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

CRIMINAL APPLICATION NO. 6805 OF 2015

1. Shri Dipak Shankarlal Dalani,
Age: 35 years, Occu: Business
2. Shri Shankarlal Lokumal Dalani,
Age: 63 years, Occu: Business
3. Sow. Kamalbai Shankarlal Dalani,
Age: 58 years, Occu: Household
4. Shri Ravi Shankarlal Dalani,
Age: 40 years, Occu: Business
5. Sow. Sona Ravi Dalani,
Age: 37 years, Occu: Household
6. Shri Naresh Shankarlal Dalani,
Age: 33 years, Occu: Business
7. Sow. Jyoti Naresh Dalani,
Age: 31 years, Occu: Household

Above all R/o Block No. P/3,
Kumar Nagar, Tq. and Dist. Dhule

8. Sow. Rajashri Lalchand Lalwani,
Age: 43 years, Occu: Household
9. Shri Lalchand Rameshlal Lalwani,
Age: 45 years, Occu: Business

Applicant Nos. 8 & 9 R/o.
C/o Rameshbhai Sindhi,
Gold Rings specialists, Shop No. 5,
Nandraton Market, 1st Floor,
Sankadisheri, Manek Chowk,
Tq. and Dist. Ahmadabad

..APPLICANTS

VERSUS

1. Sow. Menaka Dipak Dalani,
Age: 24 years, Occu: Household,
R/o. C/o Manoharlal Mulchand
Chetia, CTS No. 41, Plot No. 146,
Arunkumar Vaidya Nagar,

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Sakri Road,
Tq. & Dist. Dhule

2. The State of Maharashtra ..RESPONDENTS

Mr N. L. Choudhari, Advocate for applicants;
Mr Joydeep Chatterji, Advocate for respondent No. 1;
Mr D. V. Tele, Addl. Public Prosecutor for respondent No. 2

CORAM : N.W. SAMBRE, J.

DATE : 29th March, 2016

ORAL ORDER :

At the outset, learned Counsel appearing on behalf of the applicants restricts the application to the extent of questioning the legality and validity of the order dated 3rd August, 2015, passed by Judicial Magistrate First Class, Dhule, in Criminal Misc. Application No.777 of 2015, ordering issuance of process against the applicants.

2. While questioning the aforesaid order, learned Counsel would urge that the married sisters and such family members who are not resident of the place of applicant no.1 – husband and respondent no.1 – wife, are intentionally roped so as to give colour of accused to them. According to him, all family members including distant relations are impleaded as accused in the complaint. He would then submit that the learned Magistrate has passed the impugned order without application of mind and without considering whether the necessary ingredients of the offence are satisfied or not. He relied upon the judgment of this Court in the matter of **State of Maharashtra vs. Shashikant s/o Eknath Shinde**, reported in **2013 ALL MR (Cri) 3060**.

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3. Mr Joydeep Chatterji, learned Counsel appearing on behalf of the respondent-wife would strenuously urge that the applicants are intentionally and deliberately subjecting respondent no.1 with cruelty, which has resulted into filing of the proceedings and claiming the relief under the provisions of the Protection of Women from Domestic Violence Act, 2005. According to him, even if the order of the Magistrate is non-speaking, the allegations in the complaint can be read in the order.

4. Having bestowed my thoughts to the submissions made, it is required to be noted that the respondent – wife has added her husband, her in-laws and other relations who are not residing at the same place, as party – accused to the complaint. Perusal of the complaint speaks of omnibus allegations against the applicants.

5. Apart from above, it is to be noted that the learned Magistrate has just noted that there is *prima facie* commission of offence under the provisions of the Protection of Women from Domestic Violence Act, 2005 and as such issued process, without analyzing the role of each of the applicants in the crime as has been alleged in the complaint. The least that was expected of the learned Magistrate was to see that the ingredients of the offence are satisfied and reflect application of mind in the order of issuance of process, which is conspicuously absent in the impugned order.

6. In view of above, in my opinion, it will be appropriate to quash the order impugned and remit the matter back to the learned Magistrate for

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consideration afresh. Accordingly, the order dated 3rd August, 2015, passed by Judicial Magistrate First Class, Dhule, in Criminal Misc. Application No.777 of 2015, ordering issuance of process, is quashed and set aside and the matter is remitted back with a direction to decide the same afresh in the light of the observations made by the Division Bench of this Court in the matter of State of Maharashtra vs. Shashikant s/o Eknath Shinde (supra).

Criminal Application stands allowed in above terms.

It is made clear that this court has not considered the merits of the matter and the observations in this order are of *prima facie* nature.

(N.W. SAMBRE, J.)

amj