

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

51 CRIMINAL WRIT PETITION NO. 476 OF 2004

1. Mohanlal Shaligram Bhartiya
Age : Major, Occ. : Business,
R/o : Station Road, Dhule.

2. Radheshyam Shriram Potdar
Age : Major, Occ. Business,
R/o : Panchakandil,
Agra Road, **PETITIONERS/**
Dhule. **[ORIGINAL ACCUSED]**

VERSUS

1. The State of Maharashtra **..RESPONDENT**

2. Nandkishor Kanhaiyalal Agrawal
Age : Major, Occ. Business,
R/o : Panchakandil,
Agra Road, **RESPONDENT/**
Dhule. **[ORIGINAL COMPLAINANT]**

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Mr. S.P.Brahme, Advocate for Petitioners.
Mr. K.N.Lokhande, A.P.P. for R – 1 - State.
Mr. V.P.Latange, Advocate for R - 2.

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CORAM : Z.A.HAQ, J.

DATE OF JUDGMENT : 21st NOVEMBER, 2016

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ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.
2. Heard Mr. S.P.Brahme, learned Advocate for the Petitioners, Mr. K.N.Lokhande, learned A.P.P. for Respondent No. 1 - State and Mr. V.P.Latange, learned Advocate for Respondent No. 2.
3. Respondent No. 2 filed complaint alleging that the petitioners have to be prosecuted and convicted for the offences punishable u/ss 406,471,468,420 and 120 (B) of the Indian Penal Code. Learned Chief Judicial Magistrate, Dhule passed Order dated 20/01/2004 calling report u/s 202 of the Code of Criminal Procedure as the learned Magistrate found that the material on record was not sufficient to direct issuance of process. As per the above order, report was submitted by respondent No. 1 stating that the offence did not reveal that the

petitioners had committed any offence. After the report was submitted, learned Magistrate passed the impugned order directing issuance of summons to the petitioners for the offences punishable u/ss 468,471,406 of the Indian Penal Code.

4. After hearing the learned Advocates for the respective parties and examining the record, I find that the impugned order is not sustainable as the learned Magistrate has not recorded the reasons for concluding that respondent No. 2 has established *prima facie* case for issuance of summons. In my view, recording of reasons by the learned Magistrate, at this stage, was more important in the present case in view of the earlier order passed on 20/01/2004 and the report submitted by respondent No. 1. The impugned order is required to be set aside.

Hence, the following order:

- (i) The impugned order is set aside.
- (ii) The matter is remitted to the Chief Judicial

Magistrate, Dhule for considering the matter afresh according to law.

- (iii) Respondent No. 1 shall appear before the Chief Judicial Magistrate, Dhule on 16/12/2016 at 11.00 a.m. and abide by further orders in the matter.
- (iv) In the circumstances, parties to bear their own costs.
- (v) Rule is made absolute in the above terms.

[Z.A.HAQ, J.]