

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

CRIMINAL WRIT PETITION NO. 1390 OF 2021

Mirza Talha Baig s/o Mirza Khalil Baig

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Mr. G. G. Suryawanshi, Advocate for the Petitioner.

Smt. D. S. Jape, APP for Respondent No. 1.

Mr. A. N. Ansari, Advocate for Respondent Nos. 2 to 4 & 6.

CORAM : KISHORE C. SANT, J.

DATED : 29th NOVEMBER, 2022.

P C. :-

. By consent of the parties, taken up for final disposal.

2. Heard learned advocate for the petitioner.

3. The petitioner is challenging the order dated 26.10.2021 passed by the learned Sessions Judge, Nanded in Criminal Revision Application No. 70/2021 thereby setting aside the order dated 20.09.2021 in OMCA No. 847/2021 passed by the learned J.M.F.C., Court No. 8, Nanded directing police to carry investigation under Section 156 (3) of the Code of Criminal Procedure (for short "Cr. P C."). The learned Magistrate is directed to decide the matter afresh on its own merits after due scrutiny of the records. The original

complainant/this petitioner was directed to appear before the learned Magistrate on 15.11.2021.

4. The learned Magistrate after going through the complaint has passed the order under Section 156 (3) of the Cr. P. C. From the order it is seen that, the learned Magistrate has passed the order after going through the complaint and satisfying himself as to existence of some case requiring investigation at the hands of police.

5. From paragraph No. 14 of the order passed by the learned Sessions Judge it appears that, the learned Sessions Court had gone through the document issued by one private hospital and formed an opinion that learned Magistrate need to decide the matter afresh on its own merits. Further in paragraph No. 17, it is observed that the learned Magistrate has not considered the material presented by the complainant and has passed the order.

6. At this stage of Section 156 (3) of the Cr. P. C. what is required to be seen is only whether the offence is made out prima facie by giving the complaint. If the learned J.M.F.C. was satisfied by reading the complaint that investigation is necessary and has passed an order which shows the application of mind, then in such circumstances no interference was warranted. The interference is justified only if the

Court comes to a conclusion that, no offence is made out by reading the complaint as it is. The learned Sessions Judge, however, has not formed any such opinion and has quashed and set aside the order by directing fresh scrutiny of the records.

7. This Court feels that, when no material irregularity is committed by the learned J.M.F.C., it was not proper on the part of the learned Sessions Judge to set aside the order. Hence, the following order.

ORDER

(I) The writ petition is allowed.

(II) The order passed by the learned Sessions Judge dated 26.10.2021 in Criminal Revision Application No. 70/2021 is quashed and set aside.

(III) The order passed by the learned J.M.F.C. dated 20.09.2021 in OMCA No. 847/2021 is restored.

(IV) The writ petition is thus disposed of accordingly.

(KISHORE C. SANT, J.)

P.S.B.