

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

CRIMINAL WRIT PETITION NO. 553 OF 2016

1. Dr. Prabhakar s/o Ganpatrao Tawshikar,
Age: 72 years, Occ: Medical
Practitioner, R/o. Omerga,
Tal. Omerga, Dist. Osmanabad.
2. Dr. Samir s/o Prabhakar Tawshikar,
Age: 40 years, Occ: Medical Practitioner,
R/o. Omerga, Tal. Omerga,
District Osmanabad. ...Petitioners

versus

The State of Maharashtra,
through Dr. Ramgir s/o Kailasgir Giri,
Age: 57 years, Occ: Medical Officer
and Appropriate Authority, R/o. Omerga,
Dist. Osmanabad. ...Respondent

.....
Mr. S.D. Tawshikar , Advocate for petitioners
Ms. R.P. Gour, A.P.P. for respondent/State
.....

CORAM : N.W. SAMBRE, J.

DATE : 25th APRIL, 2016

ORAL ORDER :

Learned Sessions Judge, Omerga in Criminal Revision No. 04 of 2016 preferred at the behest of State against the order of learned Magistrate dated 22/12/2015 passed below Exhibit-29, on 21/03/2016 has made following observations in paragraph-3 of the operative order.

“3. The learned Trial Magistrate shall pass an

appropriate order on the application Exh. 29 whether the muddemal registers and forms produced in evidence by the complainant should be marked with either article number or exhibit number and then proceed further to record further examination-in-chief of the PW1.”

2. As a consequence of above, 'F' form register, which was seized from the accused persons will be either marked as exhibit number or article number. The said event took place during course of evidence.

3. While assailing the order, learned Counsel for the petitioners-accused submits that learned revisional Court had passed an order without jurisdiction as against the order which was impugned in the revision, the revision is not tenable, as rights of the parties are not finally decided the scope of revisional jurisdiction. He relied upon the judgment of the Apex Court in the matter of **Amar Nath vs. State of Haryana** reported in **1977(3) SCC 137**.

4. The second limb of submission of learned Counsel for the petitioners-accused is, the approach of learned Magistrate was proper approach as to whether piece of evidence is to be marked as exhibit or article and its legality could be looked into at the stage of final hearing while appreciation of material on record.

5. It is not in dispute that the register which is ordered to be marked as article or exhibit number was seized from the custody of accused persons. The maintenance of register in form 'F' under PC & PNDT Act is a statutory obligation, which issue is sought to be canvassed as against the accused persons by prosecution. In view of above, the order of learned Sessions Judge directing the marking of said piece of evidence as article or exhibit number will be of hardly any consequence to the present petitioners at this stage, as admissibility of the same could be looked into and appreciated by Court below at the final stage of hearing, at which stage, the petitioners will have every right to canvass the issue as regards legality of such piece of evidence.

6. In view of above observations, no case for interference is made out. As such, criminal writ petition fails and stands dismissed.

[N.W. SAMBRE, J.]