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

CRIMINAL APPLICATION NO.2145 OF 2016

Shilpa w/o Santosh Andure,
Age: 25 years, Occ: Household,
R/o. Kharwandi, Tq.Pathardi,
Dist. Ahmednagar & ors ..APPLICANTS

VERSUS

Subhash s/o Govindrao Gargade,
Age: 63 years, Occ: Agri.,
R/o. Ashti, Tq. Ashti,
Dist. Beed. ..RESPONDENT

Mr K.D. Khade, Advocate for applicants;
Mr Rahul P. Dhase, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 26th August, 2016

ORDER :

Respondent filed complaint being Regular Criminal Case No. 7 of 2013 before learned Judicial Magistrate, First Class, Shirur Kasar, alleging the offence punishable under Sections 420, 500 read with Section 34 of the Indian Penal Code. The said complaint was based on factual matrix that applicant No.1 was got engaged with the son of respondent, however, no marriage was performed with

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the son of respondent and she got married to somebody else.

2. Learned Magistrate passed an order of issuance of process after having considered the verification of the complaint and documents filed on record.

3. Perusal of the order depicts that learned Magistrate has failed to consider the ingredients of Sections 420, 500 read with Section 34 of the Indian Penal Code in the back ground of factual matrix of the contents of the complaint and verification thereof. *Prima facie*, in absence of application of mind, the order of issuance of process, in my opinion, is not sustainable.

4. As such, the order dated 7th August, 2013 ordering issuance of process is hereby set aside and as a consequence, the order passed by learned Additional Sessions Judge, Beed in Criminal Revision Application No. 99 of 2013 on 13th

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October, 2015 is also set aside. The complaint stood restored to the file of learned Judicial Magistrate, First Class, Shirur Kasar, who shall pass the order afresh considering the law laid down by the Division Bench of this Court in the matter of **State of Maharashtra vs. Shashikant s/o Eknath Shinde**, reported in **2013 ALL MR (Cri.) 3060**, particularly paragraph Nos. 29, 30 and 31 of the said judgment.

5. As such, Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

Tupe