

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

CRIMINAL WRIT PETITION NO.1126 OF 2023

RAHUL SHANKARRAO WADHAVE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Petitioner : Mr. R. M. Gaikwad (Appointed)
APP for Respondents: Mr. S. P. Sonpawale

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CORAM : R.M. JOSHI, J

DATE : SEPTEMBER 21, 2023

PER COURT :

1. This Writ Petition takes exception to the orders dated 03.02.2023 passed by Special POCSO Judge, Aurangabad in Criminal M.A. No. 43/2023 calling say of the Petitioner and order dated 27.02.2023 on application Exh. 10 to recall the said order.

2. Learned appointed Counsel for the Petitioner submits that once an application is filed under Section 156(3) of Cr.P.C before the said Court it is not open for the said Court to call upon the say of Respondent. Only option available for the Court is to issue directions under Section 156(3) or to reject the application or alternatively to consider it to be a private complaint. According to him, the procedure adopted by trial Court is alien to law.

3. Considering the provision of Section 156(3) of Cr.P.C if *prima facie* case is made out by the Petitioner for the purpose of conducting an investigation into the crime, such direction can be issued or application can be rejected if it sans merit. In appropriate case even the application may be treated as a private complaint calling upon the Applicant to lead evidence to substantiate his allegations. However, there is no reason or justification to call say of Respondents. In any case, unless process has been issued against Respondent, he cannot be heard.

4. In view of above, impugned order cannot sustain. Hence, order dated 03.02.2023 is set aside. Learned Special Court is directed to consider application filed by the Petitioner in accordance with law and decide the same at the earliest.

5. Fees of Mr. R. M. Gaikwad, learned appointed Counsel for Petitioner, is quantified @ Rs. 10,000/- (Rupees Ten Thousand Only) to be paid by High Court Legal Services Sub-Committee, Aurangabad.

(R.M. JOSHI, J.)