

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 CRIMINAL WRIT PETITION NO.973 OF 2022

- 1) Karim Ismail Tamboli (died)
 - 2) Jakira Karim Tamboli,
Age 55 years, Occ. Household,
R/o. Samnapur, Tq. Sangamner,
Dist. Ahmednagar.
 - 3) Wasim Karim Tamboli,
Age 35 years, Occ. Medical
Practitioner, r/o. Near Rukumini
Petrol Pump, Samanapur, Tq.
Sangamner, Dist. Ahmednagar.
 - 4) Nazim Karim Tamboli,
Age 33 years, Occ. Business,
R/o. Near Rukumini Petrol Pump,
Samanapur, Tq. Sangamner, Dist.
Ahmednagar.
 - 5) Najeer Ismail Tamboli,
Age 53 years, Occ. Business,
R/o. Hanuman Galli, Wadgaonpan,
Tq. Sangamner, Dist. Ahmednagar.
 - 6) Prakash Jalindar Warpe,
Age 50 years, Occ. Agriculture,
R/o. June Gavthan, Kanoli,
Tq. Sangamner, Dist. Ahmednagar
- ... Applicants

VERSUS

- 1) The State of Maharashtra
 - 2) Raees Ahmed Shaikh,
Age 41 years, Occ. President
Allied Education Society Samnapur,
R/o. Alkanagar Sangamner,
Tq. Sangamner, Dist. Ahmednagar
- ... Respondents.

...

Advocate for the Applicants : Mr. Z. H. Farooqui
APP for the Respondent No. 1/State : Mr. S.D. Ghayal
Advocate for Respondent No. 2 : Mr. N. B. Narwade

CORAM : **MANGESH S. PATIL &
ABHAY S. WAGHWASE, JJ.**

DATE : **16.11.2022.**

ORAL ORDER : (PER : MANGESH S. PATIL, J.)

Heard the learned advocate for the petitioner, learned advocate for the respondent No. 2 who is the original informant and the learned A.P.P.

2. Rule. The Rule is made returnable forthwith. With the consent of the parties, the matter is heard finally at the stage of admission.

3. In spite of a trite legal position regarding the scope and ambit of the powers of a Magistrate under Section 200 to 204 of the Code of Criminal Procedure, the learned Magistrate by the impugned order has issued a direction under Section 156(3) of the Code of Criminal Procedure at a post cognizance stage.

4. As can be seen, when a private complaint was presented by the respondent No. 2, by an order dated 18.02.2021 specifically observing that allegations were insufficient to issue any direction under Section 156(3) of Cr.P.C., the Magistrate had directed a statement of the respondent No. 2 to be recorded under Section 200 of the Code of Criminal Procedure. Accordingly the statement was recorded on 01.04.2021. Statement of one more witness Mayur Bhojane was also subsequently recorded on 08.04.2022. It appears that in spite of such earlier stages, for the reasons best known to the Magistrate, a fresh order was passed on 23.06.2022 invoking the powers under Section 156(3) of the Code of Criminal Procedure and directing the investigating officer to undertake further

investigation.

5. Once having taken cognizance of the complaint under Section 202 and having indulged in conducting an enquiry by himself, the Magistrate had no jurisdiction to revert back to an earlier stage and could not have legally issued any direction thereafter under Section 156 (3) of the Code of Criminal Procedure. The order is patently illegal and without jurisdiction.

6. The Writ Petition is allowed. The order of the Magistrate directing investigation by invoking the powers under Section 156(3) of the Code of Criminal Procedure is quashed and set aside.

7. Needless to state that the Magistrate will have to now proceed from the stage the matter had reached after taking cognizance.

8. The Rule is made absolute in above terms.

(ABHAY S. WAGHWASE, J.)

(MANGESH S. PATIL, J.)

mkd/-