

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

CRIMINAL APPLICATION NO. 1366 OF 2005

1. Shaikh Shakil S/o Ibrahim,
Age. 45 years, Occ. Police
Constable, Bakkal No. 445,
City Police Station, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar.
2. Nandkishor S/o Girju Kate,
Age. 36 years, Occ. Police
Constable, Bakkal No. 799,
City Police Station, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar.
3. Nandkishor S/o Keshavrao Sangle,
Age. 45 years, Occ. Police Constable,
Bakkal No. 445, City Police Station,
Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar. ...APPLICANTS..

VERSUS

1. State of Maharashtra.
2. Raju S/o Laxman Shelar,
Age. 30 years, Occ. Driver,
R/o. Sidharth Nagar,
Ahmednagar. ...RESPONDENTS

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None present for the applicants.
APP for Respondent 1: Mr A R Kale
Advocate for Respondent 2 : Mr Vijay Sharma

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CORAM : V.K. JADHAV, J.
Dated: November 23, 2016

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ORAL JUDGMENT :-

1. The applicants seek to quash and set aside the proceeding of RTC No.22/2005 pending before the Judicial Magistrate First Class, Court No.3, Ahmednagar.

2. Brief facts, giving rise to the present criminal application, are as follows :-

The petitioners are the police constables attached to Police Station, Shrirampur at the relevant time. One Shri Dattatraya Mhetre and one another had filed a Criminal case No.10/2005 before the Judicial Magistrate First Class, Shrirampur against eight accused persons for having committed an offence punishable under sections 395, 392, 397, r/w 34 of Indian Penal Code. It has also alleged in the said complaint that, the accused named therein used motor vehicle Premier NE138 bearing registration No.MH-17/K-1111 for commission of said offence. The learned Judicial Magistrate First Class, Shrirampur on perusal of the said complaint, directed the police investigation as provided under section 156 (3) of the Criminal Procedure Code.

3. On the basis of said directions, Crime No.M.Cr.5/2005 came to be registered at Police Station, Shrirampur and the concerned P.S.O. had directed petitioner no.1 herein to carry out investigation in the said crime No.M-5/2005. Accordingly, the petitioners carried out investigation and also seized the vehicle used in offence i.e. Premier NE 138 MH-17/K-1111 from respondent No.2 Raju Laxman Shelar on 12.1.2005. Said seizure of the vehicle was reported to the Police Station, Shrirampur as well as to the concerned Magistrate. On 15.1.2005 respondent no.2 herein filed a Criminal Case No.22/2005 before the Judicial Magistrate First Class, Ahmednagar against present petitioners for having committed an offence punishable u/s 394, 323 and 324 read with 34 of I.P.C. Initially, learned Magistrate, by order dated 15.1.2005 directed the investigation u/s 156(3) of Cr.P.C., however, on 9.2.2005, though, concerned Police Station had submitted report in the negative, by the impugned order dated 28.3.2005 issued process against the present petitioners for the offence punishable u/s 394, 323 read with section 34 of IPC. Hence, this Criminal Application.

4. None present for the applicants.

5. Learned counsel for respondent no.2-original complainant submits that, on 12.1.2005 respondent No.2 was driving a car motor vehicle Premier NE-138 MH-17/K-1111 as directed to him by the owner towards Rahuri. One Vitthal Prasad Khandelwal alongwith his brother and the mother, who, was suffering from paralysis was travelling in the car as directed by the owner. Said Vitthal Khandelwal is the friend of his owner. On way, their car was stopped by the applicants and said car was seized without disclosing anything. Even, respondent no.2-complainant was kicked out from the car and petitioners took out said car alongwith the accessories and, cash amount of Rs.14,000/- kept in the dicky of the car. The applicants also threatened respondent no.2-original complainant. Learned Magistrate has not accepted the report submitted by the police station and further by applying his mind to the allegations made in the complaint, rightly issued process against the present applicants. Learned counsel submits that, act complained against the applicants is

no where connected to their official duties and, therefore, sanction under section 197 of the Cr.P.C. is not required. Learned counsel submits that, no interference is required. Criminal application is devoid of any merits and, the same is liable to be dismissed.

6. I have also heard the learned APP for the State.

7. On careful perusal of the documents submitted alongwith this criminal application which are almost not disputed, it appears that on the basis of Misc. Cri application No.10/2005 filed by one Dattatraya Mhetre and Sharad Taksal, learned Magistrate, Shrirampur has directed the investigation into the matter as provided under section 156 (3) of Criminal Procedure Code. Said complaint was filed against eight accused persons with the allegations that they had committed decoity and taken away with them one new Tata Sumo vehicle which was yet to be given registration number and, at the time of commission of the offence accused named therein used the vehicle Premier NE138 MH-17/K-1111. On 8.1.2005 police of Police Station of Shrirampur who has

registered the crime No.M-5/2005 on the basis of the directions given by the Court as aforesaid, further directed the present petitioner no.1 to carry out investigation in the said crime. During the course of investigation of the said crime, petitioner no.1 had carried out spot panchnama dated 8.1.2005 and also recorded the statements of certain witnesses from 8.1.2005 to 11.1.2005. On 12.1.2005 petitioner no.1 had seized the said vehicle Premier NE138 MH-17/K-1111 under the panchnama. In the said panchnama, reference has been given to present respondent no.2-original complainant. It has also mentioned in the panchnama that, the purpose for the seizure of the said vehicle was disclosed to respondent no.2-original complainant Raju Shelar and, accordingly, the vehicle was seized. Thereafter, on the same day, since vehicle was seized within the jurisdiction of Police Station, Rahuri, petitioner no.1 reported said seizure to P.I. of the said Police Station, Rahuri. On 14.1.2005, petitioner No.1 has submitted report before the Judicial Magistrate First Class, Shrirampur, wherein, he has pointed out seizure of the said car and, further sought time to

submit the final report in the said case. However, on 14.1.2005 itself, the complainant in that case namely Dattatraya Mhetre and others withdrawn the complaint in view of the settlement with the accused persons. Even, said complainant had filed an application before the Court seeking custody of the vehicle Tata Sumo seized during the course of the investigation of the said crime and, the court has released the said vehicle since the complainant withdrew his complaint. Present petitioner no.1, in response to release of the said vehicle Tata Sumo also informed to the Court on 19.1.2005 that Investigating officer has no objection if the vehicle Tata sumo is released in favour of said Dattatraya Mhetre, however, in the said report petitioner no.1 also sought orders of the court about disposal of the vehicle Premier NE 138 MH-17/K-1111.

8. In a complaint filed by respondent no.2, the learned Magistrate has directed the police investigation as provided under section 156 (3) of Cr.P.C. and assistant Police Inspector on 9.2.2005 submitted the report alongwith all aforesaid documents including

statements of the witnesses recorded by him. Said Assistant Police Inspector has also recorded statement of two persons of Khandelwal family namely Vitthal and Rajkumar Khandelwal. They have specifically stated before the Investigating officer that, when they were in the said car Premier-NE 138 MH-17/K-1111, the petitioners came there in another jeep and seized said vehicle by disclosing that said vehicle was used in the commission of offence of decoity and as directed by the court they are carrying out investigation and, therefore, vehicle Premier NE 138 MH-17/K-1111 is required to be seized.

9. Even though all those documents including the statements of witnesses were produced before the Magistrate, the Magistrate instead of considering the said documents, incorrectly recorded in paragraph no.2 of the order that, there is absolutely nothing on record to show that concerned Shrirampur Police Station have reported the Court at Shrirampur about seizure of the Car from the possession of the complainant. Aforesaid documents though produced before the Magistrate or

even before this court are the unassailable and unimpeachable documents which is the part of the record of the Police Station as well as of the Court, the same requires consideration. Thus, the act complained has nexus with the official duties performed by the petitioners herein. Thus, the sanction as required under section 197 of the Cr.P.C. is essential and Magistrate cannot take cognizance without there being any sanction to prosecute the petitioners in light of the allegations made in the complaint.

10. In the case of ***D.T. Virupakshappa Vs. C. Subash Criminal appeal No. 722 of 2015, delivered on 27.04.2015 by Supreme Court***, the Supreme Court in para 6 of the said order has referred the case of ***Omprakash and others vs. State of Jharkhand, through the Secretary, Department of Home, Ranchi 1 and another*** and quoted paragraph 41 of the said judgment. Paragraph no.41 read as under:-

41. *The upshot of this discussion is that whether sanction is necessary or not has to be decided from stage to stage. This question may arise at any stage of the proceeding. In a given case, it may arise at the inception.*

There may be unassailable and unimpeachable circumstances on record which may establish at the outset that the police officer or public servant was acting in performance of his official duty and is entitled to protection given under Section 197 of the Code. It is not possible for us to hold that in such a case, the court cannot look into any documents produced by the accused or the public servant concerned at the inception. The nature of the complaint may have to be kept in mind. It must be remembered that previous sanction is a precondition for taking cognizance of the offence and therefore, there is no requirement that the accused must wait till the charges are framed to raise this plea. ...”

11. In Pepsi Foods Ltd. Vs. Special Judicial Magistrate (1998) 5 SCC 749, in paragraph no.28 of the judgment, the Supreme Court has made the following observations:-

“28. 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 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."

12. In view of the above discussion and ratio laid down by the Supreme Court in the above judgments, the order passed by the Judicial Magistrate First Class, Court No.3, Ahmednagar dated 28.3.2005 does not stand. Hence, I proceed to pass the following order.

O R D E R

- I. Criminal Application is hereby allowed in terms of prayer clauses "B and B(1)".
- II. Rule is made absolute in above terms.
- III. Criminal Application accordingly disposed off.

(V.K. JADHAV, J.)

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