

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

Cri.Writ Petition No.4019 of 2018

1. Mr Sharad Daulat Tamhane
age : 49 years, Occ.: Agriculture,
2. Anita Shaarad Tamane
age:42 years, Occ.: Agriculture,
both are residing at Tamhanwadi,
Taluka:Daund, Dist.Pune.
3. Mrs. Leelavati Gangaram Shivarkar
age: 56 years, Occ. Agriculture
4. Mr Gangaram Rambhau Shivarkar
age :62 years, Occ.: Business
both are residing at Urulikanchan,
behind Police Outpost, Taluka :Haveli,
Dist. Pune.
5. Mr Santosh Machindra Kudale
age: 39 years, Occ.: Agriculture
residing at Darekarwadi, Boriendi,
Taluka :Daund, Dist. Pune.
6. Mr Suresh Muktaji Mhetre
age : 49 years, Occ. Agriculture
residing at Sahajpur, Taluka : Daund,
Dist. Pune.
7. Mr Rupesh Raghunath Baravkar
age : 44 years, Occ. Agriculture
residing at Kedgaon, Taluka : Daund,

Dist. Pune.

8. Mr Sadanand Chandrakant Prabhune
age : 49 years, Occ.:Business
residing at Urulikanchan, near
Shrikrishna Mandir, Taluka : Haveli,
Dist.Pune. ... Petitioners.
(Original Accused)

Vs.

1. State of Maharashtra through
Public Prosecutor, Cri. Appellate Side
High Court, Bombay.
2. Mr Prashant Laxman Shinde
age : 44 years, Occ. Service
residing at Sr. No.206 B/21, Gali No.5,
Tukai Darshan, Phursungi, Hadapsar,
Pune – 411 028. ... Respondents.

Mr Aabad Ponda, Senior Advocate, i/by Karan L. Jain for
petitioners.

Mr Arfan Sait, APP for State-respondent No.1.

Mr Narendra V. Sharma a/w Rachit Khamparia for respondent
No.2.

Coram : R. N. Laddha, J.

Date : 21 March 2024.

P.C. :

Heard Mr Aabad Ponda, the learned Senior Counsel for
the petitioners, Mr Arfan Sait, the learned Additional Public

Prosecutor for the State, and Mr Narendra Sharma for the second respondent.

2. This petition is directed against an order of learned Ad-hoc Additional Sessions Judge, Baramati, in Criminal Revision No.13 of 2017 whereby the learned Judge upheld the order of issuance of process passed by the learned Judicial Magistrate, First Class, Daund, Pune, in RCC No.210 of 2013 below Exhibit 1.

3. The complainant alleges that he and his mother hold shares in various properties. Despite their share in the property mentioned in the complaint, the accused/petitioners executed a Sale Deed in favour of accused No.2, Anita, on 25.06.2012, for Rs.5,25,000/-. It is alleged that Kisan Tukaram Tamhane, who was suffering from a mental disorder, had his wife Sundarabai kidnapped by the accused and brought before the Sub-Registrar's office, where the Sale Deed was executed. Interestingly, the complainant's grandfather, Kisan Tamhane, used to sign documents, but in this case, his thumb impression was obtained on the Sale Deed. Subsequently, the complainant filed a report with Yawat Police Station on 13.04.2013, but the police took no cognizance.

Consequently, he filed a complaint. Following the verification process, the trial Court found a prima facie case against the accused under Sections 420 r/w 34 of the Indian Penal Code and issued a process against them. Aggrieved thereby, the petitioners challenged it by filing a revision application, bearing No.13 of 2017, before the Ad-hoc Additional Sessions Judge at Baramati. However, after hearing both parties, the revision application was rejected. Further aggrieved by the order of the Sessions Court, the petitioners now prefer the present petition.

4. Mr Aabad Ponda, the learned Senior Counsel, submits that the Magistrate's order to issue process was made as if the report under Section 156(3) CrPC did not exist. The report itself concludes that no offence has occurred. The learned Senior Counsel further contends that the Magistrate did not deal with the statements previously recorded by the police, instead opting to re-record the statements of the witnesses. According to the learned Senior Counsel, the Magistrate failed to adhere to the procedural requirements outlined in Sections 200 and 202 CrPC. Additionally, the learned Senior Counsel raises a grievance that the Magistrate did not specify the basis upon which cognizance was taken, and process was

issued.

5. Mr Narendra Sharma, the learned Counsel appearing for respondent No.2, submits that upon receiving a police report under Section 173(2), a Magistrate has the authority to acknowledge an offence under Section 190(1)(b) of the Code, even if the police report indicates that no case is made out against the accused. According to the learned Counsel, the Magistrate may consider the statements of witnesses examined by the police during the investigation and take cognizance of the offence without being strictly bound by the procedures outlined in Sections 200 and 202 CrPC.

6. From the material available on record, it reveals that the learned Magistrate initially directed an investigation under Section 156(3) of the CrPC. However, upon receiving a report from the police indicating that no offence had been committed, the Magistrate disagreed with the findings. Subsequently, the Magistrate took cognizance of the offence under Section 190(1)(b) CrPC and issued a process against the accused.

7. It is undisputed that the conclusions reached by the

police do not bind the Magistrate. When receiving a police report under Section 173(2), the Magistrate has the authority to take cognizance of an offence under Section 190(1)(b) of the Code, even if the police report indicates that no case has been made out against the accused. The Magistrate can consider the statements of witnesses examined during the police investigation and independently assess the facts emerging from the investigation before ordering the issuance of process.

8. It is the petitioners' grievance that neither the order of issuance of process nor the revisional court's order makes any reference to the police report. It is a settled position in the law that when a Magistrate disagrees with the police report, they must explicitly state the reasons for their disagreement and the supporting material. In the present matter, the Magistrate instructed the police to conduct an enquiry under Section 156(3) CrPC, indicating his lack of *prima facie* satisfaction with the allegations in the complaint. While the Magistrate need not enumerate all the evidence in detail at this stage, his duty remains to specify the basis for disagreeing with the police conclusions and proceed to issue process against the accused. All these aspects are also highlighted in

the case of *Suhas Balkrishna Desai & Ors. Vs. Chandrakant Ramchandra Parab & Ors.*¹

9. Given this, the impugned orders are set aside. The matter is remanded back to the Magistrate for passing fresh orders in the light of the observations made above.

[R. N. Laddha, J.]

¹ 2001(1)Mh.L.J.328.