

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

CRIMINAL WRIT PETITION NO. 811 OF 2017

1. Pramod Bapurao Patil
Age : 44 years, Occ : Agri.,
and Medical Practitioner,
R/o village Rajwadi, at present
Near Police Station, Math Galli,
Mudkhed, Tq. Mudkhed, Dist. Nanded.
2. Govind Sawairam Chavan
Age : 40 years, Occ : Agri.,
R/o Rajwadi Tanda,
Tq. Mudkhed, Dist. Nanded.
3. Kishan @ Krishna Pundlik
Boinwad
Age : 50 years, Occ : Agri.,
R/o Rajwadi Tanda,
Tq. Mudkhed, Dist. Nanded.
4. Vinod Shankar Chavan
Age : 37 years, Occ : Agri.,
R/o Rajwadi Tanda,
Tq. Mudkhed, Dist. Nanded.
5. Ramesh Rangrao Chavan
Age : 48 years, Occ : Agri.,
R/o Rajwadi Tanda,
Tq. Mudkhed, Dist. Nanded.

..PETITIONERS

VERSUS

1. The State of Maharashtra
Through Police Officer,
Police Station, Barad,
Tq. Mudkhed, Dist. Nanded.

2. Devrao Nagoba Choudante
Age : 48 years, Occ : Nil,
R/o Bhimnagar, Mudkhed,
Dist. Nanded.

..RESPONDENTS

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Mr. R.B. Narvade Patil, Advocate for the Petitioners.
Mr. D.R. Kale, APP for Respondent/State
Mr. G.G. Suryawanshi, Advocate for Respondent No.2

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

**RESERVED ON : 10th November, 2017
PRONOUNCED ON : 22nd November, 2017.**

JUDGMENT (Per S.S.Shinde, J.):

Heard the learned counsel appearing
for the petitioners, the learned A.P.P.
appearing for the Respondent/State and the
learned counsel appearing for Respondent
No.2.

2. This Petition is filed with the
following prayer :-

"b. The impugned order dated
31.01.2017 passed in O.M.C.A.

No.91/2016 by the Sessions Judge at Nanded as well as F.I.R. bearing Crime No.58/2017 registered with Barad Police Station, Tq. Mudkhed, Dist. Nanded, pursuant to the aforesaid order against the petitioners for the offences punishable under sections 427, 428, 506, 379 of I.P.C. and Section 3(i)(x) of the Atrocity Act and all the further proceedings based on it, may kindly be quashed and set aside, in the interest of justice."

3. Though the various contentions have been raised by the learned counsel appearing for the petitioners in the Memo of the Petition, however, during the course of hearing, he invites our attention to the order passed by the Additional Sessions Judge at Nanded on Misc. Criminal Application No. 91/2016 filed by Respondent No.2 herein and

submits that, there is no single reason assigned in the impugned order, why the Court felt it necessary to direct investigation under Section 156(3) of the Code of Criminal Procedure (For short "Cr.P.C."). It is further submitted that, the powers given under Section 156 of Cr.P.C. are conferred on the Magistrate, and therefore, the Special Court i.e. Court of Additional Sessions Judge at Nanded was not competent to adjudicate the Misc. Criminal Application filed by Respondent No.2. The learned counsel appearing for the petitioners submits that, the Petition deserves to be allowed on the aforesaid two grounds only. Therefore, without prejudice to the other contentions/legal issues raised in the Petition and the right to agitate the said points at the appropriate time, the learned counsel appearing for the petitioners submits that, the Petition may be allowed.

4. On the other hand, the learned counsel appearing for Respondent No.2 submits that, Writ Petition under Article 226 of the Constitution of India is not maintainable in view of availability of the remedy of filing revision challenging the impugned order passed directing the investigation under Section 156(3) of the Code of Criminal Procedure. He further submits that, the Magistrate has passed the reasoned order and thereafter the investigation has been carried out by the Investigating Officer. He further invites our attention to the averments in the affidavit in reply filed by Respondent No.2 and also other documents placed on record and submits that, the Petition may be rejected.

5. The learned A.P.P. appearing for the Respondent/State, relying upon the investigation papers and report submitted by the Investigating Officer, submits that, the Investigating Officer has formed the prima

facie opinion that, the alleged incident had not taken place as it is evident from the statements of the witnesses.

6. We have given careful consideration to the submissions advanced by the learned counsel appearing for the petitioners, learned A.P.P. appearing for the Respondent/State and the learned counsel appearing for Respondent No.2. Though the various contentions have been raised in the Petition and also by Respondent No.2 on merits, at present we are confining the adjudication of this Writ Petition on preliminary objection/contention raised by the petitioners.

7. The order passed by the Additional Sessions Judge at Nanded i.e. Special Court on Misc. Criminal Application No.91 of 2016 (Deorao Nagoba Chaudante V/s Pramod Bapurao

Patil and others) reads thus :-

"O

Perused application & affidavit. Call report U/s. 156(3) of Cr.P.C. Application stands disposed off.

Sd-
31.01.2017
ASJ"

8. Upon perusal of the aforementioned order, it is abundantly clear that, neither there is any application of mind by the concerned Court nor any reasons, much less the brief reasons have been assigned while directing the investigation under Section 156(3) of the Cr.P.C. The Division Bench of Bombay High Court Bench at Nagpur in the case of **State of Maharashtra V/s Shashikant Eknath Shinde¹**, after placing reliance on the ratio laid down in the case of **Pesi Foods Ltd. V/s Special Judicial Magistrate²** and also in the

1 2013(4) Bom.C.R.(Cri.) 801

2 1998(5) Bom.C.R. 426(S.C.)

case of Maksud Saiyed Vs. State of Gujrat³

has taken a view that, where a jurisdiction is exercised on a complaint petition filed under section 156(3) or section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The reference is also made to the judgment of the Division Bench of this Court in the case of **Yogiraj Vasantrao Surve Vs. State of Maharashtra in Criminal Application No.470 of 2011** decided on 28th February, 2013. The para 30 of the said judgment in the case of **Shashikant Shinde (supra)** reads thus :-

"30. In view of the aforesaid judgments of the Apex Court, it can, thus, clearly be seen that when the Magistrate passes order directing investigation under section 156(3) of Code of Criminal Procedure, it is necessary that, prior to doing so, he should apply his mind to the case

3 2008(5) S.C.C. 668

before him. Least that is expected of the Magistrate, is to verify from the averments of the complaint as to whether the ingredients to constitute the offences complained of have been made out or not. As such the order under section 156(3) of Code of Criminal Procedure, should depict the application of mind. No doubt the Magistrate is not expected to give elaborate judgment at that stage. However, the least expected is that the order should depict application of mind and as to how the complaint discloses the ingredients to constitute the offence complained of."

9. The Supreme Court in the case of **Anil Kumar and others V/s M.K. Aiyappa and another**⁴ in para 8 held thus :-

"8. We may first examine whether the Magistrate, while exercising his powers under Section 156(3) Cr.P.C., could act in a mechanical or casual

4 (2013) 10 SCC 705

manner and go on with the complaint after getting the report. The scope of the above mentioned provision came up for consideration before this court in several cases. This Court in Maksud Saiyed case (supra) examined the requirement of the application of mind by the 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.P.C., the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, 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) Cr.P.C., should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation." (Underlines added)

10. The Supreme Court in the case of **Priyanka Shrivastava V/s State of Uttar Pradesh and others**⁵ has made it clear that, the application filed by the complainant seeking direction for investigation under Section 156(3) of the Code of Criminal Procedure should be supported by the affidavit of the applicant. Though there is no specific provision to that effect for filing such affidavit, however, the pronouncement of the Supreme Court in the case of **Priyanka Shrivastava (supra)** binds all the Courts situate within the territorial

5 (2015) 6 SCC 287

jurisdiction of the India.

11. Therefore, the order passed by the Additional Sessions Judge at Nanded without assigning any reason and without application of mind cannot legally sustain in the light of exposition of law in the cases of **Shashikant Shinde (supra) and Anil Kumar (supra)**. On this ground alone the Petition succeeds.

12. Accordingly, the impugned order dated 31st January, 2017 passed by the Additional Sessions Judge, Nanded in Misc. Criminal Application No. 91 of 2016 is quashed and set aside. The F.I.R. bearing No.58 of 2017 registered with Barad Police Station, Tq. Mudkhed, Dist. Nanded is also quashed and set aside. The Misc. Criminal Application No. 91 of 2016 is restored to its original file. The concerned Court to decide

the said application afresh keeping in view the discussion made hereinabove and also first proceed to decide, whether the Special Court had jurisdiction to entertain the complaint ? and if answer is yes, then only proceed to consider the remaining grievances raised in the application.

13. All other contentions raised on merits of the subject matter either in the Petition or by the Respondents are left open to be agitated at the appropriate stage.

14. Rule made absolute in terms of prayer clause `B'. The Petition stands disposed of accordingly.

[MANGESH S. PATIL, J.]

[S.S. SHINDE, J.]