

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 460 OF 2017

Abdul Wahab Shaikh Munaf
 Age: 70 years, Occ: Pensioner,
 R/o. Gausiyanagar,
 Opp. Aftab Kirana Shop,
 Bhusawal, Dist. Jalgaon.

... **Petitioner**

Vs.

1. The State of Maharashtra,
 Through Office Incharge of
 Police Station Raver, Dist. Jalgaon.

2. Shaikh Azhar Gaus,
 Age: 40 years, Occ. Service (Head Master)

3. Shaikh Atiqkuraheeman Razzak Baig,
 Age; 50 years, Occ: Service (Clerk)
 Both Res. Nos. 2 & 3 C/o. Urdu Girls
 High School, Raver, Tq. Raver,
 Dist. Jalgaon.

... **Respondents**

Mr. Kedar Balbhim R., Advocate for the Petitioner.
 Mr. B.V. Virdhe, APP for Respondent-State.

CORAM : MANGESH S. PATIL, J.
DATE : 10.07.2018

ORAL JUDGMENT :

Heard. Rule. Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally.

2. The petitioner had filed an application bearing Criminal Misc. Application No. 84 of 2016 seeking a direction under Section 156

(3) of the Cr.P.C. against the respondent nos. 2 and 3 herein *inter alia* alleging that they have committed several offences. It appears that the learned J.M.F.C. by the order dated 11.04.2016 simply directed the petitioner in one lined order to place the matter for recording verification, presumably under Section 200 of the Cr.P.C. It appears that the decision of the learned Single Judge of this Court in the case of **Balaji S/o. Bhujangrao Suryawanshi V/s. The State of Maharashtra; 2014 ALL MR (Cri) 994** was cited before him and based on the observations, the learned Magistrate once again considered the request of the petitioner and refused to issue any direction under Section 156(3) of the Cr.P.C. Being aggrieved by the order, the petitioner preferred Criminal Revision Application No. 84 of 2016 under Section 397 of the Cr.P.C. before the Sessions Court. However, the learned Additional Sessions Judge by the order dated 02.03.2017 dismissed the revision holding that the order passed by the Magistrate was an interlocutory order and by virtue of Sub-section 2 of Section 397 of the Cr.P.C., the revision was not maintainable. It is important to note that no observation or conclusion was drawn by the learned Additional Sessions Judge touching the merits of the request made by the petitioner seeking action under Section 156(3) of the Cr.P.C.

3. The learned advocate for the petitioner vehemently submits that issue regarding the status of order passed under Section 156(3) of the Cr.P.C. is no more *res integra*. A Division Bench of this Court in the

case of **Avinash s/o. Trimbakrao Dhondage V/s. The State of Maharashtra & Anr; 2016 ALL MR (Cri) 985** has held that such an order is final order against which a revision would lie. In view of such pronouncement, the observation and the conclusion of the learned Additional Sessions Judge in not entertaining the revision deserves to be quashed and set aside.

4. The learned A.P.P. strongly opposes the petition. He submits that the order passed by the Magistrate on the first occasion directing a statement under verification to be recorded under Section 200 of the Cr.P.C. has not been impugned by the petitioner and consequently, no fault can be found with the learned Magistrate in refusing to issue a direction under Section 156(3) of the Cr.P.C.

5. A careful perusal of the impugned order passed by the learned Additional Sessions Judge clearly reveals that the learned Additional Sessions Judge has not examined the merits of the order passed by the Magistrate which was impugned before him. Without considering whether the request of the petitioner to issue a direction under Section 156(3) of the Cr.P.C. was rightly refused or otherwise, the learned Additional Sessions Judge by concluding that the order passed by the Magistrate was an interlocutory order refused to entertain the revision in view of Sub-section 2 of Section 397 of the Cr.P.C. and dismissed the revision.

6. As has been pointed out herein-above, the dispute is no more *res integra*, in view of the authoritative pronouncement of the Division Bench of this Court in the case of **Avinash s/o. Trimbakrao Dhondage** (supra) holding that order refusing to direct investigation under Section 156(3) of the Cr.P.C. is a final order, the stand taken by the learned Additional Sessions Judge is not tenable. Had this decision been cited earlier before him he would have certainly not refused to entertain the revision. Since the learned Additional Sessions Judge has not independently considered the merits and demerits of the order passed by the learned Magistrate impugned before him, it would be appropriate to quash and set aside the impugned order and remand the matter to the learned Additional Sessions Judge for decision of the revision afresh.

7. The writ petition, therefore, deserves to be allowed. The impugned judgment and order passed by the learned Additional Sessions Judge, Bhusawal is quashed and set aside. Criminal Misc. Application 84 of 2016 is restored. The learned Additional Sessions Judge shall decide it on merits.

8. The rule is made absolute in above terms.

(MANGESH S. PATIL, J.)