

Ghuge

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2171 OF 2022

Kailash Laxman Jogadia ... Petitioner
V/s.
State of Maharashtra & Anr ... Respondents

Mr. Satyaram R. Gaud for the petitioner.

Mr. A.R. Patil APP for the State.

Mr. R.T. Karvande P.S.I Byculla Police Station.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 29, 2022

P.C.:

1. The petitioner, who is original complainant in a proceeding alleging offences punishable under Sections 323, 341, 403, 406, 419, 420, 465, 467, 468, 506, 506, 120(B) read with 34 of Indian Penal Code, 1860, is challenging order dated 15th December 2020 directing the petitioner to examine two (2) witnesses in support of his complaint.

2. On 28th August 2019, the petitioner filed private complaint against respondent Nos.3 to 5 seeking investigation under Section 156(3) of Code of Criminal Procedure, 1973. By order dated 24th September 2019, the learned Magistrate directed police to investigate into the complaint lodged by the petitioner. On 26th September 2019 the respondent No.2 registered offence against respondent Nos.3 and 5 and after completion of investigation submitted a report that in so far as the respondent No.4 and 5 are

concerned, no offence is disclosed and in relation to respondent No.3 offence under Section 199 of I.P.C is made out.

3. On 23rd November 2020 the petitioner filed protest petition wherein the learned Magistrate by order dated 15th December 2020 directed the petitioner to examine two (2) witnesses in support of his complaint.

4. This Court by order dated 29th June 2022 issued notice to respondents. Office report shows that, respondent Nos. 3 and 5 are served.

5. On perusal of the report and the impugned order, it appears that the learned Magistrate has not taken any decision whether to accept the report submitted by the investigating agency, or not.

6. Therefore, it was necessary for the learned Magistrate to decide whether to accept the report on the basis of material contained therein or not to accept the report. Without arriving at that conclusion, the learned Magistrate could not have directed the petitioner to examine witnesses.

a) In that view of the matter, the impugned order dated 15th December 2020 is quashed and set aside;

b) The learned Magistrate after hearing the petitioner shall pass appropriate order on the report submitted by the investigating officer;

c) It appears that on 16th October 2020 the learned Magistrate issued notice to the complainant, though page No.101 of the petition shows seal stating that Summary

Class-A is granted, there is no signature of the learned Magistrate on the same. Therefore, it cannot be accepted that the the Summary Class-A has been granted by the learned Magistrate.

7. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)