

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

CRIMINAL WRIT PETITION NO. 134 OF 2014

1. Amol s/o Anantrao Jagatkar,
Age: 39 years, Occu: Lawyer,
R/o. Alankar Society, Garkheda Parisar,
Aurangabad
2. Smt. Sheela d/o Marutrao Jagatkar,
Age: Adult, Occu: Service
3. Pandurang M. Gawale,
Age: Adult, Occu: Retired Government Servant,

Petitioner No. 2 and 2 are resident of
Priaya Nagar, Parali-Vaijnath,
Dist. Beed

...Petitioners

versus

1. The State of Maharashtra,
Through Police Station, Parali,
Tq. Parali, Dist. Beed
2. Jyoti d/o Vishwanath Acharya,
Age: 34 years, Occu: Service,
R/o. Madhav Bag, Parali-Vaijnath,
Dist. Beed

...Respondents

.....
Mr. N. D. Kendre, Advocate for petitioners
Mr. D. V. Tele, A.P.P. for respondent No. 1
Mr. P. V. Balkhonde, Advocate for respondent No. 2
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CORAM : N.W. SAMBRE, J.

DATE : 17th MARCH, 2016

ORAL ORDER :

Prima facie having heard respective Counsel, it is noted
that learned Magistrate has passed order of issuance of process and

consequently summons against the accused for the offence punishable under Sections 419 and 420 read with Section 34 of the Indian Penal Code after having taken recourse to Section 202 of Code of Criminal Procedure.

2. It is required to be noted that the order of learned Magistrate does not reflect that he has applied his mind to the material that was formed to be basis for issuance of process. It is to be noted that though statement of witnesses were recorded, satisfaction of ingredients of Sections 419 and 420 of the Indian Penal Code is also not reflected in the order.

3. In my opinion, the order of learned Magistrate is without considering the material on record and the same is not maintainable, in view of 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***. Paragraphs-30, 32 and 35 of the said judgment are worth referring, which read thus :

“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 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.”

4. In view of above, the writ petition deserves to be partly allowed. In the result, I pass the following order:-

(a) The order dated 17/04/2013 passed by learned Judicial Magistrate, First Class, Parli-Vaijinath, in Regular Criminal Case No. 141 of 2012 and order dated 28/11/2013 passed by Additional Sessions Judge, Ambajogai, Dist. Beed, in Criminal Revision Petition No. 44 of 2013 are hereby quashed and set aside.

(b) Regular Criminal Case No. 141 of 2012 to restore on the file of learned Judicial Magistrate, First Class, Parli Vaijinath, with direction to decide the claim of issuance of process afresh, keeping in mind the observations made by the Division Bench of this Court in the matter of ***State of Maharashtra vs. Shashikant Eknath Shinde*** (supra).

5. The writ petition is partly allowed in above terms.

[N.W. SAMBRE, J.]