

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

35 CRIMINAL WRIT PETITION NO.19 OF 2022

**SHOBHABAI W/O. MAROTI DAKHORE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. Tushar Shinde, Advocate h/f Mr. C. K. Shinde, Advocate for the petitioner

Mrs. D. S. Jape, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 09th JANUARY, 2023

P. C.

1. Heard the learned advocates for the parties. The matter is taken up for final disposal with the consent of the parties.

2. The petitioner- original complainant is before this court who had filed Cri. Misc. Application No. 89/2013 seeking direction under Section 156 (3) of the Code of Criminal Procedure in the court of learned JMFC, Hingoli. The learned JMFC initially was pleased to issue direction to police to conduct the investigation under Section 156(3) of the Cr. P. C. Pursuant to the direction, the police authorities investigated and filed 'B' final summary report under Section 173. The learned Magistrate by order dated 08-02-2021 was pleased to accept the 'B' final summary report to the extent of accused Nos. 2 to 5. However,

in respect of accused Nos. 1 and 6 'B' final summary report came to be rejected and police was directed to carry out the further investigation and further directed to file a report as early as possible. This order was assailed by accused No.1 to 6 by filing Criminal Revision bearing No.10/2021 in the Sessions Court at Hingoli. The learned Sessions Court after considering the legal position and after hearing the parties was pleased to allow the revision application and directed to accept the 'B' summary report against accused Nos. 1 and 6 by holding that learned Magistrate should not have directed further investigation and could not have issued further direction to file report. However, the learned Additional Sessions Judge by his clause-5 was also pleased to observe that the informant is at liberty to appear before the learned Magistrate for recording her statement vide Section 200 of the Cr. P. C. and examine witnesses if any. Further the Magistrate was directed upon examination of complainant and witnesses may follow procedure under Section 203 or Section 204 of the Cr. P. C. It is this order, which is now impugned in this petition.

3. Learned advocate for the petitioner argued that learned Sessions Court has not recorded any finding as to why report of accused Nos. 1 to 6 should not be accepted.

4. Learned advocate for respondent Nos.2 and 3 vehemently opposed the petition saying that though it was open for the Magistrate either to accept the report or to reject the

report and to take cognizance of the offence, however in no case, the Magistrate could have directed police to file charge-sheet.

5. Learned APP also submits that it is the right of the police to decide whether to file a charge-sheet or not and which report to be filed would depend upon the investigation. The court cannot issue positive direction to the police to file a charge-sheet in a particular case being so, beyond the powers of the Magistrate.

6. Learned advocate for the petitioner relied upon the judgment reported in 1968 AIR (SC) 117 in the case of *Abhinandan Jha: Roopchand Lal Vs Dinesh Mishra: State of Bihar*. In the para No. 15 which speak about further investigation. This court finds that said case is not applicable to in the present case. Learned Advocate for respondent Nos. 2 and 3 placed reliance upon the judgment reported in (2012) 2 SCC 731 in the case of *Vasanti Dubey Vs State of Madhya Pradesh* wherein the Hon'ble Apex Court has held that the Magistrate does not have power to direct the police to submit a charge-sheet. Para 21 is relevant. For that purpose and the same is reproduced as under:-

21. Thus it is undoubtedly true that even after the police report indicates that no case is made out against the accused, the Magistrate can ignore the same and can take cognizance on applying his mind independently to the case. But in that situation, he has two options: (i) he may not agree with the police report and direct an enquiry under Section 202 and after such enquiry take action under Section 203; (ii) he is also entitled to take cognizance under Section 190 Cr. P. C. at once if he disagrees with the adverse

police report but even in this circumstance, he cannot straightway direct submission of the charge-sheet by the police.

7. Thus, considering the submission and the judgments, this court finds that the learned Sessions Court has not committed any illegality. The order dated 16-11-2021 does not suffer from any perversity. No ground is made out to cause interference while exercising the jurisdiction under Article 227 of the Constitution of India. Hence, the petition is dismissed and disposed off.

[KISHORE C. SANT, J.]

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