

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

**Criminal Writ Petition No. 1097 of 2016**

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| District : Beed |
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1. Gopikishan s/o. Pusaramji Bajaj,  
Age : 56 years,  
Occupation : Agriculture,  
R/o. Bardapur,  
Taluka Ambajogai,  
District Beed.
2. Balaprasad s/o. Ramgopal Bajaj,  
Age : 50 years,  
Occupation : Agriculture, .. Petitioners  
R/o. As above. (Original accused)

**versus**

1. The State of Maharashtra,  
Through Police Station Officer,  
Bardapur Police Station,  
Bardapur,  
Taluka Ambajogai,  
District Beed.
2. Pusaram s/o. Chunilalji Bajaj,  
Age : 90 years,  
Occupation : Agriculture,  
R/o. Bardapur,  
Taluka Ambajogai,  
District Beed. .. Respondents.

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*Mr. S.S. Rathi, Advocate, for the petitioners.*

*Mr. G.O. Wattamwar, Addl. Public Prosecutor, for  
the respondent no.01.*

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**CORAM : Z.A. HAQ, J.**

**DATE : 19TH DECEMBER 2016**

**ORAL ORDER:**

Heard learned Adv. Mr. S.S. Rathi for the petitioners, and the learned APP Mr. G.O. Wattamwar for the respondent no.01 - State of Maharashtra.

02. The petitioners - accused take exception to the order passed by the learned Magistrate allowing the application (Exhibit No.58) and permitting the prosecution to give secondary evidence in respect of the copy of application cum complaint alleged to have been given by the present respondent no.02.

03. After hearing the learned Advocate for the petitioners, by order dated 17th October, 2016 this Court directed issuance of notice to the respondent no.01 - State of Maharashtra and then by the order dated 24th October, 2016, the Superintendent of Police, Beed, was directed to file an affidavit explaining the necessary facts.

In response to the above order, the Superintendent of Police, Beed, has filed affidavit sworn on 19th November, 2016. In the affidavit, it

is stated that the learned Magistrate passed an order directing investigation under Section 156(3) of the Code of Criminal Procedure, 1973 and directed that the copy of complaint be sent to Bardapur Police Station, that the copy of complaint in R.C.C. No. 100/2010 was sent to Bardapur Police Station from Ambajogai Court vide Outward No. 3122, that the entry of receipt of complaint was not taken in the inward register maintained at Bardapur Police Station, however, the outward entry No. 795 taken on 14th July, 2013 in the register maintained at Police Station, Bardapur, shows that the report was sent by Police Inspector to the Court at Ambajogai and the report was received by the official at Ambajogai Court which is clear from the signature of the Clerk working at the Court at Ambajogai.

The petitioners have not filed any counter affidavit to controvert the above statement. There is no reason to discard the affidavit filed by the Superintendent of Police, Beed.

04. Though the reason given by the learned Magistrate for allowing the application (Exhibit No.58) does not appear to be proper, considering the facts which have come on record in the affidavit filed by the Superintendent of Police, Beed, I am not inclined to interfere with the impugned order.

05. The Writ Petition is dismissed. Parties to bear their own costs.

( Z.A. HAQ )  
JUDGE

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