

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 698 OF 2009

Shri Madhukar Bhau Shirke & Ors. ... Petitioners

Versus

Shri Bhimrao Gangaram Dhumale & Anr. ... Respondents

Mr. Anand S. Patil for Petitioner Nos. 2 to 6.

Mr. Venkatesh Shastry for Respondent No.1.

Mr. S. S. Pednekar, APP for State.

CORAM : NITIN W. SAMBRE, J.

DATE : APRIL 19, 2018.

P.C. :

Heard the learned Counsel for respective parties.

2. The learned Judicial Magistrate First Class, Kolhapur on May 3, 2008 passed an order for issuance of process against the Accused Nos. 1 to 6 in Criminal Complaint No. 190 of 2006 preferred under Section 200 of the Code of Criminal Procedure for an offence punishable under Sections 425, 427, 420, 468, 471, 406 read with Section 34 of the Indian Penal Code.

3. This complaint was preferred by the alleged members of a Co-operative Society namely, 'Panchasheel Co-op. Society', Ujalaiwadi, District Kolhapur against the Accused persons alleging tampering with the record of the Co-operative Housing Society in the matter of carving plots and allotment thereof.

4. The learned Judicial Magistrate First Class, Kolhapur initially passed an order on January 22, 2007, wherein he has made a reference to the report of the Investigation Officer submitted pursuant to the provisions of Section 156(3) of the Code of Criminal Procedure. Said report (Exhibit 'B') dated September 25, 2006 speaks of non-involvement of the Petitioners – Accused in the crime in question.

5. When the order impugned dated May 3, 2008 for issuance of process was passed, neither the report submitted by the Investigation Officer which is produced at Exhibit 'B' nor the contents of the complaint are taken into account. It is expected of the learned Magistrate while dealing with a complaint preferred under Section 200 of the Code of Criminal Procedure to apply his mind to the contents of the complaint, infer the satisfaction of the ingredients of the section for which the process is sought to be issued and may not be by a detail order but by speaking

order may order for issuance of process. An appropriate support can be drawn from the Judgment of the Division Bench of this Court in the matter of *State of Maharashtra V/s. Shashikant*¹ so as to infer that the order must reflect the application of mind by the Magistrate at the stage of issuance of process.

6. In the aforesaid background, having noticed that the order of the learned Magistrate, has not taken into account, the report of the Investigation Officer which is produced at Exhibit 'B' and also the fact that the order impugned for issuance of process without application of mind, the same is hereby quashed and set-aside. As a consequence of above, the order of Revisional Court i.e. the learned Additional Sessions Judge, Kolhapur is also not sustainable. Hence, I pass the following order.

ORDER

(A) The order dated May 3, 2008 passed by the learned Judicial Magistrate First Class, Kolhapur in Criminal Complaint No. 190 of 2006, confirmed by the Additional Sessions Judge, Kolhapur in Criminal Revision No. 99 of 2008 on December 23, 2008 is hereby quashed and set-aside.

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(B) Let the learned Judicial Magistrate First Class, Kolhapur to pass a fresh order in tune with the observations made by this Court in the foregoing paragraphs.

(C) The Writ Petition is partly allowed in above terms.

(NITIN W. SAMBRE, J.)