

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

**CRIMINAL WRIT PETITION NO.1787 OF 2022**

**RASHID KHAN NASEEB KHAN  
VERSUS  
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. A. P. Gaikwad, Advocate for the petitioner  
Mrs. G. L. Deshpande, APP for the respondent/State  
Mr. K. D. Mundhe, Advocate for respondent No. 3.

**CORAM : R. M. JOSHI, J.**

**DATE : 10<sup>th</sup> AUGUST, 2023**

**P.C. :-**

1. The petitioner is victim/informant in Crime No. 241 of 2013 registered with Jintur Police Station, Dist. Parbhani. It is his grievance that the learned JMFC had accepted the report submitted by the Investigating Agency under Section 169 of Cr.P.C. to the extent of respondent No. 3. It is his grievance that the said order came to be passed by ignoring the material evidence on record.

2. Learned counsel for the contesting respondent opposed the said submission by stating that the informant herein failed to appear before the JMFC raising any objection report under Section 169 of Cr.P.C. It is his further contention that the charge has been framed against the other accused person and the trial is in progress. Thus, according to him at this stage the Magistrate cannot be called upon to decide about the said report afresh.

3. Perusal of the impugned order shows that the learned Magistrate has not considered the merit of the report submitted by the Investigating Agency under Section 169 of Cr.P.C. The report is accepted and accused are discharged only on the ground that the complainant has not filed his say to the said report nor he was present before the Court. The said observation is prima facie not sustainable in view of the written objection raised by the learned counsel for the informant before the JMFC on 23/10/2015. It is the duty and responsibility of the Magistrate to go through the entire record before passing any order. The observations made by the learned Magistrate while passing impugned order about the say is not filed by the complainant is not sustainable being contrary to the available record. Apart from this, since the learned Magistrate has not applied his mind to the correctness of the report while discharging respondent No.3, it is not open for the parties to make submissions on merits.

4. Hence petition is allowed. The impugned order dated 24/09/2021 is set aside. The learned Magistrate is directed to decide the issue of acceptance of report under Section 169 of Cr.P.C. as well as discharge of respondent No.3 afresh.

**(R. M. JOSHI, J.)**

ssp