

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO.7114 OF 2017
/IN WP/890/2017

RAMESHWAR S/O. NARAYANRAO DHANKIKAR AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicants : Mr. S. S. Gangakhedkar.

APP for Respondent/State: Mr. P. G. Borade.
...

CORAM : **T. V. NALAWADE &
M. G. SEWLIKAR, JJ.**

DATE : 20th October, 2020.

ORDER: (Per T. V. Nalawade, J.)

. Criminal Writ Petition No.890 of 2017 was filed for relief of quashing and setting aside the FIR bearing Crime No.206 of 2016, registered with Vazirabad Police Station, Nanded, for the offence punishable under Section 420 read with 34 of the Indian Penal Code. Criminal Application No.7114 of 2017 is filed in Criminal Writ Petition No.890 of 2017. Criminal Application No.7114 of 2017 is filed for reconsideration of decision of Criminal Writ Petition No.890 of 2017 and it is contended that some citations on which reliance was placed by the Petitioners, are not referred and considered by the Court while

deciding Criminal Writ Petition No.890 of 2017.

2 Both the sides are heard.

3 In the writ petition, challenge to FIR was only on the ground that in private complaint filed by the informant even when he had made prayer for referring the matter for investigation under Section 156(3) of the Code of Criminal Procedure, such direction was not given and the Magistrate had expressed that it was desirable that the complainant gives evidence for consideration of issue process. The said proceeding was registered as R.C.C. No.792 of 2016. It is contended that even when there was such circumstance, subsequently on the basis of report given by the same complainant to police, crime came to be registered for similar offence, offence punishable under Section 420 read with 34 of the Indian Penal Code on 30th December, 2016. It is the contention of the Petitioners that when the Magistrate had taken the cognizance of the matter and evidence was to be given by the complainant for getting order of issue process, it was not legal on the part of the police to register crime on the basis of same allegations. This Court considered the circumstance that the complaint subsequently came to be disposed of as the complainant expressed that crime was registered and he has no desire to proceed ahead with the private complaint.

4 The learned counsel for Petitioners submitted that he was placing reliance on the following cases:

- a) **AIR 2010 SC 1877**, (*Rameshbhai Pandurao Hedau Vs. State of Gujarat*);
- b) **2013 CRLJ 776**, (*Anju Chaudhary Vs. State of Uttarpradesh*);
- c) **AIR 2015 SC 1742**, (*Ramdev Food Products Pvt. Ltd. Vs. State of Gujarat*);
- d) **2017 (2) BCR (Cri.) 856**, (*Mohammad Hashim Yusuf Osmani Vs. State of Maharashtra*);
- e) **2017 DGLS (Bom) 172**, (*Mallari Sambhau Sanket Vs. State of Maharashtra*); and
- f) **2007 Supreme (Cal) 182**, (*Smar Mondal Vs. State of West Bengal*).

5 This Court has carefully gone through the ratios of these cases. Different stages given in the Code of Criminal Procedure for

consideration of private complaint, are discussed. In one case, it is observed that second FIR on the basis of same allegations is not permissible. There is no dispute over these propositions, but those propositions were of no use in the matter, which is decided.

6 On one hand, Magistrate has power to take cognizance of the offence on private complaint and on the other hand, some duty is imposed on police to register crime when the information is given about commission of cognizable offence. These powers are separate and independent from each other. Taking cognizance of the allegations by the Judicial Magistrate First Class on one side and police on other side, is not prevented and on the contrary the provision of Section 210 of the Code of Criminal Procedure shows that when police start investigation in the crime, it is desirable for the Magistrate to stay his hands and wait for the final report of police. If charge-sheet is filed by police against the accused after forming opinion that *prima-facie* case is made out, private complaint gets merged into police case. Between the present Applicants and other side, one more proceeding bearing Criminal Application No.7227 of 2017 in Criminal Writ Petition No.891 of 2017 was filed and this proceeding came to be decided yesterday. In view of the observations made in that proceeding also on the point involved, this Court holds that the decision given by this Court in the previous matter like Criminal Writ Petition No.890 of 2017 cannot

be recalled only for mentioning the aforesaid case law, which were that way not relevant. Further, there is a bar of the provision of Section 362 of the Code of Criminal Procedure. In the result, the application stands dismissed.

ndm

[M. G. SEWLIKAR, J.]

[T. V. NALAWADE, J.]