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

CRIMINAL APPLICATION NO.4136 OF 2016

Gurumukh Mehrumal Jagwani,
Age: 54 years, Occu: Business,
R/o: 19-B, Jai Nagar, Near Omkareshwar
Mandir, Dist. Jalgaon

..APPLICANT

VERSUS

1. State of Maharashtra
2. Jalgaon Zilha Gram Sudhar Samiti,
Kanalde, Tq. & Dist. Jalgaon,
Through its Trustee/Secretary-
Madhukar Murlidhar Bhangale,
Age: 42 years, Occu: Business & Agriculture,
R/o: Kanalde, Tq. & Dist. Jalgaon

..RESPONDENTS

Mr Niteen Pradhan, Senior Advocate with Ms. Shubhada Khot, Advocate,
instructed by Mr S. H. Jagiasi, Advocate for applicant;
Mr C. V. Dharurkar, Addl. Public Prosecutor for respondent No.1;
Mr M.S. Kulkarni, Advocate for respondent No. 2

CORAM : N.W. SAMBRE, J.

DATE : 26th October, 2016

ORAL ORDER :

Chief Judicial Magistrate, Jalgaon, vide order dated 2nd July, 2016,
passed in Criminal Misc. Application No.79 of 2014, ordered issuance of
process against accused nos.1 to 7 for offences punishable under sections
120, 182, 417, 419, 420, 465, 466, 467, 468, 471, 472, 473, 474, 475, 476,
477-A read with section 34 and section 120-B of the Indian Penal Code.

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2. The present applicant is one of the accused, who has questioned the legality and maintainability of the proceedings on merits, including that of the order of issuance of process.

3. The bone of contention of Mr Pradhan, learned Senior Counsel appearing on behalf of the applicant is that the order of issuance of process is passed in a mechanical manner, without application of mind and without being satisfied with the requirement of ingredients of the offences for which process has been issued. He would then urge that if the language of the order is considered, there are certain incorrect observations, which takes to the only conclusion that the order is passed without considering the material placed on record and without disclosing proper reasons for making an order of issuance of process. As such, according to him, the order is not sustainable.

4. Mr Kulkarni, learned Counsel appearing on behalf of respondent no.2 – complainant made a strenuous effort so as to demonstrate from the record that there is sufficient material to draw a conclusion that the applicant is *prima facie* involved in offences for which the learned Magistrate has rightly issued the process. Mr Kulkarni then would urge that the applicant herein will get appropriate opportunity to put-forth his case and if required may take recourse to the provisions of section 239 of the Code of Criminal Procedure (for short “CrPC”) for discharge, if it is noticed that there is no material against him. According to him, in addition,

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there is an alternate remedy of revision available to the applicant for questioning the order of the learned Magistrate.

5. After having considered rival submissions, what is noticed from the order made made, whereby process is ordered to be issued is that the Magistrate has relied upon inquiry report called under section 202 of CrPC (Exh.6) and made an observation that the report speaks of the forged order of the court and submission thereof to obtain the permission of the court.

6. If the report at Exh.6 at page 190 of the application is perused, I hardly notice any such observations in the report. Though Mr Kulkarni was right in pointing out as regards the communication issued by the Assistant Charity Commissioner to that effect, still the same is not at all taken into consideration by the learned Magistrate. Apart therefrom, what is required to be noted is, the learned Magistrate, while passing the order of issuance of process has not at all recorded any satisfaction as regards making out ingredients of the offences, which is least expected from him. An appropriate support can be drawn from the Division Bench judgment of this Court, in the matter of ***State of Maharashtra vs. Shashikant Eknath Shinde*** reported in ***2013 ALL MR (Cri) 3060***.

7. It is also a settled law, that the criminal law cannot be set in motion merely for asking, as the other party is required to be summoned in a criminal trial and required to undergo strenuous process of defending himself. Support to that effect can be drawn

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from the judgment of the Apex Court, in the matter of **Pepsi Foods Ltd. and another vs. Special Judicial Magistrate and others**, reported in **(1998) 5 SCC 749**.

8. In view thereof, in my opinion, it will be appropriate to quash and set aside the order dated 2nd July, 2016, passed by the Chief Judicial Magistrate, Jalgaon in Criminal Misc. Application No.79 of 2014. Thus, the following order :-

The order dated 2nd July, 2016, passed by the Chief Judicial Magistrate, Jalgaon in Criminal Misc. Application No.79 of 2014, is quashed and set aside.

The matter stands restored to the file of Chief Judicial Magistrate, Jalgaon, who shall pass appropriate order keeping in mind the law laid down by the Division Bench of this Court, in the matter of State of Maharashtra vs. Shashikant Shinde (supra).

The complainant undertakes to appear before the learned Chief Judicial Magistrate, Jalgaon on the next date.

With the above observations, Criminal Application stands allowed.

(N.W. SAMBRE, J.)

amj