

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (APL) NO.742 OF 2022

Shankar Pundlikrao Douskar

Aged : 50 Yrs., Occ.: Private Service,
R/o. Plot No. 1409, Behind back
gate of Priyadarshani College,
C/o. Rahul Nakhate, Nandanwan,
Nagpur

.... **APPLICANT**

// **VERSUS** //

1. State of Maharashtra,
through P.S.O. Mouda,
Dist. Nagpur

2. Mrs Shrunkhala Kirtilal Kawale,
Aged about 35 Yrs., Occ. Service,
R/o. Sharda Chowk, Mouda,
Taluka Mouda, Dist. Nagpur

.... **NON-APPLICANTS**

Shri K. Y. Mandpe, Adv. H/f. Mr Y. B. Mandpe, Advocate for the applicant
Shri S. A. Ashirgade, APP for the State/non-applicant No.1
Ms Neerja Choubey, Advocate (appnt) for the non-applicant No.2

CORAM : G. A. SANAP, J.
DATED : 2nd JANUARY, 2023

ORAL JUDGMENT :

1] Heard.

2] **RULE.** Rule made returnable forthwith. Heard finally by
consent of learned Advocate for the parties.

3] The applicant, who is sole accused in Criminal Case No. 132 of 2018, pending before the Judicial Magistrate First Class, Mouda, has challenged the order dated 16.03.2021, whereby the learned Magistrate was inclined to grant permission for production of some documents i.e. Statements of 22 beneficiaries, the account holders of the Sanstha.

4] With the assistance of the learned Advocate for the applicant and the learned APP I have gone through the record and proceedings. It is to be noted that the application made by the learned APP, incharge of the case and one Sau Payal Verma, before the learned Magistrate is as vague as vagueness could be. Learned Magistrate also passed a vague order by simply recording “Allowed”. It is to be noted that in a case instituted on a police report, all the documents or the statement of the witnesses must be complied in the chargesheet. Perusal of the application itself creates a doubt in the mind of the Court. Learned APP mentioned in the application that the complainant/informant wanted to produce some documents. It is not clear from this application whether the documents sought to be produced were the statements of the 22 beneficiaries recorded during the course of investigation or their Bank account statements. Learned Magistrate without ascertaining the correct factual position allowed the application.

5] In the reply, filed by the State in this application a self contradictory stand has been taken. In para 4, it is stated by the APP (Mr S. M. Ukey, APP) that the production of documents before the trial Court was contrary to Section 173(5) of the Code of Criminal Procedure, 1973 and as such, the order was bad in law.

6] In para No. 5 of the reply, the learned APP (Mr S. M. Ukey, APP) tried to justify the order. It is to be noted that the vagueness has been further aggravated before this Court by the prosecution.

7] It is to be noted that after filing the charge-sheet, the investigating officer can conduct further investigation as provided under Section 173(8) of the Code of Criminal Procedure. The evidence collected during further investigation can be placed on record by filing the supplementary charge-sheet. The application made is vague on this important point. Therefore, in my view the order cannot be sustained.

8] Accordingly, the application is allowed. The order dated 16.03.2021 is set aside.

9] It is, however, made clear that this vagueness in the application can be taken care of by making separate application if permitted under the law. It is further made clear that if the documents are collected by the investigating officer but remained to be produced then in that case the investigating officer would be required to file a supplementary charge-sheet. If the statements of the witnesses are recorded and remained to be filed then in that event the Magistrate would be required to see whether the names of those witnesses are mentioned in the list of witnesses submitted with the chargesheet. If the names of the witnesses are mentioned in the charge-sheet and statements are remained to be placed on record then the production of the same can be allowed by following the procedure.

10] Rule is made absolute in the above terms.

11] The fees of Rs.5000/- be paid to learned appointed Advocate for non-applicant No. 2, as remuneration.

(G. A. SANAP, J.)

Namrata