

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

CRIMINAL APPLICATION NO. 3018 OF 2010

- 1] Nandkumar s/o Vitthal Ghumare,
Age : 42 years, Occu. Agri.,
R/o : Pargaon (Ghumara),
Tq. Patoda, Dist. Beed.
- 2] Kantilal s/o Uddhavrao Ghumare,
Age : 22 years, Occu. Agri.,
R/o : Pargaon (Ghumara),
Tq. Patoda, Dist. Beed.

... APPLICANTS

VERSUS

- 1] The Investigating Officer,
Police Station, Patoda,
Tq. Patoda, Dist. Beed.
- 2] The Police Inspector,
Police Station, Patoda,
Tq. Patoda, Dist. Beed.
- 3] The Superintendent of Police,
Beed, Dist. Beed.
- 4] The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai.
- 5] Dhanraj s/o Laxman Ghumare,
Age : 48 years, Occu. Agri.,
R/o : Pargaon (Ghumara),
Tq. Patoda, Dist. Beed.
- 6] Uttareshwar s/o Laxman Ghumare,
Age : 32 years, Occu. Agri.,

R/o : Pargaon (Ghumara),
Tq. Patoda, Dist. Beed.

7] Pradip s/o Laxman Ghumare,
Age : 37 years, Occu. Agri.,
R/o : Pargaon (Ghumara),
Tq. Patoda, Dist. Beed.

8] Ram s/o Balasaheb Ghumare,
Age : 23 years, Occu. Agri.,
R/o : Pargaon (Ghumara),
Tq. Patoda, Dist. Beed.

... **RESPONDENTS**

WITH

CRIMINAL APPLICATION NO. 107 OF 2013

Nandkumar s/o Vitthal Ghumare,
Age : 44 years, Occu. Agri.,
R/o : Pargaon (Ghumara),
Tq. Patoda, Dist. Beed.

... **APPLICANT**

VERSUS

1] The Investigating Officer,
Police Station, Patoda,
Tq. Patoda, Dist. Beed.

2] The Police Inspector,
Police Station, Patoda,
Tq. Patoda, Dist. Beed.

3] The Superintendent of Police,
Beed, Dist. Beed.

4] The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai.

- 5] Dhanraj s/o Laxman Ghumare,
Age : 50 years, Occu. Agri.,
R/o : Pargaon (Ghumara),
Tq. Patoda, Dist. Beed.
- 6] Uttareshwar s/o Laxman Ghumare,
Age : 34 years, Occu. Agri.,
R/o : Pargaon (Ghumara),
Tq. Patoda, Dist. Beed.
- 7] Pradip s/o Laxman Ghumare,
Age : 39 years, Occu. Agri.,
R/o : Pargaon (Ghumara),
Tq. Patoda, Dist. Beed.
- 8] Ram s/o Balasaheb Ghumare,
Age : 25 years, Occu. Agri.,
R/o : Pargaon (Ghumara),
Tq. Patoda, Dist. Beed.

... **RESPONDENTS**

...
Mr. A. N. Nagargoje, Advocate for Applicants.
Mrs. V. S. Choudhari, APP for Respondent Nos.1 to 4.
Mr. N. L. Jadhav, Advocate for Respondent Nos.5 to 8.

...
CORAM : **T. V. NALAWADE &
K. L. WADANE, JJ.**

DATE : 08th August, 2018.

JUDGMENT: (Per T. V. Nalawade, J.)

. The first proceeding is filed under Section 482 of the Code of Criminal Procedure for relief of quashing and setting aside the order made on the report filed by Police under Section 169 of the

Code of Criminal Procedure in the Court of Judicial Magistrate First Class, Patoda in C.R. No.68 of 2008. The relief is claimed also against the order made by the learned Magistrate on 22nd May, 2009 accepting the report filed by the Police. The second proceeding is filed to challenge the order made by the learned Judicial Magistrate First Class on Exhibit-4 of R.C.C. No.39 of 2009, by which the private complaint filed by the Respondent also came to be rejected.

2 Both the sides are heard.

3 In FIR given by Applicant Nandkumar on 22nd July, 2008, he has made allegations that in the incident dated 9th July, 2008, 7 Accused persons named by him in the FIR had assaulted him and they had robbed him of Rs.1,00,000/-, which was with him. In the supplementary statement given on 4th August, 2008, he contended that it was an attempt of life as the words cited by the Accused show that they had intention to finish him. The first informant was admitted in the hospital as he was seriously injured and the record shows that operation was required to be performed to save his life and after that his statement was recorded. After making investigation, Police filed charge-sheet against 3 of the 7 Accused mentioned in the FIR for the

offences punishable under Section 279, 325, 326, 34 etc. of the Indian Penal Code and report was filed under Section 169 of the Code of Criminal Procedure in favour of present Respondent Nos.5 to 8. Using of Section 279 of the Indian Penal Code shows that there was non-application of mind as there were specific allegations that the Accused had intercepted the vehicle of the first informant when he was in the company of a witness and then he was assaulted and attempt was made on his life. Allegations of robbing him of Rs.1,00,000/- were also made. Injury certificate is consistent with the allegations made by him of attack. The names of Respondents in whose favour report under Section 169 of the Code of Criminal Procedure was filed were mentioned in the FIR and in the supplementary statement, but Police filed report under Section 169 of the Code of Criminal Procedure. The order made by the learned Judicial Magistrate First Class on the report shows that no notice was given to the first informant before accepting the report filed by the Police. When there are aforesaid circumstances, it was necessary for the Magistrate to give notice to the first informant, present Applicant and then pass appropriate order on the report filed by the Police. As the order made by the learned Judicial Magistrate First Class, Patoda

does not show that he considered the material and he gave opportunity to Applicant Nandkumar, this Court holds that the order dated 22nd May, 2009, by which the report came to be accepted cannot sustain in law. This order needs to be set aside and the matter needs to be remanded back for giving opportunity to the first informant to have his say on the report. Tough it can be said that even revision could have been filed to challenge this order, this Court admitted the matter and the matter is pending since long, for about 8 yeas in this Court and so this Court is using the powers given under Section 482 of the Code of Criminal Procedure and allowing the matter.

4 In Criminal Application No.107 of 2013, it can be said that it was brought to the notice of the learned Judicial Magistrate First Class that the Police had filed charge-sheet against some persons, who were shown as Accused in R.C.C. No.39 of 2009. In favour of 4 Accused from the said complaint, report was filed under Section 169 of the Code of Criminal Procedure by the Police, but charge-sheet was filed against the remaining Accused. Prayer was made to see that the private complaint, which was filed on 25th February, 2009 is

merged with the police case, which was already filed, but the learned Judicial Magistrate First Class did not allow that application also. In the order made by the learned Judicial Magistrate First Class, only possibility of clubbing the two matters is considered and it does not show that proper procedure for independent consideration of the private complaint was followed. It appears that on 25th February, 2009, order was made to send the matter for investigation under Section 156(3) of the Code of Criminal Procedure. In FIR already registered and as already observed, Police Case No.79 of 2009 was filed. When already order was made under Section 156(3) of the Code of Criminal Procedure on 25th February, 2009, there was no possibility of dismissing the complaint on 6th November, 2012 as provisions of Section 203 of the Code of Criminal Procedure was not available to the learned Judicial Magistrate First Class. This position of law was not considered by the learned Judicial Magistrate First Class. The application was moved by the Accused also for discharging them from the offences punishable under Sections 325 and 326 of the Indian Penal Code, but that application was fortunately rejected on 6th November, 2012.

5 The aforesaid circumstances show that in the private complaint filed by Nandkumar bearing No.39 of 2009, the Magistrate did not follow the proper procedure. The orders made in that complaint need to be set aside and the Magistrate need to wait for the report, which the concerned Police need to be filed after making investigation under Section 156(3) of the Code of Criminal Procedure. In the result, the following order is passed:

ORDER

- I. Both the applications are allowed.
- II. The matters are remanded back to the Court of Judicial Magistrate First Class for fresh consideration. The learned Judicial Magistrate First Class needs to issue notice to the first informant before passing any order on the report filed under Section 169 of the Code of Criminal Procedure. After that, the said report and the private complaint filed are to be considered together and then appropriate orders are to be passed. This exercise

is to be done withing four months from the date of receipt of this judgment.

III. Rule is made absolute in those terms.

[K. L. WADANE, J.]

[T. V. NALAWADE, J.]

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