

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 9 OF 2020

Keshav s/o Ganpat Bhagat
Age 41 Years, Occu. Business,
R/o. Sarafa Line, Mahur,
Tq. Mahur Dist. Nanded.

Petitioner...**Versus**

1. Uddhav Dhondoji Mandade
Age : 58 years, Occu. Retd. BDO,
R/o : Kanta Peth, Bhagvanpur,
Tq. Mul, Dist. Chandrapur.
2. Sharad Mahadeo Teltumbade
Age : 50 years, Occu. Service,
Panchyat Samiti, Mahur, R/o Mahur,
Tq. Mahur, Dist. Nanded.
3. Ramesh Vithalrao Shrimangale,
Age : 48 years, Occu. Service,
Panchyat Samiti, Umari,
R/o Behind Sahyadri Public School,
Tq. Mahur, Dist. Nanded.
4. Ku. Khushbu Chandu Amrutkar,
Age : 32 years, Occ. Service,
Secretary/Gram Sevika with Rupla Naik
Tanda, Panchyat Samiti, Mahur,
R/o near Jagadamba School Campus,
Mahur, Tq. Mahur, Dist. Nanded.

5. Raju Govindrao Sarode,
Age : 45 years, Occu. Service,
Secretary/Gram Sevak with Grampanchayat,
Karyalaya, Wadsa Panchyat Samiti, Mahur,
R/o Mahur, Tq. Mahur, Dist. Nanded.

6. Pranita Prakash Rane,
Age : 38 years, Occu. Service,
Secretary/Gram Sevika with Padsa,
Panchyat Samiti, Mahur,
R/o behind Krushi Karyalay Mahur,
Tq. Mahur, Dist. Nanded, Umbri,
Tq. Umbri, Dist. Nanded.

Respondents...

WITH

CRIMINAL WRIT PETITION NO. 10 OF 2020

Keshav s/o Ganpat Bhagat
Age 41 Years, Occu. Social Worker,
R/o. Sarafa Line, Mahur,
Tq. Mahur Dist. Nanded.

Petitioner...

Versus

Arun s/o Suresh Jagtap
Age : 56 years, Occu. Service,
R/o : c/o Police Station Mahur,
Tq. Mahur, Dist. Nanded.
At present r/o : c/o Control Room,
S. P. Office, Nanded.

Respondent...

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Advocate for Petitioner in both petitions : Mr. Nagarsoge Sahebrao A.

Advocate for Respondents in WP-9-2020 : Mr. Deshmukh Umakant B.

Advocate for Respondent in WP-10-2020 : Mr. S. M. Kamble

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CORAM : KISHORE C. SANT, J.

DATE : 13th DECEMBER 2022.

ORAL JUDGMENT :

1. Heard the learned Advocates for the respective parties at length. Since a common question is posed in both these Writ Petitions and since petitioner is same, both are being taken together. By consent of the parties, both the petitions are taken up for final disposal. Hence Rule. Rule made returnable forthwith.

2. In Criminal Writ Petition No.9/2020, the petitioner/applicant had filed an application bearing OMCA No.82/2018 under Section 156(3) of the Code of Criminal Procedure (Cr.PC. for short) before the learned Judicial Magistrate First Class, Mahur, praying for direction to the police to carry out an investigation. The learned Magistrate after hearing the application, was pleased to reject the application. Though it is mentioned that the Court was inclined to proceed with the matter as per Section 200 of the Cr.PC., but the applicant and his advocate

submitted that he wants to prefer Revision against the order and they do not want to proceed with this matter as per Section 200 of the Cr.P.C. The learned Magistrate rejected the application by its order dated 11.12.2018. Against which, the Revision was preferred bearing Revision Application No.152/2018 in the Court of learned Sessions Judge, Nanded.

3. In Criminal Writ Petition No.10/2020, the petitioner/applicant had filed an application bearing OMCA No.116/2018 under Section 156(3) of the Cr.P.C. before the learned Judicial Magistrate First Class, Mahur. In this case also, the learned Magistrate by its order dated 08.02.2019 rejected the application under Section 156(3). Against which, the Revision was preferred before the learned Sessions Judge, Nanded and the same came to be dismissed by order dated 09.12.2019 mainly for the reason the Revision application is not maintainable against the order passed under Section 156(3) of the Cr.P.C. being an interlocutory order.

4. Therefore, these two petitions are filed. The main ground raised is about the maintainability of the revision. It is submitted that the

learned Sessions Judge has committed a serious error of law in holding that no revision is maintainable against the order passed under Section 156(3).

5. The learned Advocate for the petitioners has relied upon the judgment reported in 2016 (1) Bom.C.R.(Cri.) 223 in the case of **Avinash Trimbakrao Dhondage Vs. State of Maharashtra and another.** This Court has clearly held that a revision is maintainable against the order passed under Section 156(3). He submits that this order was carried to the Hon'ble Apex Court. The Hon'ble Apex Court had remanded the matter. The Hon'ble Apex Court disposed off the Special Leave Petition (SLP) by granting liberty to the petitioner to approach this Court. This Court thereafter, decided the matter and held that revision is maintainable against the order passed by the JMFC under Section 156(3). This judgment is reported in 2018(1) Bom.C.R.(Cri.) 502. Wherein again it is held that the revision is maintainable in view of this, the learned Advocate for the petitioner submits that the learned Sessions Judge has committed an error of law by observing that the revision is not maintainable.

6. Mr. Deshmukh, learned Advocate for the respondents, submitted that the revision was not maintainable as the order under Section 156(3) is an interlocutory. He relied upon the judgment reported in 2015 ALL MR (Cri.) 1097 in the case of **Yogesh S/o Vilas Dalavi and others Vs. State of Maharashtra and Anr.** He pointed out from Paragraph No.7 of the said judgment that revision is not maintainable against interlocutory order. In that case, the question was as to whether the Sessions Court was empowered to entertain the revision filed by the respondent challenging the order passed by the JMFC, exercising discretion and directing the complainant to remain present before the Court for verification. So it can be said that the proceeding was not finally decided under Section 156(3) and thus we need not consider it, as the question of law posed before that Court in the case was different than the one in this case.

7. Mr. Kamble, learned Advocate adopted the arguments of Mr. Deshmukh and further submitted that no case is made to issue direction under Section 156(3). He pointed out that the offence was not cognizable and therefore there was no question of issuing any direction.

He further read Paragraph No.11 of the order passed by the JMFC, Mahur and submits that the learned Magistrate has not committed any mistake, while rejecting the application under Section 156(3). He also submits by reading Paragraph No.11 of the judgment passed by the learned Sessions Judge, Nanded, that wherein facts of the case are considered and it is held that where prima facie, it is observed that the respondent has no direct nexus with the incident as alleged and he was not organizer of the function in respect of which, the complaint is filed.

8. Considering the above judgments and submissions, this Court finds that the learned Sessions Judge, Nanded has committed error of law by holding that no revision is maintainable against the order passed by the JMFC, Mahur, under Section 156(3) of the Cr.P.C.

9. Both the Writ Petitions are thus, allowed and disposed off accordingly. Rule is made absolute in the above terms.

10. Needless to say that all the points are kept open.

[KISHORE C. SANT, J.]