

(1)

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

CRIMINAL WRIT PETITION NO.97 OF 2016

1. Sayed Kaleem Sayed Kundan,
Age : 40 yrs, Occ. Up-Sarpanch,
2. Sayyed Ismail Sayyed Kundan,
Age : 42 yrs, Occ. Business,
3. Shaikh Rafik Shaikh Ahmed,
Age : 48 yrs, Occ. Business,
4. Shaikh Anis Shaikh Rafik,
Age : 31 yrs, Occ. Business,
5. Sayyed Aalim Sayyed Ismial,
Age : 28 yrs, Occ. Business,
6. Shahnur Dagdu Shaikh,
Age : 30 yrs, Occ. Driver,
7. Samir Shaikh Bashir,
Age : 32 yrs, Occ. Agri.,
8. Yunus Shaikh Rafik,
Age : 30 yrs, Occ. Nil,
9. Latif Shaikh Habib,
Age : 31 yrs., Occ. Business,
10. Raju Shaikh Habib,
Age : 28 yrs., Occ. Business,

All R/o Sajapur, Tal. And
Dist. Aurangabad

..PETITIONERS

VERSUS

1. The State of Maharashtra,
Through P.I., M.I.D.C., Waluj
Police Station, Aurangabad

(2)

2. Shaikh Shahanoor Shaikh Hasan,
Age : 34 yrs, Occ. Rickshaw Driver,
R/o Sajapur, Tq. & Dist.
Aurangabad

..RESPONDENTS
(Resp. No.2 – original complainant)

Mr A.M. Hajare, Advocate for petitioners;
Mr R.V. Dasalkar, Addl. Public Prosecutor for respondent no.1;
Mrs S.G. Chincholkar, Advocate for respondent no.2

CORAM : N.W. SAMBRE, J.

DATE : 11th April, 2016

ORAL ORDER :

Heard.

2. The order dated 15th October, 2015, passed by 8th Judicial Magistrate First Class, Aurangabad, in Regular Criminal Case No.1956 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 15th October, 2015, passed by 8th Judicial Magistrate First Class, Aurangabad, in Regular Criminal Case No.1956 of 2015, directing issuance of process against the petitioners-accused, is quashed and set aside.

(3)

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.2 – complainant undertakes to appear before the learned Magistrate on 25th April, 2016.

Criminal Writ Petition stands partly allowed in above terms.

(N.W. SAMBRE, J.)

amj