

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH: NAGPUR

CRIMINAL APPLICATION (APL) NO. 282 OF 2014

- 1] Mansoor Hussain Saifuddin Raja,
Aged Major, Occ. Business,
- 2] Shamoon Saifuddin Raja,
Aged Major, Occ. Business,
- 3] Hussain Zafarbhai Taskin,
Aged Major, Occ. Business,
- 4] Fakhera Fidahussain Bohara,
Aged Major, Occ. Business.

All R/o. Khamgaon, Tq.
Khamgaon, Distt. Buldana.

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APPLICANTS

..V E R S U S..

- 1] State of Maharashtra,
through Police Station Officer,
Police Station Khamgaon City,
Tq. Khamgaon, Distt. Buldana.
- 2] Dharmesh Chittaranjan Kamani,
Aged 40 years, Occ. Business,
R/o. Ralies Plots, Jalalpura,
Khamgaon, Tq. Khamgaon,
Distt. Buldana.

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NON-APPLICANTS

 Shri S. G. Joshi, Advocate for Applicants.

Shri M. K. Pathan, A.P.P. for Non-applicants/State.

Shri. A. V. Bhide, Advocate for Non-applicant No.2.

**CORAM:- Z. A. HAQ AND
AMIT B. BORKAR, JJ.**

DATED :- 02.11.2020

ORAL JUDGMENT (PER: AMIT B. BORKAR, J.) :-

1. This is an application under Section 482 of the Code of Criminal Procedure challenging the First Information Report bearing No.M-2/2014 dated 07/03/2014 filed in pursuance of order dated 04/03/2014 passed by Judicial Magistrate First Class, Khamgaon.

2. It is submitted by Mr. S. G. Joshi, learned Advocate for the applicant that the order of issuance of investigation under Section 156(3) of the Code of Criminal Procedure passed, which is challenged in the present application is unreasoned order and the same shows non application of mind on the part of learned Judicial Magistrate First Class. Only on this limited ground, it is submitted that the application deserves to be allowed and the matter is required to be remanded back to the Judicial Magistrate First Class, Khamgaon.

3. Mr. A. V. Bhide, learned Advocate for non applicant No.2 opposed the submission made by Mr. Joshi and submitted that the application deserves to be dismissed.

4. We have scrutinized the impugned order dated 04.03.2014, which reads as under :

“Complain is sent to City Police Station for investigation U/s.156(3) with direction to filed report within 90 days.”

5. After going through the said order, we find substance in the submission of Mr. S. G. Joshi, learned Advocate for the applicants that passing of the order shows complete non application of mind on the part of Judicial Magistrate First Class. It is now the settled principle of law that while passing the order under Section 156(3) of the Code of Criminal Procedure, the Magistrate has to apply his mind as to why the investigation is directed. The issue is no longer *res integra* in view of the judgment of this Court in the case of ***State of Maharashtra through Deputy Commissioner of Police, Nagpur Vs. Shashikant S/o. Eknath Shinde*** reported in **2013 (5) ABR 86**.

6. Since the impugned order is without reasons, without going into the merits of the case of either side, we are remanding the matter back for disposal in accordance with law.

7. Hence, we pass the following order.

ORDER

i) The order dated 04.03.2014 passed by the Judicial Magistrate First Class, Khamgaon against the applicants is quashed and set aside.

ii) Since the order dated 04.03.2014 passed by the Judicial Magistrate First Class, Khamgaon is set aside, the consequential registration of First Information Report bearing No. M-2/2014 for the offences under Sections 468, 471, 420, 109 read with Section 120-B of the Indian Penal Code is also quashed and set aside.

iii) The matter is remanded back to the Judicial Magistrate First Class, Khamgaon for passing order in accordance with law.

iv) The non-applicant No.2 shall appear before the Judicial Magistrate First Class, Khamgaon on 11.01.2021 at 11.00 a.m.

8. With the above observations, the application stands allowed accordingly.

JUDGE

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