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

CRIMINAL WRIT PETITION NO.362 OF 2016

1. Balaji s/o Aainath Rahatkar,
Age : 62 years, Occ. Business,

2. Sachin s/o Balaji Rahatkar,
Age : 38 years, Occu. Business,

Both R/o Ravivar Bazar,
HUDCO, Nanded

..PETITIONERS

VERSUS

1. The State of Maharashtra
Through Secretary,
Home Department,
Mantralaya, Mumbai – 32

2. The Superintendent of Police,
Nanded, Tq. & Dist. Nanded

3. The Police Station Officer,
Nanded (Rural) Police Station,
Nanded,
Tq. & Dist. Nanded

4. The Executive Magistrate,
Nanded, Tq. & Dist. Nanded

..RESPONDENTS

Mr B.G. Deshmukh, Advocate for petitioners;
Mr R.V. Dasalkar, Addl. Public Prosecutor for respondents

CORAM : N.W. SAMBRE, J.

DATE : 20th October, 2016

ORAL ORDER :

Pursuant to a report submitted by the police authorities, Executive Magistrate, Nanded registered a chapter case against the present

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petitioners vide Case No.639 of 2015 and decided to proceed against them under sections 107 and 116 (3) of the Code of Criminal Procedure.

2. The petitioners were put to notice on the said report and were called upon to execute the bond for keeping peace or maintaining good behaviour, which was executed by them. However, the said order along with proceedings is questioned in the present petition.

3. Mr Deshmukh, learned Counsel appearing on behalf of the petitioners submits that once the proceedings are taken out under sections 107 and 116 (3) of the Code of Criminal Procedure, interim bond for good behaviour and keeping peace, cannot be ordered to be executed by the petitioners, particularly in the light of the Division Bench judgment of this Court, in the matter of **Mrs. Pramila Navin Shaha vs. State of Mah. & ors.**, reported in 2005 **ALL MR (Cri) 1233**. He would then urge that the respondent – complainant has falsely implicated the petitioners in the crime in question. Though the petitioners hold all necessary permissions for construction, still the respondent – complainant has filed false complaint. He would then urge that the proceedings as are initiated, are required to be quashed and set aside.

4. Learned Addl. Public Prosecutor has tendered affidavit-in-reply sworn in by the Naib Tahsildar and submits that the order directing the petitioners to execute the bond has been passed inadvertently.

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5. In view of the submissions made, in my opinion, the order passed by Executive Magistrate, directing the petitioners to execute the bond is not sustainable and is quashed and set aside.

6. In the background of narration of the facts, the Executive Magistrate, Nanded, is further directed to consider, whether, on merits, chapter proceedings are sustainable before him or not. As the petitioners have an alternate efficacious remedy to challenge order passed in chapter proceedings, this Court refrains from going into merits on that issue, with liberty to the petitioners to question order, if any, passed adverse to their interest.

Criminal Writ Petition stands disposed of in above terms.

(N.W. SAMBRE, J.)

amj