

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

Criminal Writ Petition No. 0350 of 2017

District : Beed

Ratnamala w/o. Shivaji Kharat,
Age : 50 years,
Occupation : Household,
R/o. Kawadgaon (Bk.),
Taluka Wadvani,
District Beed.

.. Petitioner
(Original complainant)

versus

1. The State of Maharashtra.
2. Pandurang s/o. Kathalu Dombale,
Age : 65 years,
Occupation : Agriculture,
R/o. Kawadgaon (Bk.),
Taluka Wadvani,
District Beed.
3. Sandipan s/o. Ganpatrao Khalge,
Age : 50 years,
Occupation : Agriculture,
R/o. Kawadgaon (Bk.),
Taluka Wadvani,
District Beed.
4. Suman s/o. Gangaram Sajgane,
Age : 60 years,
Occupation : Agriculture,
R/o. Kawadgaon,
Taluka Wadvani,
District Beed.
5. Bhagwan s/o. Kashinath Karadkar,
Age : 50 years,
Occupation : Agriculture,
R/o. Kawadgaon (Bk.),
Taluka Wadvani,
District Beed.

6. Dinkar s/o. Pandurang Dombale,
Age : 28 years,
Occupation : Agriculture,
R/o. Kawadgaon (Bk.),
Taluka Wadvani, .. Respondents
District Beed. (Original accused)

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Mr. S.P. Urgunde, Advocate, for the petitioner.

*Mr. K.S. Patil, Addl. Public Prosecutor, for
respondent no.01.*

*Mr. S.J. Salunke, Advocate, for respondents
no.02 to 06.*

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CORAM : V.L. ACHLIYA, J.

DATE : 09TH AUGUST 2017

ORAL JUDGMENT :

01. Rule. Rule made returnable forthwith. By consent, heard finally.

02. Before adverting to the submissions advanced, it is necessary to consider few facts leading to filing of the petition.

(a) The petitioner herein approached Judicial Magistrate (F.C.), Wadvani, District Beed, by way of an application under Section 156(3) of the Code of Criminal Procedure, 1973, seeking direction to investigating agency to register the offence and

conduct investigation. On due consideration of the application, supported with the affidavit and material placed, learned Magistrate was pleased to pass order on 22nd July, 2016 and directed the officer in-charge of Police Station, Wadvani, to register the FIR and investigate the case.

(b) Being aggrieved by said order, respondents no.02 to 06 preferred revision before Addl. Sessions Judge, Majalgaon, District Beed. Vide judgment and order dated 06th February, 2017, learned Addl. Sessions Judge allowed the revision petition and set aside order dated 22nd July, 2016 passed by the learned Magistrate.

(c) Being aggrieved by the order passed by the learned Addl. Sessions Judge, the petitioner i.e. the complainant has preferred this writ petition.

03. Mr. S.P. Urgunde, learned Counsel appearing for the petitioner, submitted that the order passed by the learned Addl. Sessions Judge is not sustainable in law for the reason that the order directing investigation of the case passed by the learned Magistrate was duly executed. Pursuant to the order, FIR was registered and investigation was conducted. On conclusion of investigation, charge-sheet was filed on 09-11-2016 against respondents no.02 to 06 in the court of Judicial Magistrate

(F.C.), Wadvani. On filing of charge-sheet, case was registered as R.C.C. No.77/2016. On the same day, learned Magistrate has passed order of taking cognizance and issued process under Sections 420, 323, 504, 506 read with Section 34 of the Indian Penal Code against accused - respondents no.02 to 06. It is submitted that the fact regarding investigation and filing of charge-sheet was not brought to the notice of learned Addl. Sessions Judge. Due to this reason, the order came to be passed by the revisional court. He further submitted that in view of filing of charge-sheet, order passed by the revisional court become *non-est* and liable to be set aside.

04. Mr. S.J. Salunke, learned Counsel appearing for respondents no.02 to 06, submitted that the revisional court was fully justified in setting aside the order passed by the learned Magistrate. He submitted that in consequences to the order passed by the revisional court, proceedings before the Magistrate is liable to be dropped.

05. Having appreciated submissions advanced by respective parties, I am of the view that the order passed by the revisional court is not sustainable in law. The order passed by the learned Magistrate directing to register FIR and investigate was given effect by the investigating agency and conducted the investigation. Based upon investigation, charge-

sheet has been filed in the court of Judicial Magistrate (F.C.), Wadvani. Charge-sheet has been filed much prior to judgment and order passed by the Sessions Court. Learned Magistrate has also taken cognizance of case instituted on the basis of Police report. In such circumstances, order passed by the revisional court is not sustainable in law. I am, therefore, of the view that the order passed by the revisional court deserves to be set aside.

06. At this stage, learned Counsel appearing for respondents no.02 to 06 submits that respondents no.02 to 06 may be given liberty to approach the trial court and move an application seeking discharge.

07. In the result, writ petition is allowed in terms of prayer clause "A" with liberty to respondents no.02 to 06 to file application seeking discharge.

08. Rule made absolute in the above terms.

(V.L. Achliya)
JUDGE

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