

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

WRIT PETITION NO.3915 OF 2022

Reema William Mascerenhas & Ors.

..Petitioners

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. R. D. Suryawanshi a/w Amol Mhatre, for the Petitioners.

Ms. M. H. Mhatre, APP for the Respondent/State.

Mr. J. S. Kini a/w Aum Kini i/by Sapna Krishnappa, for the Respondent No.2.

**CORAM : NITIN W. SAMBRE &
GAURI GODSE, JJ.**

DATE : 30th JUNE, 2023

PC.

1. Petitioners are seeking quashing of FIR being Crime No.287 of 2022 registered with Naupada Police Station for the offence punishable under Sections 406, 420, 504, 506 and 34 of the IPC.

2. The offence came to be registered pursuant to the directions of investigation by Magistrate in exercise of powers under Section 156(3) of the CrPC.

3. The contentions are, the order of the Magistrate directing the investigation in exercise of powers under Section 156(3) of the CrPC is without application of mind and there is no

finding recorded by the Magistrate of having satisfaction of noticing cognizable offence as has been disclosed in the complaint. So as to substantiate the aforesaid contentions, reliance is placed on judgment of the Apex Court in the matter of ***Ramdev Food Products Pvt. Ltd. Vs. State of Gujarat*** reported in ***2016(1) Mh.L.J.(Cri.) 98***, so also on the judgment of this Court in the matter of ***Nirmal Bang Securities Pvt. Ltd. & Ors. Vs. State of Maharashtra & Anr.*** reported in ***2018(1) Mh.L.J. (Cri.) 488***.

4. Learned counsel Mr. J. S. Kini submits that FIR though discloses the cognizable offence as the contents therein are based on complaints, still the order of the Magistrate cannot be justified as same lacks application of mind and as such consents or quashing of the order dated 5th November, 2022 so as to enable the respondent No.2/complainant to approach afresh before the Magistrate so as to canvass its grievance.

5. In the aforesaid background and having regard to the consent extended by the respondent No.2/complainant, so also, in view of law laid down in the above judgments (*cited supra*), we deem it appropriate to quash and set aside the impugned order dated 5th November, 2022 passed by 7th Judicial Magistrate First Class, Thane in MA No.2304 of 2022 (*Chandrakant Laxman Shelar Vs. Williams Mascarenhas & Ors.*) as the order impugned does not reflect application of mind by the Magistrate.

6. However, in the facts and circumstances of the case, we deem it appropriate to direct the respondent No.2/complainant to appear before the Magistrate on 10th July, 2023 so as to enable him to canvass his grievance afresh as is made out in the complaint and we expect the Magistrate to deal with the claim afresh having to the law laid down by the Apex Court and division bench of this Court in the above referred judgments.

7. The petition as such stands allowed.

[GAURI GODSE, J.]

[NITIN W. SAMBRE, J.]