

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

Criminal Writ Petition No. 954 of 2015

District : Nandurbar

1. Sanjay Ashok Lohar (Chavan),
Age : 42 years,
Occupation : Stamp Vendor.
2. Ashok Giridhar Lohar,
Age : 66 years,
Occupation : Business.
3. Latabai Ashok Lohar,
Age : 60 years,
Occupation : Housewife.
4. Sachin Ashok Lohar,
Age : 35 years,
Occupation : Labourer.

Petitioner Nos.1 to 4
R/o. Khataimata Nagar,
At Post : Taloda,
District : Nandurbar.

5. Surekha Jagdish Panchal,
Age : 38 years,
Occupation : Housewife.
6. Jagdish (Bachu) Gujju Panchal,
Age : 46 years,
Occupation : Business.

Petitioner Nos.5 and 6
R/o. Limbayat,
Near Lokmanya Tilak Garden,
Surat, Taluka & District : Surat
(Gujrat).

7. Sarita Mukesh Lohar,
Age : 36 years,
Occupation : Housewife.
8. Mukesh Nandlal Lohar,
Age : 40 years,
Occupation : Business.
9. Nandlal Suklal Lohar,
Age : 71 years,
Occupation : Business.
10. Miraben Nandlal Lohar,
Age : 65 years,
Occupation : Housewife.

Petitioner Nos.7 to 10
R/o. 150, Green Park,
Dhusav Road, Bhestan,
Surat (Gujrat).

11. Kishor Dhabu Lohar,
Age : 72 years,
Occupation : Business.
 12. Kusum Kishor Lohar,
Age : 66 years,
Occupation : Housewife.
- Petitioner Nos.11 and 12
R/o. 396, Kusumnanda,
Hudco Colony, Korit Road,
Nandurbar, Dist. : Nandurbar.
13. Dinesh Chhotubhau Chavan,
Age : 42 years,
Occupation : Business.
 14. Jyoti Dinesh Chavan,
Age : 39 years,
Occupation : Housewife.

15. Gajanan Ghhotu Chavan,
Age : 61 years,
Occupation : Business.

16. Pratibha Gajanan Chavan,
Age : 59 years,
Occupation : Housewife.

Petitioner Nos.13 to 16
R/o. Gurukrupa Colony,
Near Bus Stand, Taloda,
District : Nandurbar.

.. Petitioners.

versus

1. The State of Maharashtra.

2. Sou. Urmila @ Chhaya Sanjay Chavan,
Age : Major,
Occupation : Housewife,
C/o. Ghanshyam Kalidas Lohar,
R/o. Borad, Taluka : Taloda,
District : Nandurbar.

.. Respondents.

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*Mr. R.S. Shinde, Advocate, holding for
Mr. N.L. Chaudhari, Advocate, for the petitioners.*

*Mr. R.V. Dasalkar, Addl. Public Prosecutor, for
respondent no.1.*

Mr. G.A. Nagori, Advocate, for respondent no.2.

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CORAM : N.W. SAMBRE, J.

DATE : 15TH MARCH 2016

ORAL JUDGMENT :

1. Heard the learned Counsel for respective parties.
2. Rule. Rule made returnable forthwith. By consent of the learned Counsel for the parties, heard finally.
3. Respondent no.2 herein filed Regular Criminal Case No. 34/2014, in the Court of Judicial Magistrate (F.C.), Taloda [District : Nandurbar], against the petitioners alleging commission of offence under Sections 498A, 323, 504, 506, read with Section 34 of the Indian Penal Code. The learned Magistrate has taken cognizance of the same and by order dated 31-1-2015, directed issuance of process against accused persons i.e. petitioners herein for the said offences. The same was subject matter of challenge in a revision before the learned Additional Sessions Judge, Shahada, vide Criminal Revision Application No. 12/2015, which came to be dismissed by judgment and order dated July 3, 2015. As such, the present petition.
4. Mr. Shinde, the learned Counsel for the petitioners, while inviting attention of this Court to the order of issuance of process passed by the learned Magistrate on January 31, 2015, would urge that the said order is without considering the material that was brought on record qua the role attributed to each of the petitioners who are named as accused in the said proceedings. According to him, some of the accused are residents of State of Gujarat and are included as accused by making certain omnibus allegations which are not at all taken into account by the learned Magistrate before passing the order of issuance of process. He would then

invite attention of this court to the law laid down by a Division Bench of this Court in the case of ***State of Maharashtra Vs. Shashikant s/o. Eknath Shinde***, reported in ***2013 ALL MR (Cri) 3060***, so as to canvass that an order passed by the Magistrate directing either investigation or registration of crime has to be upon considering the material that was brought on record and the order must reflect application of mind. According to him, the orders impugned, as such, are not sustainable.

5. Mr. Nagori, the learned Counsel for respondent no.2 - original complainant, would urge that the learned Magistrate after taking into account the evidence of independent witnesses, which was brought on record, has satisfied himself, as is apparent from the observations made in para 2 of the order of the Magistrate passed on January 31, 2015. He would then submit that upon satisfaction, the learned Magistrate has rightly issued process against the petitioners in the light of provisions of Section 204 of the Code of Criminal Procedure 1973. He would submit that there is enough material on record to connect the present petitioners qua their *prima facie* involvement in the crime in question and, as such, in view of concurrent findings i.e. the order of issuance of process and dismissal of revision, this Court in its extraordinary jurisdiction should be slow in interfering and sought dismissal of the petition.

6. The learned Addl. Public Prosecutor for respondent no.1 has supported the impugned orders.

7. Having bestowed my thoughts to the submissions made and upon perusal of the complaint, it is required to be noted that the

complainant - respondent no.2 has impleaded all the relatives, total 16, as accused to the complaint alleging some vague role to some of the accused. This Court must take note of the fact that some of the accused are residents of Surat in Gujrat State. The sister of her husband i.e. accused no.1 is not even residing with them. However, she is shown as shown with some vague allegations. The said aspect and the prima facie availability of the material on record as against the said accused person is not at all dealt with by the learned Magistrate while passing the order of issuance of process.

8. The learned Counsel for the petitioners, in my opinion, has rightly invited attention of this Court to the judgment of Division Bench of this Court in the case of ***State of Maharashtra Vs. Shashikant s/o. Eknath Shinde*** (cited supra), so as to canvass that the Magistrate must apply his mind to the material that is brought before him and satisfy himself before passing an order of issuance of process. In my opinion, the order passed by the learned Magistrate is contrary to the law laid down by the Division Bench of this Court in the case of ***State of Maharashtra Vs. Shashikant s/o. Eknath Shinde*** (cited supra). Paras 30, 32 and 35 of the said judgment are re-produced below in order to have useful reference :-

"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 offences/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 qua 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. "

9. In the result, the petition is allowed.

(a) The order dated 31st January 2015, passed by the learned Judicial Magistrate (F.C.), Taloda, below Exhibit 1 in Regular Criminal Case No. 34/2014, and the order dated 3rd July 2015, passed by the Additional Sessions Judge, Shahada, in Criminal Revision Application No. 12/2015, are quashed and set aside.

(b) The matter is remitted back to the learned Judicial Magistrate (F.C.), Taloda, who is directed to pass fresh orders after going through the law laid down by the Division Bench of this Court in the case of ***State of Maharashtra Vs. Shashikant s/o. Eknath Shinde*** (cited supra) and thereafter pass appropriate orders in the matter.

10. Rule is made absolute in the aforesaid terms.

(N.W. SAMBRE)
JUDGE

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