

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3443 OF 2014

Laxman S/o Govind Dhakane and others .. Applicants

Vs.

The State of Maharashtra and others .. Respondents

Mr. D.G. Nagode, Advocate h/f Mr. K.N. Lokhande, Advocate for the applicants

Mr. S.D. Ghayal, A.P.P. for the respondent/State

Respondent no.2 served – absent

CORAM : N.W. SAMBRE, J.

DATE : 22/06/2016

ORAL ORDER :

Having heard Mr. D.G. Nagode, learned counsel h/f. Mr. K.N. Lokhande, learned counsel for the applicant and the learned A.P.P., it is noted that the impugned order of issuance of process suffers from non-application of mind as the learned Magistrate, while ordering issuance of process, has not recorded his satisfaction much less satisfaction of the ingredients of sections punishable, for which he has ordered the issuance of process.

2. The said issue is squarely covered by the law laid down by a Division Bench of this Court in the matter of **State of Maharashtra vs. Shashikant Eknath Shinde** reported in **2013 ALL MR (Cri) 3060**. Paragraphs 29, 30, 32 and 35 of the said judgment are worth referring to, which read thus :

"29. The Apex Court in the said case has referred to its earlier observations made in the case of **Pepsi Foods Ltd. And another vs. Special Judicial Magistrate and others**, reported in **(1998) 5 SCC 749**), 35 Criminal Application No.258.13 (APL) which reads thus:

"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."

30. In view of the aforesaid Judgments of the Apex Court, it can, thus, clearly be seen that when the Magistrate passes order directing investigation under Section 156 (3) of Cr.P.C., it is necessary that, prior to doing so, he should apply his mind to the case before him. Least that is expected of the Magistrate, is to verify from the averments of the complaint as to whether the ingredients to constitute the offence/s complained of have been made out or not. As such the order under Section 156(3) of Cr.P.C., should depict the application of mind. No doubt the Magistrate is not expected to give elaborate Judgment at that stage. However, the least expected is that the order should depict application of mind and as to how the complaint discloses the ingredients to constitute the offence complained of.

32. It can, thus, be seen that the Division Bench of this Court has clearly held that if the petition or complaint does not disclose commission of cognizable offence, the learned Magistrate cannot pass the order under Section 156(3) of Cr.P.C.. It is also held that disclosure of commission of the offence is sine quo non for issuing the order under Section 156 (3) of Cr.P.C..

35. It will, thus, have to be held that it is mandatory for the Magistrate to apply his mind to the allegations made in the complaint and only when the allegations made in the complaint make out the ingredients to constitute an offence, the learned Magistrate can pass an order of investigation under Section 156(3) of Cr.P.C. Equally, when the ingredients to constitute the offence are not made out in the complaint, the learned Magistrate cannot direct investigation under Section 156(3) of Cr.P.C. Such an order is without jurisdiction. If the contention of the learned counsel for respondent complainant that once the complaint is filed under Section 156(3) of Cr.P.C., the learned Magistrate has no option but to pass an order under Section 156(3) of Cr.P.C., is accepted, it would amount to reducing the learned Magistrate to nothing else but the

postman. As such, we have no other option but to reject the said contention."

3. In the above background, impugned order dated 4/3/2014 passed by the learned Judicial Magistrate First Class, Ashti in Regular Criminal Case No. 233 of 2013 (Meera W/o Laxman Dhakne Vs. Laxman Govind Dhakne and others) is quashed and set aside.

4. The matter stands restored back to the file of learned Judicial Magistrate First Class, Ashti for passing afresh order in the light of observations made hereinabove.

5. Criminal Application stands allowed in the above terms.

[N.W. SAMBRE]
JUDGE

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