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

CRIMINAL WRIT PETITION NO. 73 OF 2016

1. Ashok s/o Damodhar Ugale,
Age : 44 years, Occ. Service
(Assistant Teacher),
R/o Tridal, Apartment, Block No.
B-1, Narali Bagh, Aurangabad
2. Kushindar s/o Patilbua Kedar,
Age : 50 years, Occ. Private service,
R/o Near Bharti Vidhyapith,
Ambegaon, Tq. Dist. Pune-46
3. Smt. Urmila w/o Tukaram Sanap,
Age : 46 years, Occ. Household,
R/o Near Sharada Hotel, N-11/a,
Plot No.6/1, Sudarshan Nagar,
Hudco, Aurangabad

..PETITIONERS
(Orig. Accused No.2, 7 & 11)

VERSUS

1. The State of Maharashtra,
Through Police Inspector,
Police Station, Beed (City),
Tq. Dist. Beed
2. The Superintendent of Police,
Beed, Dist. Beed
3. Dr. Sanjay s/o Nilkanthrao Lakhe Patil,
Age : 48 years, Occ. Agriculture,
R/o Near Sugar Factory, Ramnagar,
Nanded Road, Jalna, Tq. Dist. Jalna

..RESPONDENTS

Mr M.M. Chaudhari, Advocate for petitioners;
Mr R.V. Dasalkar, Addl. Public Prosecutor for respondents no.1 & 2;
Mr S.E. Siddiqui, Advocate for respondent no.3

CORAM : N.W. SAMBRE, J.

DATE : 5th April, 2016

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ORAL ORDER :

The petitioners are the accused in criminal case, being Criminal Misc. Application No.136 of 2012, in which the learned Chief Judicial Magistrate, Beed had called report under section 202 of the Code of Criminal Procedure, by an order dated 5th March, 2012 and upon perusal thereof, ordered issuance of process for offences punishable under sections 120-B, 420, 467, 468, 471 read with section 34 of the Indian Penal Code, by an order dated 2nd January, 2014.

2. Mr Chaudhari, learned Counsel appearing on behalf of the petitioners would urge that perusal of the reasons cited for issuance of process against the petitioners does not reflect application of mind by the learned Magistrate, nor satisfaction of the ingredients, to constitute the offences complained of.

3. Mr Siddiqui, learned Counsel appearing on behalf of respondent no.3 – complainant would submit that the contents of the report submitted under section 202 of the Code of Criminal Procedure has to be read in the order of issuance of process. According to him, once the Magistrate is satisfied, this Court should be slow in interfering with the order of issuance of process. He has also raised a ground of alternate remedy.

4. With the assistance, I have perused the entire documents. It is required to be noted that the order passed by the learned Magistrate on

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2nd January, 2014 issuing process against the petitioners is an unreasoned order. The Magistrate has neither recorded satisfaction about the ingredients of sections under which the offence is alleged to have been committed and for which process is issued, nor has he recorded any reasons which reflect application of mind to the facts.

5. In the above background, in my opinion, appropriate support can be drawn from the judgment rendered 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**, particularly paragraphs 29, 30, 32 and 35, which read thus :-

"29. The Apex Court in the said case has referred to its earlier observations made in the case of Pepsi Foods Ltd. And another vs. Special Judicial Magistrate and others, reported in (1998) 5 SCC 749), 35 Criminal Application No.258.13 (APL) which reads thus:

"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before

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summoning of the accused. The magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

30. *In view of the aforesaid Judgments of the Apex Court, it can, thus, clearly be seen that when the Magistrate passes order directing investigation under Section 156 (3) of Cr.P.C., it is necessary that, prior to doing so, he should apply his mind to the case before him. Least that is expected of the Magistrate, is to verify from the averments of the complaint as to whether the ingredients to constitute the offence/s complained of have been made out or not. As such the order under Section 156(3) of Cr.P.C., should depict the application of mind. No doubt the Magistrate is not expected to give elaborate Judgment at that stage. However, the least expected is that the order should depict application of mind and as to how the complaint discloses the ingredients to constitute the offence complained of.*

32. *It can, thus, be seen that the Division Bench of this Court has clearly held that if the petition or complaint does not disclose commission of cognizable offence, the learned Magistrate cannot pass the order under Section 156(3) of Cr.P.C.. It is also held that disclosure of commission of the offence is sine quo non for issuing the order under Section 156 (3) of Cr.P.C..*

35. *It will, thus, have to be held that it is mandatory for the Magistrate to apply his mind to the allegations made in the complaint and only when the allegations made in the complaint make out the ingredients to constitute an offence, the learned Magistrate can pass an order of investigation under Section*

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156(3) of Cr.P.C. Equally, when the ingredients to constitute the offence are not made out in the complaint, the learned Magistrate cannot direct investigation under Section 156(3) of Cr.P.C. Such an order is without jurisdiction. If the contention of the learned counsel for respondent complainant that once the complaint is filed under Section 156(3) of Cr.P.C., the learned Magistrate has no option but to pass an order under Section 156(3) of Cr.P.C., is accepted, it would amount to reducing the learned Magistrate to nothing else but the postman. As such, we have no other option but to reject the said contention.”

6. In view thereof, the present petition succeeds. I, therefore, pass following order :-

The order dated 2nd January, 2014, passed by Chief Judicial Magistrate, Beed, ordering issuance of process against the petitioners is hereby quashed and set aside.

The learned Magistrate shall deal with the complaint, in the light of the observations made by the Division Bench of this Court, in the matter of State of Maharashtra vs. Shashikant Eknath Shinde (quoted supra) and thereafter shall pass appropriate orders afresh.

Respondent no.3 – complainant undertakes to appear before the learned Chief Judicial Magistrate, Beed on 18th April, 2016.

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Criminal Writ Petition stands partly allowed in above terms.

(N.W. SAMBRE, J.)

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