

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 683 OF 2021

Shaikh Abdul Kaleem Sk. Abdul Aziz

...Petitioner

Versus

The State of Maharashtra and Ors.

...Respondents

Mr V.C. Patil holding for Mr V.D. Patnoorkar, Advocate for Petitioner
Mr G.O. Wattamwar, APP for Respondent No.1/State

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 20th AUGUST, 2022

PER COURT :

1. The challenge in the petition is the impugned order passed by the learned Chief Judicial Magistrate, Nanded in Misc. Criminal Application No. 146/2017 dated 18.01.2018.

2. Heard Mr Patil holding for Mr V.D. Patnoorkar, learned counsel for the petitioner and Mr G.O. Wattamwar, learned APP for the State.

3. Learned counsel for the petitioner invited my attention to the impugned order dated 18.01.2018. He submitted that it is observed by the JMFC that the offence has taken place. Even then, the learned Magistrate has turned down the prayer to forward the complaint for investigation according to section 156 of Cr.PC. He submitted that the impugned order is bad in law. The learned Magistrate ought to have forwarded the complaint for investigation through Police in view of nature of offences alleged against the accused. He, therefore, submits that the impugned order is liable to be quashed and set aside.

4. Per contra, Mr Wattamwar, learned APP for the State supported the impugned order. He submitted that no interference is called for.

5. Having regard to the submissions of both the sides, I have studied the impugned order passed by the learned Magistrate dated 18.01.2018. On going through the same, it would reveal that the learned JMFC has applied his judicial mind and passed reasoned order. It is observed that the offence has taken place, but no purpose would be served by sending the complaint for investigation regarding inquiry of certain documents. As such, the learned Magistrate was pleased to reject the prayer for investigation under section 156(3) of Cr.PC and directed to the complainant to remain present to record his verification statement. I do not see any legal error on the face of the impugned order. It is the discretion of the Judicial Magistrate First Class which mode should be adopted for conducting the investigation or enquiry. The party cannot as of right sought for investigation through Police. It is not the right of the party to have investigation through Police. It is not the case that complaint has been dismissed by the learned JMFC straightway.

6. On the other hand, learned Magistrate has applied his judicial mind and passed reasoned order observing that the offence has taken place and accordingly directed to the complainant to remain present for verification statement.

7. Under these circumstances, the impugned order cannot be said to be defective in the eye of law. There is no merit in the petition.

8. At the most, proceedings pending before the learned Magistrate can be expedited while disposing this writ petition.

ORDER

- (i) Criminal Writ Petition stands dismissed.
- (ii) The proceedings of Misc. Criminal Application No. 146/2017 pending on the file of Chief Judicial Magistrate, Nanded is hereby expedited.
- (iii) The Learned Chief Judicial Magistrate, Nanded is requested to fix the time schedule for recording the verification statement of the complainant and accordingly proceed with the matter.
- (iv) With the above directions, criminal writ petition stands disposed of.

[**SHRIKANT D. KULKARNI, J.]**

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