

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 620 of 2017

1. Vaibhav Sambhaji Roham,
Age : 25 Years, Occ. Agriculture,
R/o. Jeur Kumbhari, Tq Kopargaon,
District Ahmednagar.

2. Swapnil Arun Waghmare,
Age : 27 Years, Occ. Service,
R/o. Shankarnagar, Kopargaon,
Tq. Kopargaon, District Ahmednagar

3. Trilok Prabhakar Pawar,
Age : 26 Years, Occ. Agriculture,
R/o. Hingani, Tq. Kopargaon,
District Ahmednagar

4. Kapil Bhausahab Pawar,
Age : 34 Years, Occ. Service,
R/o. Bagul Vasti, Tq. Kopargaon,
District Ahmednagar

5. Rajendra Amrut Kapagate,
Age : 51 Years, Occ. Service,
R/o. K.B.P. Sanjeevani College,
Kopargaon, Tq. Kopargaon,
District Ahmednagar

6. Pankaj Nagin Patil,
Age : 35 Years, Occ. Service,
R/o. K.B.P Sanjeevani College,
Kopargaon Tq. Kopargaon,
District Ahmednagar.

...PETITIONERS

VERSUS

1. The State of Maharashtra
Through the A. P. I. Railway Police,
Kopargaon Tq. Kopargaon,
District Ahmednagar.

2. Dadalal Shankar Patil,
Age : 52 Years, Occ. Service,
R/o. Aarti Row Housing Society,
Bhushan Nagar, Kedgaon
Ahmednagar, Dist. Ahmednagar

..RESPONDENTS

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Advocate for the Petitioners : Mr. Ashwin V. Hon

A.P.P for Respondent No.1-State : Mr. A. B. Chate

Advocate for Respondent No.2 : Mr. N. B. Narwade

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CORAM : T.V. NALAWADE J.
DATE : 5th March, 2019.

JUDGMENT:

Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2. The petition is filed to challenge the decision given in Criminal Revision Application No. 29 of 2016 by the learned Additional Sessions

Judge, Kopergaon dated 29.03.2017. The revision is dismissed by the learned Additional Sessions Judge, Kopergaon on the ground that there is no territorial jurisdiction as the order under challenge was passed by the Railway Court Magistrate Manmad, and that Court is subordinate to Sessions Court, Nashik. The learned Judicial Magistrate, First Class, Manmad (Railway) has given direction to make investigation under Section 156(3) of the Code of Criminal Procedure and this order was challenged in the revision. As the submissions made show that the learned Judicial Magistrate, First Class, Manmad (Railways) has no jurisdiction to make such order, hearing was given to both the sides.

3. The submissions made and record show that private complaint was filed by respondent No.2 before the learned Magistrate, Manmad, for the offences punishable under Section 302, 201 read with Section 34 of the Indian Penal Code in the month of May 2011. The first order to make investigation was passed on 07.06.2011 and that was for making investigation under Section 156(3) of the Code of Criminal Procedure. The concerned police station submitted the report that there was no material in the form of the statements and other things to show that it was murder and the material showed that it was death in the Railway accident. After receipt of this report, the learned Judicial Magistrate, First Class, Manmad (Railways) passed order under Section 202 of the Code of Criminal Procedure and directed the complainant to produce all

his witnesses for their verification/examination. This order was made on 30.07.2012. The statements of many witnesses came to be recorded and after that, hearing was given to the counsel of the complainant, on the point of issuance of process. The learned Judicial Magistrate, First Class, Manmmad (Railways) refused to issue process under Section 204 of the Code of Criminal Procedure, but again directed the police to register the crime and re-investigate the crime under section 156(3) of the Code of Criminal Procedure. It appears that for taking such steps, the learned Magistrate has observed that probably police had made investigation under Section 202 of the Code of Criminal Procedure and not under Section 156(3) of the Code of Criminal Procedure in the past.

4. The learned counsel for the petitioner placed reliance on some reported case like **(2017) 4 Supreme Court Cases 177**, (*Amrutbhai Shambhubhai Patel Vs. Sumanbhai Kantibhai Patel and others*). The Apex Court has discussed the power of the Magistrate under Section 202 of the Code of Criminal Procedure and also under Section 173 (8) of the Code of Criminal Procedure. In any case, the scheme of the Act itself shows that if the Magistrate takes cognizance of the matter and starts making inquiry under Section 202 of the Code of Criminal Procedure, that too in a case which is triable by the Court of Sessions, the only recourse open to him is to record the statements of all the witnesses, who are produced by the complainant, and then decide as to whether

the case is made out to issue process. After taking cognizance of the matter and making inquiry under Section 202 of the Code of Criminal Procedure, it is not open to the Magistrate to revert back to Section 156(3) of the Code of Criminal Procedure. If the Magistrate wanted to see that more investigation is made before making order of enquiry under Section 202 of the Code of Criminal Procedure, the Magistrate could have made order of further investigation under Section 156 (3) of the Code of Criminal Procedure. As that was not done, now the Magistrate cannot make such order. Further, the report of the concerned Police Station submitted after making investigation on the basis of previous order does not show that this report can be treated as one under Sections 202 of the Code of Criminal Procedure. The Magistrate had no jurisdiction in the present matter to direct the police to make investigation as there was allegation of murder and the case would have been triable by the Court of Sessions in view of Section 202 (1) (a) of the Code of Criminal Procedure. Thus, the order under challenge could not have been made by the Magistrate and that needs to be set-aside. In the result, following order :-

ORDER

1. The petition is allowed.
2. The order of the learned Judicial Magistrate (F.C.), Manmad (Railways) dated 10.12.2015, passed in Regular Criminal Case No. 34 of 2011, directing Police

to re-investigate the matter under Section 156(3) of the Code of Criminal Procedure is hereby set-aside.

3. The matter is remanded back to the learned Judicial Magistrate, First Class, Manmad (Railways) to follow the procedure as given in Code of Criminal Procedure after taking cognizance of the matter under Section 202 of the Code of Criminal Procedure.

Rule made absolute in the aforesaid terms.

[T.V. NALAWADE]
JUDGE

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