

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

CRIMINAL WRIT PETITION NO. 527 OF 2008

1. Promod Wamanrao Kshirsagar
Age : 36 years, occ : service (Junior Engineer)
R/o Flat No. 101, Yash Corner, Naik
Nagar Road, Anand Nagar,
Nanded.

2. Shri PB. Nawale
Age : 35 years, occ : service
R/o Plot No. 30, Fulsungi,
Indraprasth Nagar, Bhati,
Nagpur

.. Petitioners.

Versus

1. The State of Maharashtra
Through Police Station Officer,
Shivaji Nagar Police Station,
Nanded.

2. Asha Shantilal Bhandari
Age : 40 years, occ : household
R/o Mahavir Society, Shivaji
Nagar, Nanded.

.. Respondents.

Mr. N.V. Gaware, Advocate for petitioners.

Mr. S.D. Ghayal, A.P.P. for respondent No.1/State.

Mr. Vijay Sharma, Advocate for respondent No.2.

**CORAM : T.V. NALWADE &
SUNIL K. KOTWAL,JJ.**

DATED : 03.08.2017.

JUDGMENT : (PER SUNIL K. KOTWAL,J.)

1. Petitioners have filed this Writ Petition to quash and set aside the order dated 07.08.2008 passed by the Chief Judicial Magistrate, Nanded in O.M.C. No. 276/2008 filed by respondent No.2, and consequent F.I.R. bearing Crime No.135/2008, dated 13.08.2008 registered at Shivaji Nagar Police Station, Nanded, under Sections 323, 380, 452 and 457 read with Section 34 of the Indian Penal Code.

2. Petitioner No.1 works as a Junior Engineer and petitioner No.2 as Deputy Executive Engineer with Maharashtra State Electricity Distribution Co. Ltd., Nanded (hereinafter referred as “ M.S.E.D.C.L.”).

3. On 02.08.2008 while executing Special Theft Detection Drive Operation, petitioners and other staff members started verifying and checking the Meters in Mahavir Society at Nanded. After receiving telephonic call from staff member Mr. P.B. Nawale, the petitioners visited the house of Girish Bansilal Bhandari and noticed that the said Girish Bhandari was abusing

Mr. Nawale and other staff members in filthy language. One person Manoj Bhandari also abused the employees of M.S.E.D.C.L. in filthy language. On intervention by the petitioners, Girish Bhandari, Manoj Bhandari and Virendra Bhandari assaulted the petitioners. Therefore, on the same day complaint was lodged to Police Station and in the result Crime No. 129/2008 was registered against the offenders under Sections 353, 332, 342, 323, 504 and 506 read with Section 34 of the Indian Penal Code. On the same day second complaint was registered against Manoj Bansilal Bhandari under Section 135 of Indian Electricity Act for theft of electric energy of worth Rs. 2,72,196/-. Being annoyed with this action of the petitioners, as a counter-blast, respondent No. 2 Smt. Asha Shantilal Bhandari filed complaint before the Chief Judicial Magistrate, Nanded, which was registered as O.M.C. No.276/2008 against the petitioners alleging criminal house trespass and theft of jewellery from her house by the petitioners.

4. On 07.08.2008 Chief Judicial Magistrate, Nanded passed an order under Section 156 (3) of the Code of Criminal

Procedure and directed the Police Inspector of Shivaji Nagar Police Station to register crime and investigate accordingly. In the result, Crime No. 135/2008 was registered against petitioners under Sections 452, 457, 323 and 380 read with Section 34 of the Indian Penal Code. Therefore, this petitioner arises.

5. Heard learned Advocate Mr. Gaware for petitioners, learned A.P.P. for the State and learned Advocate Mr. Vijay Sharma for respondent No.2.

6. Contention of the learned Advocate for the petitioners is that, the complaint lodged by respondent No.2 is *mala fide*, passed on vague assertion and deserves to be quashed. He placed reliance on the case between **Baijnath Jha Versus Sita Ram and another** reported in 2008 AIR SCW 4614, wherein the Apex Court ruled out that, “when proceedings instituted were *mala fide*, based on vague assertion and were initiated with *mala fide* intents and constitute sheer abuse of process of law, the proceedings are liable to be quashed”.

7. In reply, learned Advocate for respondent No.2 supported the order passed by Chief Judicial Magistrate, Nanded on the ground that on merits it can be decided whether the complaint lodged by respondent No.2 is false or not.

8. We have carefully gone through the copy of F.I.R. dated 02.08.2008 lodged by petitioner No.1 to Shivaji Nagar Police Station, Nanded alleging the use of criminal force and causing hurt to the petitioners by Manoj Bhandari and Girish Bhandari. On the same day second complaint was lodged regarding commission of theft of electric energy by Manoj Bhandari. Thereafter on 07.08.2008 respondent No.2 Smt. Asha Bhandari filed complaint before Chief Judicial Magistrate, Nanded under Sections 452, 457, 323 and 380 of the Indian Penal Code against the petitioners. On the same day, learned trial Court passed the impugned order, which reads as under :-

“Heard Advocate Manish Sharma for the applicant, perused documentary evidence on record including affidavit of the applicant. The police Inspector of Shivajinagar P.S. is directed U/Sec. 156 (3) of Cr.P.C. to register crime and investigate. Accordingly present application is disposed off”.

A bare glance at the impugned order makes it clear that the learned Chief Judicial Magistrate, Nanded did not apply his mind to the facts of the case. No reasons are assigned to show that after going through the facts of the case, he was satisfied that at least cognizable offence is made out against the petitioners.

9. Thus, the impugned mechanical order, passed without application of mind, is bad in law and deserves to be set aside on this count alone. Reference can be made on the case of **Maksud Saiyed Vs. State of Gujarat & ors. reported in (2008) 5 SCC 668**, wherein Apex Court examined the requirement of the application of mind by Magistrate before exercising jurisdiction under Section 156(3) and held that, where a jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 Cr.PC., the Magistrate is required to apply his mind in such a case. The application of mind by Magistrate should be reflected in order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, will not be sufficient. After going

through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) of the Code of Criminal Procedure should be reflected in the order, though a detailed expression of his views is neither required nor warranted. This law is also followed by Apex Court in **Anil Kumar & ors. Vs. M.K. Aiyappa & anr. reported in AIR 2014 SC (Supp) 1801.**

10. Otherwise also, the facts placed on record clearly indicate that only because on 02.08.2008 the petitioners caught the members of Bhandari family for committing theft of electric energy and only because the offence was registered against the members of Bhandari family, as a counter-blast, respondent No.2 filed this baseless complaint with *mala fide* intention.

11. Therefore, in the light of law laid down by the Apex Court in the case of **Baijnath Jha** (cited supra), the proceedings initiated against the petitioners deserves to be quashed. Accordingly, we proceed to pass the following order.

ORDER

1. The Petition is allowed.
2. The order passed by the Chief Judicial Magistrate, Nanded to make investigation under Section 156 (3) of the Code of Criminal Procedure is set aside.
3. The F.I.R. filed on the basis of the said order is also quashed and set aside.
4. Rule is made absolute in the above terms.

Sd/-**(SUNIL K. KOTWAL)
JUDGE****Sd/-****(T.V. NALAWADE)
JUDGE**

vdd/