

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

CRIMINAL WRIT PETITION NO. 1470 OF 2015

1. Punam d/o Vijay Pandhare,
Age: 21 years, Occ: Education,
2. Marotrao s/o Baburao Pandhare,
Age: 73 years, Occ: Nil,
3. Rukhminibai w/o Vijaykumar Pandhare,
Age: 69 years, Occ: Nil,
4. Shakuntala w/o Vijaykumar Pandhare,
Age: 43 years, Occ: Agri.,
5. Pradeep s/o Marotrao Pandhare,
Age: 38 years, Occ: Agri.,

All R/o. Chinchala, Tq. Wadwani,
District Beed.

...Petitioners

versus

1. The State of Maharashtra
Through the Parli Vaijinath P.S.
Osmanabad Dist. Osmanabad.
2. Sow. Meena w/o Arjun Bankar,
Age: 32 years, Occ: Household,
R/o. Gangakhed, at present R/o
Room No. 16, Palak Apartment,
Yadhav Nagar, Shirpur,
Badlapur East, Thane
C/o. Sambhaji Gadade, Gurukrupa Nagar,
in front of Nath Cinema Parli-V,
Dist. Beed.

...Respondents

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Mr. Chandrakant R. Pawar, Advocate for petitioners
Mr. D.V. Tele, A.P.P. for respondent No. 1
Mr. S.G. Chapalgaonkar, Advocate for respondent No.2

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CORAM : N.W. SAMBRE, J.

DATE : 10th MARCH, 2016

ORAL ORDER :

Present writ petition is directed against the order dated 26/05/2015 passed by learned Additional Sessions Judge, Ambajogai in Criminal Revision No. 16 of 2013.

2. Present respondent No.2-original complainant filed complaint before learned Judicial Magistrate, First Class, Parli-Vaijinath vide Regular Criminal Case No. 144 of 2011 alleging that the present petitioners be prosecuted for the offence punishable under Sections 494, 109 read with Section 34 of Indian Penal Code.

3. Learned Magistrate, by an order dated 01/03/2012 was pleased to pass an order directing issuance of process against accused No. 1 for the offence punishable under Section 494 of Indian Penal Code and for the offence punishable under Sections 494 read with Section 109 of Indian Penal Code against accused Nos. 2 to 14, 16 and 19 to 21.

4. The said order of issuance of process was subject matter of challenge in the above referred revision, which came to be dismissed by the order dated 26/05/2015 in absence of learned Counsel of both the parties. As such, present writ petition.

5. My attention is invited to the order passed by learned Judicial Magistrate, First Class, Parli-Vaijinath ordering issuance of process on 01/03/2012 and impugned order passed by learned Sessions Judge, Ambajogai on 26/05/2015.

6. Perusal of the order passed by learned Magistrate ordering issuance of process depicts that same suffers from non-application of mind, as there are hardly any considerations reflected in the order, ordering issuance of process against present petitioners. The said approach on the part of learned Magistrate is contrary to the law laid down by the Nagpur Bench of Bombay High Court in the matter of ***State of Maharashtra vs Shashikant s/o Eknath Shinde*** reported in ***2013 ALL MR (Cri) 3060***. Relevant Paragraph-32 of the said judgment reads thus:

“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.”

7. Upon perusal of the order of learned Sessions Court,

before whom, the order of learned Magistrate was in question, it is noted that learned Sessions Judge has lost sight of above referred legal proposition, which could have been considered before examining legality and validity of the order passed by the Magistrate ordering issuance of process.

8. In this background, in my opinion, both the orders i.e. one passed by learned Judicial Magistrate, First Class, Parli-Vaijinath in Regular Criminal Case No. 144 of 2011 on 01/03/2012, ordering issuance of process and another order dated 26/05/2015 passed by learned Additional Sessions Judge, Ambajogai in Criminal Revision No. 16 of 2013 are hereby quashed and set aside.

9. It is directed that learned Judicial Magistrate, First Class, Parli-Vaijinath shall pass fresh order considering the law laid down by this Court in the matter of ***State of Maharashtra vs Shashikant s/o Eknath Shinde*** (supra), before passing any order on the complaint preferred by respondent No. 2-complainant.

10. In view of the fact that the proceedings are pending since last two years, it will be appropriate, in my opinion, to direct learned Magistrate to pass appropriate orders on the complaint, as observed herein above, expeditiously.

11. The writ petition stands allowed in above terms.

[N.W. SAMBRE, J.]

Tupe/10.03.16