

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

CRIMINAL APPLICATION NO.2208 OF 2017

1. Smt.Naheda Anjum Majharrulla Hasmi
Age 55 years, Occu: Household
2. Gafurrulla Majharrulla Hasmi
Age 40 years, Occu: Advocate
3. Ajahar Majharrulla Hasmi
Age 32 years, Occu: Engineer
All R/o.Hasmi Chuuk Ausa,
Tq. Ausa, Dist. Latur.
4. Hamidpasa Syed
Age 26 years Occ. Service,
R/o. Katghar Galli Ausa
Tq.Ausa, Dist. Latur.

APPLICANTS

VERSUS

1. The State of Maharashtra
Through Police Station Ausa,
Tq. Ausa, Dist. Latur
2. Mainuddin Khan Dastagirkhan
Durrani,
Age 65 Years, Occ. Business,
R/o.Jamalnagar Ausa
Tq. Ausa, Dist.Latur.

RESPONDENTS

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Mr.R.K.Ashtekar, Advocate for the applicants
Mr.D.R.Kale, APP for Respondent—State

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**CORAM: S.S.SHINDE &
MANGESH S.PATIL, JJ.**

Date: 03.11.2017

ORDER: [Per S.S.Shinde, J.]

1] This Application is filed with the following prayer:

B) The first information report registered under section 420, 467, 468, 471 r/w 34 of I.P.C.bearing crime no. 137/2014 with Ausa Police Station on 30.07.2014 against the applicants may kindly be quashed and set aside.

2] Learned counsel appearing for the applicants submits that the Investigation Officer had completed the investigation of the Crime No.137/2014, registered with Ausa Police Station, Ausa and submitted 'B' summary report before the Judicial Magistrate First Class, Ausa, District Latur. It is submitted that in stead of accepting such report, the learned Magistrate on 21st February, 2017, proceeded to pass the order below Exh.1 in RCC No.33/2014 [Mainoddin Vs.

Naheda and others], and directed the Investigation Officer to cause further investigation of the complaint/First Information Report. It is submitted that since the civil suit is pending before the Civil Court between the parties, the question of filing complaint and issuing directions to register the First Information Report was absolutely unwarranted.

3] On the other hand, learned APP appearing for the respondent-State submits that in absence of challenge to the order passed by the Judicial Magistrate First Class, Ausa, on 21st February, 2017 below Exh.1 in RCC No.33/2014, the prayer in the application for quashing the FIR may not be entertained. He further submits that the Investigation Officer instead of waiting till the opinion of the Handwriting Expert is received, hurriedly proceeded to file 'C' summary report, and therefore, the Judicial

Magistrate First Class, AUSA, has rightly issued direction for further investigation of the complaint filed by respondent no.2.

4] We have heard the learned counsel appearing for the applicants and learned APP appearing for the respondent-State. We have carefully perused the order passed by the learned Magistrate on 21st February, 2017, which reads thus:

"Read the complaint, and nil police report submitted by the investigating officer. The complainant alleged falsification of a bond dtd. 25.07.2013 in his name by the accused persons in order to grab his property. From the investigation report submitted by the police, it is seen that, though the said disputed bond came to be sent for the opinion of Handwriting Expert and yet it is to be received by the investigating officer, he

submitted nil report. It was necessary for the investigating officer to wait till the receipt of Handwriting Expert opinion to arrive at a proper conclusion. Therefore, it is not appropriate on the part of the investigating officer to submit nil report. Hence, the complaint is redirected to the concerned investigating officer / police station for submission of appropriate report after having Handwriting Expert opinion with regard to the disputed bond and other necessary evidence. Hence, the complaint is redirected for investigation accordingly.

The aforesaid order makes it clear that the Investigation Officer instead of waiting till the report of Handwriting Expert is received, hurriedly proceeded to file 'C' summary. In fact, the allegations in the FIR are that the accused persons in order to grab the property of the complainant, prepared

fabricated documents with the forged signature of the complainant.

5] In that view of the matter, the Judicial Magistrate First Class, is justified in re-directing for investigation of the complaint. Admittedly, the applicants have not challenged the order passed by the Judicial Magistrate First Class, AUSA. Since the First Information Report discloses ingredients of the alleged offences, the prayer of the petitioner to quash the First Information Report cannot be entertained. Hence Application stands rejected.

6] The observations made herein above are *prima facie* in nature and confined for adjudication of the present application only.

[MANGESH S.PATIL]
JUDGE

[S.S.SHINDE]
JUDGE