

(1)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.6 OF 2016

1. Bhalchandra s/o Parbati Hogle,
Age : 50 years, Occ. Service – Teacher,
R/o Nutan Kanya Prashala,
Pathrud, Tq. Bhoom,
Dist. Osmanabad

2. Changdeo s/o Parbati Hogle,
Age : 74 years, Occ. Agri.,
R/o Jejla, Tq. Bhoom,
Dist. Osmanabad

..PETITIONERS
(Orig. Accused No.1 & 2)

VERSUS

1. Haridas s/o Sakharam Kasab,
Age : 45 years, Occ. Agri.,
R/o Jejla, Tq. Bhoom,
Dist. Osmanabad

2. The State of Maharashtra,
Through Police Station, Ambhi,
Tq. Bhoom, Dist. Osmanabad

..RESPONDENTS
(Resp. no.1 – Orig. Complainant)

Mr V.M. Humbe, Advocate for petitioners;
Mr G.J. Kore, Advocate for respondent no.1;
Mr A.R. Kale, Addl. Public Prosecutor for respondent no.2

CORAM : N.W. SAMBRE, J.

DATE : 11th April, 2016

ORAL ORDER :

Heard.

(2)

2. The order dated 30th October, 2015, passed by Judicial Magistrate First Class, Bhoom, in Misc. Application No.163 of 2015, directing issuance of process against the petitioners-accused, reflects non application of mind and is contrary to the law laid down by the Division Bench of this Court in the matter of ***State of Maharashtra vs. Shashikant Eknath Shinde*** reported in ***2013 ALL MR (Cri) 3060***.

3. In view thereof, the order dated 30th October, 2015, passed by Judicial Magistrate First Class, Bhoom, in Misc. Application No.163 of 2015, directing issuance of process against the petitioners-accused, is quashed and set aside.

Learned Magistrate shall pass an order afresh, after application of mind and considering the law laid down by the Division Bench of this Court, in the matter of *State of Maharashtra vs. Shashikant Eknath Shinde* (*supra*), particularly paragraphs 29, 30, 32 and 35.

Respondent no.1 – complainant undertakes to appear before the learned Magistrate on 18th April, 2016.

Criminal Writ Petition stands partly allowed in above terms.

(N.W. SAMBRE, J.)

amj