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

CRIMINAL REVISION APPLICATION NO. 128 OF 2015

Shaikh Mahmood Abdul Gani,
Age: 42 years, Occu: Service,
R/o. 633 Tophkhana,
Tal. & Dist. Ahmednagar

..APPLICANT

VERSUS

1. Sanjay B. Naikpatil,
Age: 49 years, Occu: Service as
Asst. Police Inspector Add.
R/o. Ganraj Apartment, 4th Floor,
Shivneri Park, Baner,
Balevadi Road, Baner, Pune
2. Milind D. Khodve,
Age: 51 years, Occu: Service as
Asst. Police Inspector Add.
At Akkalkot Police Station,
Dist. Sholapur
3. Dildar Gulab Shaikh,
Age: 56 years, Occu: Service as
Police Constable B. No. 771,
At. Add. - Police Head Quarter,
Ahmednagar
4. Appa Baburao Chavhan,
Age: 44 years, Occu: Service as
Police Constable B. No. 1943,
At Add- Baburdi,
Tal. Shrigonda, Dist. Ahmednagar
5. Anvar Ali Sayyad Ali,
Age: 43 years, Occu: Service as
Police Constable B. No. 698,
At Add.- Police Head Quarter,
Ahmednagar
6. Zakir Babbar Qureshi,
Age: 45 years, Occu: Service as
Police Constable B. No. 2094,
At. Add.-Police Head Quarter,
Ahmednagar

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7. Bhagvan Ganpat Bade,
Age: 48 years, Occu: Service as
Police Constable B. No. 2077,
at Pipe line Road, Ahmednagar
 8. Gorakh Kisan Vidhate,
Age: 46 years, Occu: Service as
Police Constable B. No. 1939,
At. Add-Suryanagar, Ahmednagar
- ..RESPONDENTS

Mr S. S. Wagh, Advocate for applicant;
Mr N. V. Gaware, Advocate for respondent Nos. 4 to 6

CORAM : N.W. SAMBRE, J.

DATE : 7th September, 2016

ORAL ORDER :

In R.T.C. No.22 of 2003, the present respondents – police officials are the accused, who are alleged to have committed offences punishable under sections 342, 203, 219, 323, 426 read with section 34 of the Indian Penal Code.

2. Learned Magistrate, having noticed *prima facie* material against respondents-accused, ordered issuance of process.

3. In the said matter, application Exh.127 came to be moved by the respondents-accused before the Magistrate for re-calling witness.

4. The respondents-accused then moved Criminal Revision No.9 of 2014 questioning the order of framing of charge passed by Judicial

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Magistrate First Class, (Court No.7), Ahmednagar on 10th December, 2013. The said revision came to be partly allowed after maintaining the order passed below Exh.127 by the learned Magistrate refusing the respondents-accused to permit re-call of the witness for recording of evidence. However, the order dated 8th January, 2015, passed below Exh.128, regarding framing of the charge against the respondents-accused for offences punishable under sections 342, 203, 323, 426 read with section 34 of the Indian Penal Code, came to be set aside. As such, the order passed by learned Additional Sessions Judge, in Criminal Revision No.13 of 2015 is questioned in the present revision.

5. Mr Wagh, learned Counsel appearing on behalf of the applicant while taking me through the order impugned would submit that but for the reasons that the present applicant was convicted for offences punishable under sections 353, 332, 323, 504 and 506 of the Indian Penal Code, in R.T.C. No.81 of 2003, there are no considerations whatsoever, so as to set aside the order of framing of charge against the accused persons for the above referred offences. He would submit that in absence of any reasons in the order impugned, which establishes live link between the case canvassed and decision arrived at, the order impugned is not sustainable, as the application of mind of the Judge is not reflected in the order.

6. Per contra, Mr Gaware, learned Counsel appearing on behalf of respondents no.4 and 5 would strenuously urge that the order passed is just and proper, as there are sufficient grounds for allowing the revision by

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ordering setting side the order of framing charge against accused persons for offences punishable under sections 342, 203, 323, 426 read with section 34 of the Indian Penal Code.

7. If the impugned order of quashing of the order of framing of charge against the accused is perused, what is noticed is, the learned Additional Sessions Judge has relied upon the judgment of the Court below in R.T.C. No.81 of 2003, wherein the present petitioner was convicted for offences punishable under sections 353, 332 and 506 of the Indian Penal Code. Learned Additional Sessions Judge, based on the said judgment has observed that the petitioner appears to have used criminal force to deter public servants from discharging their duties and there was a complete trial in respect of the incident. The learned Additional Sessions Judge then has observed that the Trial Court was required to consider the said judgment while passing the order of framing the charge in a private complaint, which does not appear to have been considered by the Trial Court. The learned Additional Sessions Judge then observed that the said document, being a public document within the meaning of section 74 of the Evidence Act, can be read in evidence as per section 77 of the said Act. From the above referred observations, prima facie what could be observed is the learned Additional Sessions Judge has committed a mistake by not divulging upon how the judgment in R.T.C. No.81 of 2003 is required to be relied upon and is helpful to the respondents – accused/police officers, seeking a prayer for quashing of the order of framing of charge.

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8. *Prima facie*, what could be noticed from the order impugned is that, the learned Additional Sessions Judge has not given any reasons or rather has not reflected application of mind in the order impugned *qua* the order of allowing the revision for setting aside order of framing of charge against the accused persons.

9. It is then to be noted that just because the respondents are police officers, that does not mean that the Additional Sessions Judge was not expected to write any reasons in the order setting aside the order of framing of charge. Thus, the order impugned, passed by learned Additional Sessions Judge, is not sustainable. I, therefore, pass the following order :-

The order dated 19th June, 2015, passed by Additional Sessions Judge, Ahmednagar, in Criminal Revision No.13 of 2015, to the extent of setting aside the order passed below Exh.1 and below Exh.128, on 8th January, 2015, regarding framing of charge against the accused, for offences punishable under sections 342, 203, 323, 426 read with section 34 of the Indian Penal Code is not sustainable and is accordingly set aside. Criminal Revision, to that extent, stands restored to the file of the learned Sessions Judge, Ahmednagar, who shall decide the same by himself, without assigning the matter to any other Additional Sessions Judge.

Criminal Revision as such, stands partly allowed in above terms.

(N.W. SAMBRE, J.)

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