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

CRIMINAL APPLICATION NO.5354 OF 2015

1. Ruplal Ratan Jadhav,
Age: 57 years, Occu: Service,
R/o. Vaijapur-Yeola Raod,
M.N.C. No. 8, Gangapur,
Dist. Aurangabad
 2. Sakharam Nema Rathod,
Age: 65 years, Occu: Nil,
R/o Tisgaon Tanda,
Ta. Khultabad, Dist. Aurangabad
 3. Rajshree d/o Ruplal Jadhav,
Age: 29 years, Occu: Service,
R/o. Hivkheda, Tal. Kannad,
Dist. Aurangabad
 4. Pankaj s/o Ruplal Jadhav,
Age: 24 years, Occu: Nil. Student,
R/o. Mauli Nagar, Near Surya Lawns,
Beed By-pass Road, Aurangabad,
Dist. Aurangabad
- ..APPLICANTS

VERSUS

1. The State of Maharashtra,
Through Police Inspector,
Sillod City Police Station,
Tal. Sillod, Dist Aurangabad
 2. Ramu Maherchand Rathod,
Age: 58 years, Occu: Nil,
R/o. Shirsal Tanda,
At present Kale Colony, Sillod,
Tal. Sillod, Dist. Aurangabad
- ..RESPONDENTS

Mr S. U. Chaudhari, Advocate for applicants;
Mr A. R. Kale, Addl. Public Prosecutor for respondent No. 1;
Mr S. N. Patil, Advocate for respondent No. 2

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CORAM : N.W. SAMBRE, J.**DATE : 15th April, 2016****ORAL ORDER :**

The order dated 28th April, 2014, passed by learned Judicial Magistrate First Class, Sillod, ordering issuance of process for offences punishable under sections 323, 504, 506 of the Indian Penal Code is questioned by the applicants-accused in the present application under section 482 of the Code of Criminal Procedure.

2. Learned Counsel appearing on behalf of respondent no.2 – complainant raised an objection to the tenability of the present proceedings.

3. I have perused the order passed by the Magistrate ordering issuance of process. It is noted that the said order lacks any reasons. The Magistrate has even not satisfied that the complaint discloses the ingredients to constitute the offences for which issuance of process is ordered.

4. The order passed by the Magistrate directing issuance of process against the petitioners-accused, reflects non application of mind and is contrary to the law laid down by the Division Bench of this Court in the matter of **State of Maharashtra vs. Shashikant Eknath Shinde** reported in **2013 ALL MR (Cri) 3060**. Paragraphs 29, 30, 32 and 35 of the said judgment read thus :-

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“29. The Apex Court in the said case has referred to its earlier observations made in the case of Pepsi Foods Ltd. And another vs. Special Judicial Magistrate and others, reported in (1998) 5 SCC 749; (1998 ALL MR (CRI.) 144 (S.C.)) which reads thus :

"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

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 offence/s complained of have been made out or not. As such the order under Section 156(3) of

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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 quo 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."

5. In view thereof, the order dated 28th April, 2014, passed by Judicial Magistrate First Class, Sillod, in S.C.C. No.1086 of 2013, directing issuance of process against the petitioners-accused, is quashed and set aside.

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Learned Magistrate shall pass an order afresh, after application of mind and considering the law laid down by the Division Bench of this Court, in the matter of *State of Maharashtra vs. Shashikant Eknath Shinde (supra)*, particularly paragraphs 29, 30, 32 and 35.

Respondent no.1 – complainant undertakes to appear before the learned Magistrate on 25th April, 2016.

Criminal Application stands partly allowed in above terms.

(N.W. SAMBRE, J.)

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