

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

CRIMINAL APPLICATION NO. 5792 OF 2016

Vijaysing s/o. Nathesing Rajput .. Applicant

Versus

The State of Maharashtra & Ors. .. Respondents

Mr.B.R. Waramaa, Advocate for the applicant.

Mr.K.N. Lokhande, A.P.P. for respondent/State.

Mr.S.S. Patil, Advocate for respondent Nos. 2 & 3.

CORAM : Z.A. HAQ, J.

DATED : 21.11.2016

P.C. :-

. Heard Mr.B.R. Waramaa, learned Advocate for the applicant/original complainant, Mr.S.S. Patil, learned Advocate for non-applicant Nos. 2 & 3 and Mr. K.N. Lokhande, learned A.P.P. for non-applicant No.1.

02. Rule. Rule made returnable forthwith.

03. The applicant/original complainant has challenged the order passed by the learned Magistrate on 03rd October, 2016, by which the learned Magistrate has closed evidence of prosecution without examining the Investigation Officer.

04. It is recorded in the impugned order that summons was issued to the Investigation Officer and it was served, however, the Investigation Officer remained absent and therefore order was passed directing issuance of bailable warrant and it could not be served on the Investigation Officer and subsequently the report of execution of bailable warrant, which was issued again was not received back. In the circumstances, learned Magistrate closed the evidence of prosecution.

05. After going through the impugned order, I find that the learned Magistrate has committed patent illegality and has failed to exercise jurisdiction vested in him which enables him to secure the presence of the witness. Therefore, the impugned order is unsustainable and has to be set aside. Hence, the following order :-

(i) The impugned order is set aside.

(ii) The learned Magistrate shall take steps to record the evidence of the Investigation Officer by resorting to the procedure, according to law and then proceed further in the matter.

06. The application is allowed in above terms. In the circumstances, parties to bear their own costs.

07. The learned Advocate for non-applicant Nos.2 & 3 prays for direction for expeditious disposal of the prosecution. The accused are granted liberty to make such request before the learned Magistrate.

[Z.A. HAQ, J.]