

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2210 OF 2015

Balasaheb Rangnath Patil – Katad : Petitioner.
Versus
The State of Maharashtra and ors. : Respondents.

Mr. Nitin Sejpal a/w Ms. Pooja Sejpal and Ms. Akshata Desai for the Petitioner.
Mrs. Rutuja Ambekar, APP for the Respondent/State.
Mr. A B Tajane for Respondent No.2.

CORAM : S. S. SHINDE, J
DATE : 23rd July 2019

P.C.

1 This Writ Petition is filed for the following substantive relief :-

(b) That this Hon'ble Court, in exercise of its inherent jurisdiction be pleased to quash and set aside the impugned Order dated 22nd April 2015 passed by the learned Extra Joint Ad Hoc Additional Sessions Judge, Nashik in Criminal Revision Application No.73 of 2015 and this Hon'ble Court be further pleased to restore the Order dated 10th March 2015 passed by the learned Judicial Magistrate, First Class, 9th Court, Nashik in R.C.C. No.85 of 2015."

2 The learned counsel appearing for the Petitioner – Original Complainant, Mr. Nitin Sejpal submits that the learned Extra Joint Ad Hoc Additional Sessions Judge, Nashik had no jurisdiction to quash the First Information Report (for short "FIR") registered on the basis of the order passed by the learned Judicial Magistrate, First Class, 9th Court, Nashik under Section 156(3) of the Code of Criminal Procedure (for short "Cr.PC."). It is submitted

that pursuant to the order passed by the learned Magistrate under Section 156(3) of the Cr.P.C., the FIR was registered and investigation was in progress. In support of the contention that the FIR once registered pursuant to the order passed by the learned Magistrate under Section 156(3) cannot be quashed by the Sessions Court, the learned counsel for the Petitioner placed reliance on the ratio laid in the judgment of a Division Bench of this Court in the case of **B.S. Khatri v/s. State of Maharashtra and another**¹. Therefore the learned counsel for the Petitioner submits that the Writ Petition may be allowed.

3 On the other hand the learned counsel appearing for Respondent No.2 – Original Accused No.1, Mr. A B Tajane submits that keeping in view of the judgment of the Full Bench of this Court in the case of **Mr. Panchabhai Popotbhai Butani & ors.v/s. State of Maharashtra and ors.**², the Sessions Court can quash the FIR registered pursuant to the order passed by the learned Magistrate under Section 156(3) of the Cr.P.C. since the Petitioner did not approach the Police Station under Section 154 of the Cr.P.C. for registration of FIR, and therefore, the order passed by the learned Extra Joint Ad Hoc Additional Sessions Judge, Nashik, being a well reasoned order, cannot be quashed and set aside. He invites attention of this Court to the reasons assigned by the Sessions Court in the impugned order and submits that the Writ petition may be rejected. He submits that since the Sessions Court was

¹ 2004(1) Mh.L.J.

² 2010 ALL MR (Cri) 244

well within its revisionary jurisdiction in quashing and setting aside the order passed by the learned Magistrate, First Class, 9th Court, Nashik under Section 156(3) of the Cr.P.C. and consequent upon it the FIR in question was quashed by the Sessions Court, no interference is warranted in the impugned order. In support of the aforesaid contention, the learned counsel for Respondent No.2 sought to place reliance on Full Bench Judgment of this Court in ***Panchabhai Popatbhai Butani's*** case (supra), and the judgment of a learned Single Judge of this Court at Aurangabad Bench in the case of ***Bajrang Vitthalrao Sangnwar v/s. State of Maharashtra and anr.***³

4 Upon appreciating the rival contentions of the learned counsel for the parties and upon perusing the material placed on record and the reasons assigned by the Sessions Court, this Court is of the opinion that the Sessions Court has no jurisdiction/power to quash the FIR. Once FIR came to be registered on the basis of the order passed by the learned Magistrate under Section 156(3) of the Cr.P.C. it was not open for the Sessions Court to quash the said FIR. It is only the High Court by invoking jurisdiction under Section 482 of the Cr.P.C. or Writ Jurisdiction may consider in appropriate cases, a prayer for quashing the FIR. It is not necessary to elaborate the reasoning since the impugned order needs to be interfered with only on the ground that the Sessions Court had no jurisdiction to quash the FIR.

³ 2014(4) Bom.C.R. (Cri.) 748

5 In the result, the impugned judgment and order dated 22nd April 2015 passed by the learned Extra Joint Ad Hoc Additional Sessions Judge, Nashik is quashed and set aside. However, it is made clear that merely because the impugned order is quashed and set aside on technical ground that the Sessions Court had no jurisdiction to quash the FIR, the same would not preclude Respondent No.2 from availing of the appropriate remedy for quashing the FIR in case Respondent No.2 is so advised. The Writ Petition is accordingly disposed of.

[S. S. SHINDE , J]