

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

Criminal Writ Petition No. 1271 of 2015

District : Hingoli

Rajesh s/o. Uttamrao Landge,
Age : 34 years,
Occupation : Service,
R/o. Tulsiram Nagar,
Malegaon Road,
Taroda (Kh.),
Taluka & District : Nanded. .. Petitioner.

versus

1. The State of Maharashtra,
Through Kalamnuri Police Station.
2. Vijay s/o. Vitthalrao Thorat,
R/o. Mauje Gadala,
Taluka : Kalamnuri,
District : Hingoli. .. Respondents.

.....

*Mr. Dhananjay M. Shinde, Advocate, for the
petitioner.*

*Mr. N.T. Bhagat, Addl. Public Prosecutor, for
respondent no.1.*

*Mr. Ajinkya Kale, Advocate, holding for
Mr. S.B. Talekar, Advocate, for respondent no.2.*

.....

CORAM : Smt. SADHANA S. JADHAV, J.

DATE : 4TH JULY 2016

ORAL ORDER:

Heard the learned Counsel for the petitioner, the learned Addl. Public Prosecutor for respondent no.1 and the learned Counsel for respondent no.2.

2. It appears from the record, that respondent no.2 had filed a complaint before Judicial Magistrate (F.C.), Aundha Nagnath, District Hingoli, alleging therein that the petitioner had committed the offences under Sections 409, 420, 465, 466, 467, 468, 471 of the Indian Penal Code and Section 3 read with Section 7 of the Essential Commodities Act. Upon perusal of the complaint filed by respondent no.2, the learned Magistrate vide order dated 28th April 2014, had issued directions under Section 156(3) of the Code of Criminal Procedure, 1973 [**For short, "Cr.P.C"**].

3. It is pertinent to note that pursuant to the directions issued by the learned Magistrate, Crime No. 33/2014 was registered at Police Station, Kalamnuri, District Hingoli, on 5th May 2014. Being aggrieved by the said order, the petitioner herein had filed Criminal Revision Application No. 16/2014 before the Addl. Sessions Judge, Basmath. By an order dated 15th May 2015, the said revision application was dismissed thereby confirming the

order passed by the learned Magistrate, dated 28th April 2014.

4. The petitioner herein had then filed an application before this Court under Section 482 of the Cr.P.C., which was registered as Criminal Application No. 3912 of 2015. On 3rd September 2015, the Hon'ble Division Bench of this Court had granted liberty to the petitioner to withdraw the Application and "take steps as are available in law". The petitioner has, therefore, filed the present Criminal Writ Petition and has impugned the order dated 28th April 2014, passed by the learned Magistrate, thereby issuing directions under Section 156(3) of the Cr.P.C.

5. In fact, the petitioner had no locus to challenge an order issuing directions under Section 156(3) of the Cr.P.C., as a proposed accused would have no locus to challenge the said order which is basically in the nature of direction. It is further pertinent to note that the said direction had been implemented and crime was registered on 5th May 2014. Hence, the order passed by the learned Addl. Sessions Judge, thereby rejecting the revision, was a justifiable order which called for no interference. However, the petitioner had filed the Criminal Application under Section 482 of the Cr.P.C. and had circulated the same before the Hon'ble Division

Bench. The Hon'ble Division Bench had granted liberty to take steps in accordance with law. Once this Court has held that a proposed accused has no locus to challenge the order passed under Section 156(3) of the Cr.P.C., the petition itself would not be maintainable.

6. The Hon'ble Division Bench of this Court (Coram : A.S. Oka and P.D. Naik, JJ.) at Principal Seat at Bombay, in Criminal Application No. 152 of 2015, (***Kailash Dattatraya Jadhav & others Vs. State of Maharashtra & others***), vide order dated 4th May 2016, after dealing with all the receiving judgments, has observed as follows :-

" In a case where an order made under Sub-section 3 of Section 156 culminates into registration of FIR, the Revisional Court is powerless to pass an order of quashing the FIR and quashing a charge sheet filed on the basis of the FIR. Therefore, in a case where on the basis of an order under Sub-section 3 of Section 156 of the Code, FIR is registered, the remedy of revision under the Code for challenging the order under Sub-section 3 of Section 156 will not be an efficacious remedy at all. For the reasons which we have recorded above, even in a case where a revision application is entertained against an order under Sub-section 3 of Section 156 where FIR on the basis of the said order is already registered, in exercise of revisional jurisdiction, neither this Court nor Sessions Court can quash the FIR and proceedings

subsequent to the FIR, as what can be gone into by the Court in revisional jurisdiction is the issue of legality, validity and propriety of the orders passed by a subordinate Criminal Court. "

7. In that view of the matter, the petition sans merits and the same is accordingly dismissed.

(Smt. SADHANA S. JADHAV)
JUDGE

.....