

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

Criminal Writ Petition No. 1239 of 2014

District : Nanded

Sau. Mangarani w/o. Suresh Ambulagekar,
Age : 45 years,
Occupation : Agriculture,
R/o. Pasaydan Apartment,
Shivajinagar, Nanded.

.. Petitioner
(Original accused)

versus

Mahesh s/o. Mukundrao Parandekar,
Age : 37 years,
Occupation : Tahsildar,
R/o. Bhokar,
Taluka : Bhokar,
District : Nanded.

.. Respondent
(Original complainant)

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*Mr. P.P. Mandlik, Advocate, holding for
Mr. A.S. Gandhi, Advocate, for the petitioner.*

*Mr. D.V. Tele, Addl. Public Prosecutor, for
the respondent.*

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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. The petitioner suffered an order of issuance of process in Regular Criminal Case No. 26 of 2014, for offences punishable under Sections 171-G, 177 and 181 of the Indian Penal Code, passed by the learned Judicial Magistrate (F.C.), Bhokar. The said order thereafter was confirmed in Criminal Revision No. 2/2014 preferred by the petitioner. The learned Addl. Sessions Judge, Bhokar, vide judgment and order dated August 20, 2014, dismissed the said revision. As such, the present petition.

4. Mr. Mandlik, the learned Counsel for the petitioner, while inviting my attention to the order of issuance of process, would urge that the order depicts complete non-application of mind in respect of the ingredients of the Sections of the Indian Penal Code under which offence is punishable and for which process is issued by the learned Magistrate. In his submission, the learned Magistrate has not at all considered satisfaction of the very ingredients of the Sections of the Indian Penal Code from the contents of the application and the evidence that is brought on record prior to the order of issuance of process. He would then submit that the learned Addl. Sessions Judge has also lost sight of the same.

5. Mr. Tele, the learned Addl. Public Prosecutor for the respondent, while opposing the application would submit that it is pursuant to the complaint that was received by one of the candidates, the

Collector had applied its mind to the conduct of the petitioner and has directed the Tahsildar to file complaint. He would submit that perusal of the complaint would depict satisfaction of the very ingredients of the Sections of the Indian Penal Code of which process is issued.

6. In my opinion, having perused the order passed by the learned Magistrate on 23rd January 2014 and the order passed by the learned Addl. Sessions Judge in exercise of revisional jurisdiction on 20th August 2014, it is noticed that the learned Magistrate has passed the order without application of mind to the case that was brought before it. It is required to be noted that though the Magistrate is not required to write a judgment, but his order must reflect the considerations. The satisfaction of the ingredients of the Sections of which prima facie an offence is alleged has to be recorded by the Magistrate. Upon perusal of the order impugned, what is reflected is, the learned Magistrate has passed a vague order saying that the Magistrate is satisfied that prima facie there appears to be a commission of offence punishable under the said Sections.

7. In my opinion, a useful reference can be made 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***. Paras 30, 32 and 35 of the said judgment are re-produced below :-

"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. "

In view of above observations of the Division Bench, it was expected of the Magistrate to apply his mind before ordering the issuance of process and upon satisfying the ingredients of the Sections under which the offence is punishable.

8. In the result, the petition is allowed.

(a) The order dated 23rd January 2014, passed by the Judicial Magistrate (F.C.), Bhokar, in Regular Criminal Case No. 26/2014, and the judgment and order dated 20th August 2014, passed by the Addl. Sessions Judge, Bhokar, in Criminal Revision No. 2/2014, are quashed and set aside.

(b) The matter is remitted back to the learned Judicial Magistrate (F.C.), Bhokar, 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.

9. Rule is made absolute in the aforesaid terms.

(N.W. SAMBRE)
JUDGE

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