

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

**CRIMINAL WRIT PETITION NO.818 OF 2016**

1. Jagdeo s/o.Mahadeo Akhare  
Age: 61 years, Occ : Retired Dy.S.P.  
R/o.New Jagruti Society, Plot No.92,  
Katol Road, Nagpur.
2. Deelip s/o.Murlidhar Patil  
Age: 52 years, Occ : Service,  
R/o.Pimpalgaon, Tq. Pachora,  
Dist. Jalgaon.
3. Kailas s/o.Umraosing Chauhan,  
Age: 53 years, Occ : Service,  
R/o.Police Line, Faizpur,  
Tq.Yawal, Dist.Jalgaon.

**PETITIONERS**  
[Orig.Accused]

**VERSUS**

1. The State of Maharashtra  
Through its Principal Secretary,  
Home Department, Mantralaya,  
Mumbai-32.
2. Sameer s/o.Ramesh Takte,  
Age: 35 years, Occ: Business,  
R/o. Gita Bhavan, Narayanwadi,  
at Chalisgaon, Tq. Chalisgaon,  
Dist. Jalgaon.

**RESPONDENTS**

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Mr.R.N.Dhorde, Senior counsel i/b.  
Mr.V.R.Dhorde, Advocate for petitioners  
Mr.R.S.Deshmukh, Advocate for respondent no.2  
Mr.M.M.Nerlikar, APP for the Respondent/  
State

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**CORAM: S.S.SHINDE &  
V.K.JADHAV, JJ.**

Reserved on : 24.01.2017  
Pronounced on : 09.03.2017

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

1. This Petition under Article 226 of the Constitution of India and under section 482 of Criminal Procedure Code is filed with the following prayers:

B) Quash and set aside the F.I.R. bearing C.R.No.338/2012 registered with Chalisgaon Police Station under Sections 166, 167, 201, 217, 218, 219 of the Indian Penal Code dated 22.10.2012 as well as the order dated 06.04.2016 passed by the learned Judicial Magistrate, First Class, Chalisgaon in Criminal M.A. No.1098/2015 rejecting the "B" Summary Report and issuing the process against the petitioners for the offence punishable under Sections 166, 167, 218, 219 r/w. 34 of the Indian Penal Code and registering the R.C.C. against the

petitioners and for that purpose issue necessary orders;

2. Brief facts leading for filing the present Writ Petition as disclosed in the memo of the Petition, are as under:

The learned Magistrate has passed the order of issuing process against the petitioners. The petitioners herein are the opponents/accused in RCC No.572/2012, filed by respondent no.2 for the offence punishable under Sections 166, 167, 196, 201, 217, 218, 219 and 34 of the Indian Penal Code. Respondent no.2 herein is the original complainant in RCC No.572/2012.

3. It is the case of the petitioners that the petitioner no.1 was working as Police Inspector at Chalisgaon Police Station, Dist. Jalgaon. At the relevant time, petitioner no.2 was also working in the said Police Station as the Police Head Constable,

who registered the offence bearing Crime No. 125/2008, under Section 380 of the IPC as reported by respondent no.2. Petitioner no.3 is one of the Head Constable at Chalisgaon Police Station.

4. Respondent no.2 is local shop keeper filed a written complaint on 07.07.2008 bearing C.R. No.125/2008, with Chalisgaon Police Station under Section 380 of the IPC, alleging that, while he was in shop selling mobiles, there was theft in his shop and 10 mobiles have been stolen. Petitioner no.2 Constable S.H.O.Deelip Patil registered the C.R.No.125/2008, on the basis of complaint written by respondent no.2 himself. It is further the case of the petitioners that in the said complaint, one Vilas Deshmukh, Head Constable (deceased), was an Investigating Officer to whom the investigation was entrusted. Said Vilas Deshmukh investigated the said offence and thereafter on 30.09.2008

filed "A" summary report before the learned Judicial Magistrate First Class, Chalisgaon, stating that the accused are not traceable though offence is committed. Accordingly, the notice was also given to respondent no.2 in view of the provisions of Section 173 (f) of the Criminal Procedure Code, intimating that, "A" summary final has been filed before the learned JMFC, Chalisgaon in the said C.R.No. 125/2008. The petitioners have placed on record copy of the said "A" summary report submitted by the Investigation Officer in the compilation of the Writ Petition.

5. It is further the case of the petitioners that on 07.07.2009, there was some dispute between one Purushottam Patel, a building contractor and one Dr.Uttamrao Mahajan, local resident, who is running Ayurvedic College at Chalisgaon about dues of the amount in respect of construction bills. Therefore, the said Purushottam Patel

approached petitioner no.1 and requested him to register the complaint for non-payment of the said amount against Dr.Uttamrao Mahajan. However, since it was a civil dispute regarding payment of amount of construction work, the petitioner no.1 informed the complainant that, it is a civil dispute regarding settlement of dues, and allegations do not disclose cognizable offence. Therefore, complainant was advised to adopt civil remedies. Thereafter, said Purushottam Patel approached directly to Shri. Lohar, the then Additional S.P., Chalisgaon Division, and in turn the said Additional S.P. directed the petitioner no.1 (P.S.O.) to register the offence in respect of said civil dispute by letter dated 01.07.2009, for some obvious reasons, which are disclosed hereinafter. However, the petitioner no.1 refused to register the offence informing that, earlier he has informed Shri Patel that the said

dispute is purely of civil nature and hence no cognizable offence is made out. It is further the case of the petitioners that, thereafter said Dr.Mahajan, who is also member of the Zilla Parishad, Jalgaon, was called to the office of Additional Superintendent of Police by the said Additional S.P. in his cabin, and he was informed that there is complaint received against him about the dispute of building construction work. Then the said Dr.Uttamrao Mahajan was informed by the Additional S.P. to pay the amount immediately, otherwise he may be arrested. Thereafter, the said Dr.Mahajan informed, the Additional S.P., that he has problem of ailment of heart and already undergone angioplasty and he is under tension. It is the case of the petitioners that Additional S.P. Shri Lohar demanded Rs.60 lacs from Shri Mahajan to settle the dispute. Three cheques were taken in the name

of 'Shivam Constructions' which belongs to Patel Contractors, and Dr.Mahajan was informed if the said cheques are not encashed, again he would be taken in confinement.

6. It is further the case of the petitioners that, said Dr. Mahajan was kept in confinement, and was not allowed to talk even to his family members. So also it was informed that he will not be allowed to go unless the amount is paid. Thereafter, Dr.Mahajan was kept in confinement in one unknown private place situate in front of office of Additional S.P. Thereafter, he was again taken to some other private place. Ultimately, son of said Dr.Mahajan lodged a complaint against the said Additional S.P. and there was hue and cry in the local press as well as local area. At the relevant time, even assembly session was going on. Therefore, the offence bearing C.R.No.

145/2009, came to be registered against the Additional S.P. Shri Lohar for the offences punishable under Sections 347, 364A, 385 and 34 of the Indian Penal Code on 16.07.2009. The petitioners have placed on record copy of the said FIR/Crime registered with the Chalisgaon Police Station on 16<sup>th</sup> July, 2009.

7. It is further the case of the petitioners that the investigation of the said crime was handed over to CID and charge-sheet came to be filed before the learned JMFC, Chalisgaon, under Sections 166, 342, 346, 348, 364A, 385, 504, 506 r/w. 34 of the IPC and the Sessions Case is registered as Sessions Case No.131/2012, which is pending in Sessions Court at Jalgaon. It is the case of the petitioners that the said Additional S.P. Shri. Lohar was enraged with the petitioner no.1, who registered the offence against him due to the complaint of Dr.Mahajan and his son and the consequences

were immediate. It is further the case of the petitioners that with vengeance the Additional S.P. issued notice to the petitioners on 13<sup>th</sup> September, 2011, and the order of punishment was also effected, though petitioner no.1 did not commit any cognizable or non cognizable offence. The disciplinary action has been taken against him for lapses in taking action and he was awarded punishment of censure as per the provisions of Rule 10 of the Maharashtra Civil Services [Discipline and Appeal] Rules, 1979. Petitioner no.1 was issued warning and petitioner nos.2 and 3 were reduced in rank. Petitioner no.1 has already filed an appeal with the higher authority vide Rule 17 of the said Rules, 1979.

8. It is further the case of the petitioners that on 15<sup>th</sup> September, 2009, the said Additional S.P. Chalisgaon Division behind the back of the petitioner no.1

appears to have taken antedated complaint from respondent no.2 about the offence committed on 07.07.2008, and directed an enquiry through subordinate Police Officer, who was immediately working under him, namely Dy.S.P., Shri Latkar, and has received the report from the said Latkar after enquiry, which was vague, wherein it was concluded that the complaint given by Mr.Sameer i.e. respondent no.2, was not properly recorded and investigated. It is further the case of the petitioners that the said enquiry report was prepared and submitted by subordinate of the Additional S.P., Shri Lohar, Chalisgaon, and the petitioner no.1 has registered the offence under Section 364 of the IPC bearing Crime No.145/2009 dated 16.07.2009 against the Additional S.P. Shri Lohar. The petitioner no.1 also gave written application to the Director General of Police that, as the petitioners have registered the offence

against the said Additional S.P., therefore, he would create some problems to the petitioner no.1, and hence no enquiry should be done by him or Officers appointed by him against the petitioners. Thereafter, on 02.07.2009, the said subordinate Officer of the Additional S.P. who submitted the report, made an application to the JMFC, Chalisgaon to reopen the enquiry. The enquiry was reopened on the basis of the order passed by the learned JMFC. The petitioners have placed on record copy of application dated 02.07.2009 along with order dated 20.07.2009 passed by the JMFC, Chalisgaon. It is further the case of the petitioners that one person shown to have been arrested, and he was tried in pursuance of the Crime No.125/2008 in RCC No.293/2010 by the learned JMFC, and the said person was acquitted in summary trial for the offence punishable under Section 411 of the IPC. The petitioners have placed on record

copy of the judgment in RCC No.293/2010 dated 28.10.2015 passed by the JMFC, Chalisgaon.

9. It is further the case of the petitioners that trial against the Additional S.P. Shri Lohar in Sessions Case No.131/2012 is yet pending, and the petitioner no.1 is prosecution witness in the said Sessions Case. It is further the case of the petitioners that in order to pressurize and harass the petitioner no.1, who registered the offence against the then Additional S.P. Shri Lohar under Section 364A etc., the said Additional S.P. through respondent no.2 filed private complaint bearing RCC No.92/2016, alleging offences against the petitioners punishable under Sections 166, 167, 201, 217, 218, 219 and 34 of the IPC. It is the case of the petitioners that the complaint did not disclose in respect of registration of offence bearing Crime No.125/2008 under Section 380 by him.

The learned Magistrate passed the order directing investigation under Section 156 [3] of Criminal Procedure Code. Petitioners have placed on record copies of private complaint bearing Criminal M.A.No.572/2012 along with order dated 18.10.2012 passed by the learned JMFC, Chalisgaon.

10. On 22.10.2012, in pursuance of the order under Section 156 [3], passed on 18.10.2012, the offence came to be registered against the petitioners after 4 years from the alleged incident, bearing Crime No. 338/2012 with Chalisgaon Police Station under Sections 166, 167, 201, 217, 218, 219 of the IPC. The petitioners have placed on record copy of FIR bearing Crime No.338/2012 registered on 22.10.2012 with Chalisgaon Police Station.

11. Meantime, on 04.11.2015, the petitioners were transferred at different

places. The petitioner no.1 stood retired at Pusad on 31<sup>st</sup> July, 2013, and the petitioner nos. 2 and 3 were posted at Yawal and Chopda Police Station respectively. On 15.02.2015 the Public Prosecutor submitted a detailed opinion not to file criminal case and charge-sheet in the matter. The petitioners have placed on record copy of letter dated 15.02.2015 sent by the Public Prosecutor.

12. It is further the case of the petitioners that the Investigating Officer pursuant to the said FIR has carried out investigation and submitted the "B" Final Report before the learned JMFC on 04.11.2015. Petitioners have placed on record copy of "B" summary report filed before the learned JMFC on 04.11.2015. Respondent no.2, who is interested and acting at the behest of the then Additional S.P., filed the Protest Petition in Criminal M.A. No.1098/2015 objecting the said "B" summary report in

which the evidence of three Officers was recorded. The fact that accused in C.R.No. 125/2008 has been acquitted, in which the charge-sheet was filed for the offence punishable under Section 411 of the IPC is not in dispute.

On 06.04.2016 the learned JMFC, Chalisgaon rejected "B" summary report and issued process under Sections 166, 167, 218, 219 r/w. 34 of the IPC and directed to register the said case as RCC. The petitioner no.1 is retired from service on 31.07.2013 as Dy. Superintendent of Police at Pusad as he was transferred from Chalisgaon in the year 2009. The petitioner nos. 2 and 3 are the Head Constables at Pachora and Yawal Talukas.

13. It is further the case of the petitioners that the prosecution against the petitioners is vindictive, and to place the petitioners under pressure as the Sessions

Case is pending against the then Additional S.P. Shri Lohar, for framing serious charges of kidnapping etc. in the Sessions Court, at Jalgaon. In said case, the petitioner no.1 is a witness for the prosecution. Therefore, the pending proceeding before the Court of Magistrate is nothing but an abuse of process of law, and with *ulterior motive* to harass and to pressurize the petitioner no.1, who is one of the witness in Sessions Case.

14. The learned Senior Counsel appearing for the petitioners submit that, pursuant to the directions given by the then Additional S.P. Shri Lohar, to his subordinate Officer to make an enquiry in respect of the alleged offence of theft of mobile, mentioned in the complaint given by respondent no.2. Said subordinate Officer approached the learned JMFC, Chalisgaon, and prayed for reopening the enquiry, and accordingly, on 2<sup>nd</sup> July, 2009, enquiry was reopened by the learned

JMFC. It is submitted that, after full-fledged enquiry, on 28<sup>th</sup> October, 2015, the JMFC acquitted the accused in the said case i.e. RCC No.293/2010, by summary trial. It is submitted that, in the year 2008, though the petitioner no.1 was incharge of the Police Station when the FIR/complaint was lodged in respect of the alleged theft of mobile, and petitioner nos.2 and 3 were also working as Police Constables in said police Station, none of the petitioners were Investigating Officer in the said crime in which "B" summary was filed. It is further submitted that the said "B" summary was reopened on the application filed by the Officer as directed by the Additional S.P. Shri Lohar. It is submitted that, there was investigation after reopening the case and charge-sheet came to be filed after investigation. The said case was tried and the accused were acquitted. The learned counsel submitted that though the

impugned order issuing process can be challenged by way of filing the Revision, however, the petition cannot be rejected on the ground of availability of remedy of Revision. In support of aforesaid contention, reliance is placed in the case of ***International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) and others Vs. Nimra Cerglass Technics Private Limited and another<sup>1</sup>***.

15. The learned Senior counsel further submits that before prosecuting the petitioners, it is necessary to obtain sanction from the appointing authority. In support of the aforesaid contention, he invites our attention to the ratio laid down in the case of ***N.K.Ganguly Vs. Central Bureau of Investigation, New Delhi<sup>2</sup>***. He further invites our attention to the ratio laid down

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1 [2016] 1 SCC 348

2 [2016] 2 SCC 143

in the case of **State of Haryana Vs. Bhajan Lal**<sup>3</sup> and submits that the case of the petitioners fall under category 7 of the said categories i.e. where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. Therefore, relying upon the pleadings in the Petition, annexures thereto, the learned counsel appearing for the petitioners submits that the Petition deserves to be allowed.

16. The learned APP appearing for the respondent-State, relying upon the investigation papers submits that, in fact when the petitioners filed a complaint in the year 2012, he did not submit necessary documents and did not extend cooperation to

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3 AIR 1992 SC 604

the Investigation Officer for 1 and  $\frac{1}{2}$  years from registration of the FIR. He further submits that respondent no.2 did approach the then Additional Superintendent of Police and thereafter again on the same set of allegations like in the earlier complaint filed by respondent no.2 in the year 2008 with the Chalisgaon Police Station crime No. 125/2008 was registered. After investigation in that case, charge sheet was filed and thereafter accused in the said case has been acquitted in the year 2015. It is submitted that after proper investigation and enquiry, Chalisgaon Police Station did submit "B" summary report bearing No.5/2016 on 25<sup>th</sup> February, 2015, in the Court of Judicial Magistrate First Class-1, Chalisgaon.

17. The learned counsel appearing for respondent no.2 invites our attention to the averments in the affidavit-in-reply. He submits that, the Petition is not tenable, as

the petitioners have an alternate and efficacious remedy to file a Revision against the order of rejection of "B" summary report and against the order of issuance of process for the offence punishable under Sections 166, 167, 218, 219 r/w. 34 of the IPC against the petitioners, passed by the Judicial Magistrate First Class at Chalisgaon.

18. He further submits that, in the year 2008, there was theft in his shop on 4<sup>th</sup> July, 2008. His shop was broken and some hand-sets pieces of the mobile were stolen. Respondent no.2 rushed to the Chalisgaon Police Station, where at the relevant time the present petitioners were working as Police Officers, however, the petitioners have not taken cognizance of the grievance raised by respondent no.2. It is submitted that, it is due to the persistent follow up of the respondent no.2, petitioner no.1 has agreed to get lodged the FIR subject to condition of

respondent no.2 agreeing to give in writing as per the say of petitioner no.1. As the respondent no.2 was having no alternative, except lodging of the FIR as per the say of petitioners, he lodged report on 7<sup>th</sup> July, 2008, bearing Crime No.125/2008, thereby alleging that his bag consisting of the mobile phones has been taken away by someone from his shop.

19. It is submitted that after 2 and  $\frac{1}{2}$  months from registering such FIR, respondent no.2 was communicated that, the investigation has been stopped. It is submitted that, only for the sake of record, the FIR was lodged, however, there was no investigation at all. Respondent no.2 filed detailed say to the Additional Superintendent of Police and said Officer found prima facie case and then he directed *de novo* investigation of the crime. The learned counsel invites our attention to the contents of the representation, which was

given to the Additional Superintendent of Police. He submits that, one Mr.Dilip Karle [PSI] carried out the investigation and then Section 457 of the IPC was added in the crime, as per the leave of the trial Court. It is submitted that, detailed enquiry was conducted in the said crime by said Sanjay Latkar, Sub Divisional Police Officer, Chalisgaon. During the enquiry, the SDPO has recorded the statement of the witnesses, including that of the petitioners and came to the conclusion that, in fact, the petitioners are guilty for the charge of the minimizing the nature of offence and accordingly sent the enquiry report dated 26th November, 2009, along with the statement of witnesses recorded to the office of the Additional Superintendent of Police, Chaligaon. Respondent no.2 obtained copy of the said report and copy of the said report is placed on record with the reply. Pursuant to above

enquiry report, common departmental enquiry has been conducted by the Superintendent of Police, Jalgaon, against the petitioner nos. 2 and 3 along with one Vilas Rangrao Deshmukh [who worked as Police Head Constable at the relevant time] and also awarded punishment to all of them.

20. It is submitted that, upon receipt of the above said report and information received vide letter dated 24<sup>th</sup> May, 2011, from the office of the Director General of Police [M.S.], Mumbai, regarding the petitioner no.1, respondent no.2 again approached to the Police Station, Chalisgaon, for lodging the First Information Report against the petitioners and one Vilas Deshmukh, Head Constable, but in vain. So considering the said fact, the respondent no. 2 was constrained to file a private complaint with the learned Judicial Magistrate First Class, Chalisgaon, thereby seeking directions

under Section 156 [3] of the Code of Criminal Procedure for the offences punishable under Sections 166, 167, 196, 201, 217, 218, 210 r/w. 34 of the IPC. Upon hearing the above said complaint, the Magistrate at Chalisgaon has been pleased to issue directions under Section 156 [3] of Code of Criminal Procedure and thereupon the crime bearing No.338/2012, has been registered against the petitioners and one Vilas Deshmukh for the offences punishable under Sections 166, 167, 201, 217, 218, 219 of the IPC.

21. Upon registration of the aforesaid crime No.338/2012, the concerned Police Authorities have started the investigation and upon completion of the same have filed "B" summary report in the Court of Judicial Magistrate First Class at Chalisgaon. Upon receipt of the same, the respondent no.2 appeared before the Magistrate and filed his protest petition and to substantiate his

claim and considering the evidence led by the respondent no.2 and investigation papers, the Court of Judicial Magistrate First Class at Chalisgaon has been pleased to pass an order dated 6<sup>th</sup> April, 2016, thereby issuing process against the petitioners and further rejected the 'B' summary report submitted by Investigating Officer in Crime No.338/2012.

22. It is submitted that, it reveals from the enquiry report and fact that the process is issued against the petitioners, the petitioners not only are found guilty for minimizing the nature of offence in a full-fledged departmental enquiry conducted against them, but also punishment has been awarded and also implemented against them. It is submitted that, respondent no.2 is having no concerned with Mr.Manoj Lohar, who was the then Additional Superintendent of Police at the relevant time, except the fact of filing representation regarding

unsatisfactory investigation in crime registered by respondent no.2 at the hands of petitioners. It is further revealed from the investigation made by Mr.Dilip Karle, PSI, who took over the investigation of crime upon the directions of the Additional Superintendent of Police, and arrested the accused and also sought permission for adding Section 457 of the Indian Penal Code in the crime registered by respondent no.2. It is denied that the FIR has been lodged by respondent no.2 at the pretext of Manoj Lohar. It is submitted that, the Magistrate has already issued process and therefore this Court may not entertain this Petition.

23. We have given careful consideration to the submissions of the learned Senior Counsel appearing for the petitioners, learned APP appearing for the respondent – State and the learned counsel appearing for the respondent no.2. With their able

assistance, we have carefully perused the investigation papers, pleadings and grounds taken in the petition, annexures thereto, and also reply filed by respondent no.2, relevant provisions of the Indian Penal code and the judgments cited across the bar by the learned Senior Counsel appearing for the petitioners. The preliminary objection raised by the counsel appearing for the respondent no.2 in respect of maintainability of the present Writ Petition, on the ground that, there is alternate remedy available to challenge the order of issuance of process by the Judicial Magistrate First Class, it would be appropriate to make reference to the judgment of the Supreme Court in the case of ***International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) and others Vs. Nimra Cerglass Technics Private Limited and another [cited supra]***, in that case also, the appellants therein

challenged order passed by the Magistrate taking cognizance of the complaint filed by the respondent therein seeking prosecution of the appellants for the offences punishable under Sections 405, 415, 418, 420 IPC read with Sections 34 and 120-B IPC. In that case, after investigation, the Investigation Officer submitted final report dated 28<sup>th</sup> January, 2008, stating that the dispute is purely of civil nature and that no offence was made out against the appellants and the same may be accepted and the case be treated as closed. On protest petition filed by the respondent, the Magistrate took cognizance of the case for the offences under Sections 419 and 420 IPC read with Section 34 IPC vide order dated 11<sup>th</sup> November, 2008. The said order was challenged by the appellants therein directly before the High Court invoking the provisions of Section 482 of the Criminal Procedure Code. In that context,

the Supreme Court while explaining the scope of Section 482 of Criminal Procedure Code, observed that, the powers of quashing criminal proceedings should be exercised very sparingly and quashing a complaint in criminal proceedings would depend upon the facts and circumstances of each case. The High Court's inherent powers, be it, civil or criminal matters, is designed to achieve a salutary public purpose and that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. If the averments in the complaint do not constitute an offence, the Court would be justified in quashing the proceedings in the interest of justice. Therefore, it follows from the observations of the Supreme Court in the aforesaid judgment that, merely because an alternate remedy is available to the petitioners to take exception to the order passed by the

Judicial Magistrate First Class issuing process, cannot be a ground for not entertaining the Petition on merits.

*[Underlines added]*

24. Upon careful perusal of the documents placed on record, it appears that, respondent no.2 is involved in the business of the sales and services of Mobile phones by name 'Neels Cellular' at Chalisgaon, District Jalgaon. It is alleged that, in the year 2008, when respondent no.2 proceeded to Mumbai for purchasing the material for the purpose of shop, at that time, he received phone call of his mother and got knowledge of theft / decoity in his shop during night of 4<sup>th</sup> July, 2008. When he returned back from Mumbai and visited his shop, he found that, shop has been broken and some hand-sets pieces of mobile had disappeared, therefore, he lodged the FIR with Chalisgaon Police Station. It is the case of the petitioner

that, petitioner no.1 was working as Incharge Police Station Officer and petitioner nos. 2 and 3 were working as Constables in the said Police Station. According to the respondent no.2, though FIR bearing Crime No.125/2008, was registered, there was no proper investigation / enquiry of the said FIR for 2 and ½ months. However, it appears from the report submitted by the Police that, petitioner no.1 entrusted the investigation of crime bearing No.125/2008 to one Police Officer Shri. Deshmukh, Head Constable, appointed as Investigation Officer, and it was exclusive domain of the said Investigation Officer to look into the allegations in the FIR and then cause further investigation and take it to the logical end. The Supreme court in the case of **State of Haryana Vs. Bhajan Lal [cited supra]**, has made specific observations that investigation is an exclusive domain of the Investigation

Officer, and as long as investigation is in accordance with law, there cannot be interference by any other person or Court. It further appears that after investigation, 'A' summary report was filed before the Judicial Magistrate First Class, Chalisgaon. Respondent no.2 was not satisfied with the said investigation and he approached Mr.Manoj Lohar, who was working as Additional Superintendent of Police at the relevant time at Jalgaon. It further appears from the perusal of the documents placed on record that, he issued direction to the Chalisgaon Police Station to cause enquiry and accordingly investigation was handed over to one Mr.Dilip Karle [PSI]. During the course of an investigation, said Mr.Dilip Karle [PSI] arrested one of the accused, namely, Pravin Mahale from Nashik on 3<sup>rd</sup> August, 2009. He caused further investigation, and found it appropriate to add Section 457 of the IPC,

and accordingly said section was added after taking permission from the Judicial Magistrate First Class, Chalisgaon. After investigation, charge sheet was filed before the Judicial Magistrate First Class at Chalisgaon. It appears that, after filing the charge sheet after full-fledged trial, accused came to be acquitted. It means the crime which was registered in the year 2008 by respondent no.2 has been thoroughly investigated by independent Police Officer, and thereafter charge sheet came to be filed and accused therein came to be acquitted.

25. It further appears from the material placed on record that, departmental enquiry was initiated against the petitioners and same resulted into taking an action against them for not properly investigating the crime. The petitioner no.1 has stated in the petition that, he has preferred an appeal, challenging the said department enquiry.

There was full-fledged investigation / enquiry in crime No.125/2008, and then same resulted into filing the charge sheet, conducting full-fledged trial and subsequent acquittal of the accused.

26. It appears that respondent no.2 filed private complaint i.e. RCC No.572/2012 in the Court of Judicial Magistrate First Class, Chalisgaon, thereby seeking direction under Section 156 [3] of the Criminal Procedure Code for the offences punishable under Section 166, 167, 196, 201, 217, 218, 219 r/w. 34 of the IPC. It further appears that the Judicial Magistrate First Class, Chalisgaon, issued directions under Section 156 [3] of the Code of Criminal Procedure, and thereafter crime bearing No.338/2012 is registered. In our opinion, belated complaint, without obtaining sanction from the appointing Authority i.e. State Government, filed in the year 2012 for the

grievance, which was already addressed after full-fledged investigation of the crime No.125/2008, by the Investigating Officer Mr.Jagdeo Akhare i.e. petitioner no.1, there was no question of entertaining private complaint belatedly after four years from the registration of Crime No.125/2008, about the incident taken place in the year 2008.

27. We find considerable force in the argument of the learned counsel appearing for the petitioners that, private complaint is instituted with vengeance and due to departmental rivalry. It is not in dispute that the petitioner no.1 is witnesses in Sessions Case No.131/2012 [Crime No. 145/2009], which is filed against Mr.Manoj Lohar, the then Additional S.P. It also appears from the investigation papers that, after registration of FIR bearing Crime No. 338/2012, the complainant did not turn up to the Police Station for more than 1 and  $\frac{1}{2}$  year

and as a result further investigation was delayed, as it revealed from perusal of the report prepared by the Investigating Officer and the investigation papers. There is serious doubt about and intention of the complainant i.e. respondent no.2, in filing said complaint in the year 2012, belatedly after four years about the alleged incident of theft, which was allegedly taken place in the year 2008. As already observed, he did not turn up to the Police Station for 1 and  $\frac{1}{2}$  years to cooperate the Police machinery for investigation.

28. As already observed, already departmental enquiry has been caused and appropriate action is taken against the petitioners. Even in the present round of litigation, the concerned Investigating Officer after considering the statements of the witnesses and other material collected during the course of investigation has filed

'B' final report before the learned JMFC, Chalisgaon. The report prepared by the Deputy Superintendent of Police, Chalisgaon, clearly mentions that, he has considered the entire material/documents in relation to the alleged incident including earlier investigation done in Crime No. 125/2008, and has also taken into consideration the fact that, the complainant did not turn up to the Police Station for about 1 ½ year after registration of the FIR, pursuant to the direction issued by the JMFC, Chaligaon under Section 156 [3] of the Code of Criminal Procedure. It is also mentioned that complaint is filed with vengeance and *mala fide* intention before the learned JMFC-1, Chalisgaon, and accordingly, after considering the entire material 'B' final report is filed before the JMFC, Chalisgaon.

29. It is true that the process is issued by the concerned Court, however, in

our opinion, when the offence was registered in the year 2008, and thereafter, appropriate investigation has been done about the same offence again filing the complaint against the petitioners attributing negligence on their part, belatedly in the year 2012, appears to be abuse of process of law inasmuch as already about the incident of theft full-fledged enquiry / investigation was conducted, charge sheet was filed and after trial accused came to be acquitted.

30. Therefore, in the light of the discussion in the foregoing paragraphs, in our considered opinion, further continuation of the proceedings against the petitioners i.e. FIR bearing Crime No.338/2012, registered with Chalisgaon Police Station under Sections 166, 167, 201, 217, 218, 219 of the Indian Penal Code dated 22.10.2012 as well as the order dated 06.04.2016 passed by the learned Judicial Magistrate First Class,

Chalisgaion in Criminal M.A.No. 1098/2015, will be abuse of process of law/court. When the material brought on record by the petitioners and also the prosecution unequivocally indicates *mala fide* intention/institution of proceeding with vengeance by the complainant, the pending proceedings in RCC No.572/2012 and RCC No. 92/2016, deserves to be quashed and set aside. The Supreme Court in the case of **State of Haryana Vs.Bhajan Lal [cited supra]** held that, in following categories the Court would be able to quash the F.I.R.

*108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and*

reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of Magistrate within the purview of Section 155(2) of the Code.
3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the

same do not disclose the commission of any offence and make out a case against the applicant.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

[Underlines added]

31. The case in hand is squarely covered in category 7. Therefore, for the reasons aforesaid, Criminal Writ Petition is allowed in terms of prayer clause-B. The rule is made absolute on above terms and the Petition stands disposed of accordingly.

**[V.K.JADHAV]**  
**JUDGE**

**[S.S.SHINDE]**  
**JUDGE**

DDC