

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 551 OF 2017**

Shivaji Baba Gaikwad

..Petitioner

Vs.

API. Tembhurni Police Sation

..Respondent

Mr. Dilip Bodake for the Petitioner

Mr. A. R. Kapadnis APP for the Respondent

**CORAM :R. M. SAVANT, &
SANDEEP K SHINDE,JJ
DATE : 30th JANUARY, 2018**

P.C.

1 The above Writ Petition has been originally filed for quashing the FIR being C. R. No.129/2015 dated 3-7-2015 registered with the Tembhurni Police Station. The second relief sought is a direction to the Tembhurni Police Station to carry out thorough and fair investigation in respect of the crime committed by the Respondent No.3 Mr. Vishal Vitthal Gaikwad. It seems that the Investigating Agency has submitted a report to the Learned Magistrate under Section 173(2) of the Cr.PC and in the said report the Respondent No.3 has been given a clean chit. It is in the said context that the relief of quashing of the FIR has been sought.

2 We inquired from the Learned Counsel for the Petitioner as to

whether the said report has been accepted by the Learned Magistrate. The Learned Counsel for the Petitioner informed us that the said report has not been accepted by the Learned Magistrate. However, he at the same time states that the case has been committed to the Court of Sessions. We are unable to fathom how the two can be reconciled. Though the report has been submitted by the Investigating Agency, the above Petition has not been amended and the Petition as originally filed with the prayers therein, is still being prosecuted.

3 Be that as it may, if the report has not been accepted, then it is for the Petitioner to object to the said report by filing an appropriate Application. If the report has been accepted, then it is for the Petitioner to take appropriate recourse in law in so far as the clean chit given to the Respondent No.3 on such grounds as are available in law.

4 The Learned Counsel for the Petitioner seeks to rely upon the judgment of the Apex Court in the matter of **Minu Kumari & Anr. Vs. State of Bihar & Ors.**¹ In our view the said case would not aid the Petitioner in so far as the relief sought in the present Petition is concerned. The said case was revolving around the facts which were involved in the said case in which facts and circumstances the Apex Court found fault with the Trial Court of issuing summons to some of the parties at the time of taking cognizance, though in the charge sheet three of the ladies accused were found to be not involved in

¹ AIR 2006 SC 1937

the case. Such is not the case in the instant matter. In that view of the matter, there is no warrant to keep the above Petition pending, the same is accordingly disposed of.

[SANDEEP K. SHINDE, J]

[R.M.SAVANT, J]