

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 829 OF 2021

Vilas S/o Ganpatrao Shirolkar ...Applicant

Versus

The State of Maharashtra and Anr. ...Respondents

Ms Snehal P. Kulkarni, Advocate for Applicant
Mr S.D. Ghayal, A.P.P. for Respondent No. 1/State
Mr S.A. Wakure, Advocate for Respondent No. 2

**CORAM : V.K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 16th JUNE, 2021

PER COURT :

1. The applicant is seeking directions for termination of proceedings vide Criminal Miscellaneous Application No. 56 of 2008 pending on the file of Judicial Magistrate First Class, Tuljapur by invoking inherent jurisdiction under Section 482 of Cr.P.C.
2. Heard Ms Snehal Kulkarni, the learned counsel for the applicant, Mr Ghayal, the learned A.P.P. for the respondent No. 1/State and Mr Wakure, learned Counsel for respondent No. 2/original complainant.
3. Learned Counsel for the applicant submits that as soon as learned J.M.F.C., Tuljapur passes an order under Section 156 (3) of Cr.P.C., nothing remains before the J.M..F.C.

4. In the present case, the learned Magistrate has passed the order of investigation under Section 156 (3) of Cr.P.C. on 06.03.2008 in Criminal Miscellaneous Application No. 56 of 2008. She submits that in view of the legal position laid down by the Division Bench of this Court in case of ***Avinash Trimbakrao Dhondage Vs. State of Maharashtra and others reported in 2016 (1) Bom. C.R. (Cri.) 223***, the proceedings of Criminal Miscellaneous Application No. 56/2008 does not remain. The learned Magistrate has not passed any order to that effect and that proceeding is still pending for so many years unnecessarily. She submits that necessary directions need to be issued to the learned J.M.F.C. Tuljapur in view of the legal position laid down by this Court in case of ***Avinash Trimbakrao Dhongade (supra)***.

5. The learned A.P.P. submits that in view of the directions given, the learned JMFC, Tuljapur, M. Case No.5/2008 came to be registered for the offences punishable under section 420, 403 of I.P.C. at Osmanabad City Police Station and Investigating Officer has filed "C Summary" in Criminal Miscellaneous Application No. 56/2008. The learned counsel for respondent No. 2/original complainant admits that position.

6. We have gone through the citation in case of ***Avinash Trimbakrao Dhondage (supra)*** wherein it is held that once the Magistrate passes an order under Section 156 (3) of the Cr.P.C., the learned Magistrate has further nothing to do and proceeding under Section 156 (3) of Cr.P.C. terminated, nothing remains pending before the Magistrate after such order is passed. In the present case, though order of

investigation under section 156 (3) of Cr.P.C. came to be passed on 06.03.2008, the proceedings of Criminal Miscellaneous Application No. 56/2008 is still pending. In view of the legal position made clear in case of ***Avinash Trimbakrao Dhondage (supra)***, it is necessary to issue directions to the J.M.F.C. Tuljapur to pass an appropriate order in the Criminal Miscellaneous Application No. 56/2008 regarding termination of proceeding. So far as "C summary" report filed by the Investigating Officer is concerned, that can be dealt with independently according to law. That would not be an obstacle to terminate proceeding of Criminal Miscellaneous Application No. 56/2008. With this, we conclude and proceed to pass following order :-

ORDER

- (I) Criminal Miscellaneous Application No. 56/2008 pending on the file of J.M.F.C. Tuljapur shall stand terminated.
- (II) The learned J.M.F.C. Tuljapur shall pass an appropriate order to that effect.
- (III) The J.M.F.C. Tuljapur shall deal with the "C Summary" report filed by the Investigating Officer independently according to law after giving an opportunity of being heard to both sides.
- (IV) The Criminal Application is accordingly disposed of.

[SHRIKANT D. KULKARNI, J.]

[V.K. JADHAV, J.]

mta