

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION No. 489/2022.

Ganesh Maroti Shende,
Aged about 29 years, Occupation
-Service, resident of Saoli, Tahsil
Saoli, District Chandrapur.

... **PETITIONER.**

VERSUS

State of Maharashtra,
through the Police Station Officer,
Police Station Saoli, Tahsil Saoli,
District Chandrapur.

... **RESPONDENT.**

Mr. A.M. Chandekar, Advocate for the Petitioner.
Ms.M. Deshmukh, A.P.P. for the Respondent.

CORAM : VINAY JOSHI, J.

DATE : SEPTEMBER 07, 2022.

ORAL JUDGMENT :

Heard. Considering the controversy involved in the matter

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and by consent of the learned Counsel for the parties, Criminal Writ Petition is taken up for final disposal at the stage of admission by issuing Rule, making the same returnable forthwith.

2. The petitioner has raised a challenge to the order dated 25.01.2021 passed by the Judicial Magistrate First Class, Saoli in Final Summary Case No.1/2020, whereby the learned Magistrate has directed to register is complaint. It is primely argued that the police have initially registered an offence punishable under Section 366 of the Indian Penal Code and on investigation, released the accused by invoking Section 169 of the Code as there was no sufficient material against him. However, later on, the police have again took cognizance of some affidavit of informant lady and found that there has been commission of a non-cognizable offence and thus made final report to the Magistrate, who in turn directed to register the complaint.

3. The facts in brief are that the informant lady aged 21 years filed a report dated 07.01.2018, alleging that the petitioner has

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abducted her and therefore, police registered crime bearing C.R.No.9/2018 for the offence punishable under Section 366 of the Indian Penal Code. Investigation was carried out, however, the police did not found sufficient material, and therefore, report under Section 169 of the Code was filed on 27.08.2018. It appears that later on again the police came into action on account of some affidavit or oral report of the informant and on that basis filed final report in terms of Section 173 of the Code of Criminal Procedure, pertaining to non-cognizable offence. The Magistrate has directed to register the said report as a complaint.

4. It reveals that after carrying out investigation, the police found that there is no sufficient evidence or reasonable suspicion to justify the prosecution, and therefore, report under Section 169 was filed. In the wake of such position, unless there is a second report to the police, there was no reason to again investigate into the matter and file final report. It reveals that the learned Magistrate after receipt of the report under Section 169 of the Code, directed the Investigating Officer to file detail report which resulted into filing of

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the final report, which was directed to be registered as a complaint. The procedure adopted by the Magistrate, as well as the Investigating Officer is unknown to law. The impugned order is totally unsustainable in the eyes of law and hence, the petition needs to be allowed and is accordingly allowed.

5. The impugned order dated 25.01.2021 passed by the Judicial Magistrate First Class, Saoli in Final Summary Case No.1/2020 is hereby quashed and set aside.

6. Rule is made absolute in aforesaid terms with no order as to costs.

JUDGE