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

CRIMINAL WRIT PETITION NO. 597 OF 2016

1. Shaikh Kausar d/o Shaikh Gafur,
Age: 46 years, Occu: Service as
Incharge Principal with Model High School,
Navkhanda, Jubilee Park, Aurangabad,
Taluka and District Aurangabad,
R/o: House No. 7-2-266, Opposite Icon
Hospital, Ganesh Colony, Hudco Road,
Aurangabad,
Taluka & Dist. Aurangabad
2. Mrs. Fatema Rafiq Zakaria,
Age: 80 years, Occu: Educationist,
At present The Chairman of Maulana Azad
Educational Trust, Aurangabad,
R/o: 'Shadab, Opposite Maulana Azad
College, Roza Bagh, Aurangabad,
Taluka & Dist. Aurangabad
3. Mr. Sayed Ismatullah Pasha,
Age: 57 years, Occu: Private Service,
R/o: Flat Nos. 301-302, 'Sultanbad Chirag',
Behram Baugh Road, Jogeshwari (West),
Mumbai – 400 012

..PETITIONERS

VERSUS

1. The State of Maharashtra
2. Uzma Khanam Mirza Moin Ullah Baig,
Age: 32 years, Occu: Service as
Assistant Teacher with Model High School,
Navkhanda, Jubilee Park, Aurangabad,
Taluka and District Aurangabad,
R/o House No. 1/27/33, New Road,
Manjoorpura, Behind Dr. Jafar Hospital,
Aurangabad,
Taluka & Dist. Aurangabad

..RESPONDENTS

Mr R. S. Deshmukh, Advocate for petitioners;
Mr D. V. Tele, Addl. Public Prosecutor for respondent No.1;
Mr S. V. Dixit, Advocate for respondent No. 2

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CORAM : N.W. SAMBRE, J.

DATE : 4th May, 2016

ORAL ORDER :

Rule. With the consent of the parties, petition is heard finally.

2. The present petition questions the order dated 16th September, 2015, passed by learned 11th Judicial Magistrate First Class, Aurangabad, below Exh. 1, in S.C.C. No. 625 of 2015, thereby ordering issuance of process against petitioners for offence punishable under Section 13 of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977 (for short the 'M.E.P.S. Act'). The said order was upheld in Criminal Revision No. 34 of 2016, vide order dated 18th April, 2016, passed by the learned Additional Sessions Judge, Aurangabad, below Exh. 18. As such present petition.

3. While inviting my attention to the order impugned, Mr Deshmukh, learned Counsel appearing on behalf of the petitioners would urge that the learned Magistrate, while ordering issuance of process, has in mechanical manner, ordered issuance of process, without disclosing reasons and material considerations so as to constitute an offence based on the material placed. According to him, the order of learned Magistrate suffers from non application of mind. He would then invite my attention to the judgment of 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**, so as to submit that in criminal complaint case, accused

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cannot be summoned in mechanical manner, as same is a serious matter. He would then invite my attention to the observations made by the Apex Court in the matter of **M/S. Pepsi Foods Ltd. vs. Special Judicial Magistrate**, reported in **1998 5 SCC 749**. He would then submit that, least that was expected of the learned Magistrate was, to record satisfaction as regards making out a case for issuance of process, based on the pleadings, verifications and other material, as is brought on record, which according to him, is absent in the order impugned.

4. He would then submit that this Court should take judicial note of following important issues:

- (a) the remedy for challenging the order of School Tribunal was taken recourse to in exercise of constitutional rights and
- (b) no motive could be attributed, as the order of School Tribunal is already complied with.

He would then submit that this Court may order remand back the present matter to the file of learned Magistrate, so as to enable him to pass a fresh order, after recording satisfaction and reasons in support thereof, after considering the above important issues.

5. Mr Dixit, learned Counsel appearing on behalf of the respondent No. 2 would strenuously oppose the submissions on the ground that the proceedings, as are taken recourse to by the respondent No. 2 are in

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statutory exercise of the powers as the order of the Tribunal was not complied with. He would then submit that, once based on the pleadings and verification, it is demonstrated that the order of the School Tribunal was not complied with, which action of the petitioners is contrary to the provisions of Section 13 of the M.E.P.S. Act, the remedy was taken recourse to. According to him, in view of reasoned order of the School Tribunal based on the satisfaction is recorded by the learned Magistrate. He tried to distinguish the matter of ***State of Maharashtra vs. Shashikant*** (supra), by submitting that the proceedings under Section 156 of the Code of Criminal Procedure or such complaint proceedings, as are taken recourse to, pursuant to the Sections 190 and 200 of the Code of Criminal Procedure, cannot be treated at par with that of proceedings before the School Tribunal for non-compliance of the order.

6. According to him, as both the Courts below have concurrently held against petitioners, petition needs to be rejected.

7. What is required to be noted from the rival submissions made by the respective Counsel is, whether the learned Magistrate is required to disclose application of mind by recording appropriate reasons while ordering issuance of process, particularly in the matter of offence under Section 13 of the M.E.P.S. Act, as has been alleged in the complaint under the provisions of the said Act.

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8. It is required to be noted that the learned Magistrate, while dealing with such complaint, is required to conduct proceedings in accordance with the provisions of the Code of Criminal Procedure. Once, the learned Magistrate opens the complaint and records the verification, the least that was expected of him to consider reflection of satisfaction qua making out prima facie case upon recording satisfaction of the ingredients, as regards motive (criminal), criminal intention to commit alleged offence by showing disrespect to the order of School Tribunal.

9. Learned Counsel for the petitioners, in my opinion, was right in relying upon judgment of the Division Bench of this Court in the matter ***State of Maharashtra vs. Shashikant*** (supra), particularly paragraph Nos. 28,29,30, 33 and 34 of the said judgment.

What could be noted from the above fact, it was expected of the Magistrate to take into account criminal intention, if any, the recourse taken to by the petitioners for exhausting statutory-constitutional remedy and compliance of the order under complained of.

10. As a consequence, writ petition is partly allowed. Rule is made absolute in terms of prayer clauses 'C' and 'D'.

11. It will be open for the complainant to appear before learned Magistrate pursuant to this order.

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12. The observations made in this order are prima facie and it is expected of the learned Magistrate to pass fresh order, in accordance with the law laid down by this Court in the matter of ***State of Maharashtra vs. Shashikant*** (supra) and taking into account above observations.

(N.W. SAMBRE, J.)

sjk