

2. The proceeding bearing criminal writ petition No. 891 of 2017 is filed for relief of quashing the First Information Report bearing Crime No. 304 of 2016 registered with Bhagyanagar Police Station, Nanded, on 26-12-2016 for the offence punishable under Section 406 read with

Section 34 of the Indian Penal Code (IPC). The crime is registered on the basis of report given by daughter of Narayanrao Ramlingu Dhankikar, respondent No. 2 of the main proceeding.

3. The main contention of the applicants-petitioners in writ petition is that Judicial Magistrate First Class had refused to pass order under Section 156(3) of the Code of Criminal Procedure (Cr.P.C.) and Judicial Magistrate First Class had directed the complainant to give evidence by order dated 22-12-2016 and so the Police ought not to have registered the aforesaid crime on the basis of same allegations.

4. There are allegations made by Narayanrao Dhankikar, who is represented by his daughter Jaimala in private complaint that false record of partition was prepared by her brother, Rameshwar Dhankikar and his son, namely, Suraj Rameshwar Dhankikar. By deceiving father, some signatures of Narayanrao were obtained on some documents. It is contended that at the relevant time Narayanrao was living with Rameshwar and Suraj and this circumstance was misused and false record was created to grab landed property worth more than Rs. Four to five Crores. It is contended that when Narayanrao suffered heart-attack, he was shifted to Pune, then he started living with his daughter Jaimala. Thereafter, on enquiry they realized that such fraud was played by these two persons. They approached to Police on 25-08-2016, but as no action was taken by the Police on that report, a private complaint was filed. Narayanrao had requested for order of investigation under section 156(3) of the Cr.P.C. but cognizance of the matter was taken by Judicial Magistrate, First Class and direction was given to lead evidence for order of issuance of process.

5. The FIR shows that crime came to be recorded on 26-12-2016, i.e. after about four days of making order by the Magistrate. In the said report, allegations are made that her father had kept articles like gold ornaments in cupboard, in his room and he was also having cash amount of Rs. Five lakhs. He is freedom fighter. In this report, it is contended that in Pune when she made enquiry with her father about his valuable assets and cash, it was informed that he has kept those articles in the house from Nanded, when he was living with Rameshwar and Suraj. Then enquiry was made with Rameshwar and Suraj and when cupboard was searched, those articles were not found there. It is contended that the gold ornaments worth more than Rs. Seven Lakhs and cash amount of more than Rs. Five Lakhs was there. This movable property was mentioned in the report dated 26-12-2016 and on the basis of this report a crime is registered under Section 406 read with Section 34 of the Indian Penal Code.

6. The aforesaid description of the contents of private complaint and FIR show that two incidents are totally different and it cannot be said in respect of the same incident first private complaint was filed and then FIR was given. Even if this material circumstance is ignored, Police have power to register a crime, when information is received regarding cognizable offence. The provisions of Section 210 of Cr.P.C show that if private complaint is pending and Police investigation is going on in respect of the same subject-matter, the Magistrate is expected to stay hands. Thus, more importance is given to crime registered in Police Station and investigation which is going on. If Police file case, both the cases need to be clubbed together and those matters are heard as Police case and not

as private complaint. Though this circumstance is there, the applicants-petitioners had prayed for quashing of FIR. Thus, the proceeding itself was misconceived. Learned counsel for applicants-petitioners placed reliance on some observations of this Court in the case of **Mohammad Hisham Yusuf Osmani Versus Tate of Maharashtra and another** reported in **2017 All MR (Cri) 4709**. This is in regard to registration of two FIRs in respect of the same incident. In that case, the Court had held that separate investigation of subsequent FIR is contrary to law. In view of provisions of Cr.PC. mentioned above and other provisions of Cr.P.C., with due respect this Court is observing that no order of issue process was made in the complaint and further matters of private complaint and FIR are totally different. So, these observations also cannot be used in favour of the present applicants. Thus, nothing can be achieved by restoring the matter, so the present criminal application needs to be dismissed. Accordingly, Criminal Application stands dismissed.

Sd./-

[**M.G. SEWLIKAR**]
JUDGE

Sd./-

[**T. V. NALAWADE**]
JUDGE

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