

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 346 OF 2019

1. Ramchand Pamandas Motwani,
Age : 71 years, Occu. Business,
2. Chetan Pamandas Motwani,
Age : 54 years, Occu. Business,

Both R/o House No. 33,
Tarakpur, Ahmednagar,
Dist. Ahmednagar.

...Petitioners

Versus

The State of Maharashtra
Through Police Station Officer,
Kotwali Police Station, Ahmednagar. ...Respondent

.....

Mr. N. V. Gaware, Advocate for Petitioners.
Mr. A. P. Basarkar, A.P.P. for Respondent.
Mr. N. B. Narwade, Advocate for Complainant.

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CORAM : V.M. DESHPANDE, J.

DATE : 2ND APRIL, 2019

ORAL JUDGMENT :

01. Rule. Rule made returnable forthwith. By consent of both the parties, heard finally.

02. This writ petition challenges the Order dated 9.1.2019 passed by the learned J.M.F.C. Court No. 7, Ahmednagar in R.C.C. No. 674/2013 granting

the permission to the prosecution for further investigation.

03. When this writ petition was taken up for hearing, Mr.N.B.Narwade, the learned Counsel submitted that he is representing Laxmichand Motwani, who is the first informant and he is not joined as a party. He submitted that he is the person having interest in the criminal case. Obviously, he being the complainant has every right to participate in the proceedings. Consequently, I permit Mr. N.B.Narwade to submit the affidavit on behalf of Laxmichand and it is taken on record. I have also heard him.

04. In 2011, Laxmichand, the younger brother of applicant-Ramchand filed a first information report with Police Station Kotwali against him and others on the basis of which an offence was registered as C.R.No. 196/2011 for the offences punishable under Sections 420, 468, 471 read with 34 of the Indian Penal Code. After completion of the investigation, charge-sheet was filed and the learned Magistrate was proceeding with the trial. During the pendency of the R.C.C.No.674/2013, the Investigating Officer filed an application Exh. 39

for seeking permission under Sub-Section (8) of Section 173 of the Code of Criminal Procedure for further investigation for the reasons mentioned therein. The learned Magistrate by the impugned Order has allowed the same. The impugned Order reads as under :

"Considering the reason, permission for further investigation is granted."

05. The aforesaid Order, which is under challenge before this Court is most cryptic one. It does not show the application of mind on the part of the Court below. It is expected from the learned Magistrate to supplement reasons for allowing or dis-allowing the application in question. In that view of the matter, in my view, the Order can not stand to the scrutiny of law.

06. Consequently, I pass following Order;

ORDER

(i)Writ petition is allowed.

(ii)The Order dated 9.1.2019 passed by learned J.M.F.C., Ahmednagar in R.C.C.No. 674/2013 below Exh.39 is hereby quashed

and set aside.

(iii)The learned Magistrate is directed to hear again the learned Prosecutor on Exh. 39 and also shall grant an opportunity of hearing to the original complainant and accused persons and pass a reasoned order in accordance with law.

(iv)With this, the application is allowed and disposed of.

(v)Rule is made absolute in those terms.

[V.M. DESHPANDE]

JUDGE

Dahibhate/-