

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

REVISION APPLICATION NO. 177 OF 2024

Kiran Patel and Ors.	...Applicants
vs.	
The State of Maharashtra and Anr.	...Respondents

Mr. Girish Kulkarni, Senior Advocate i/by Mr. Maitreya Shukla	Advocate for the Applicants
Mr. Pranav Badheka a/w Mr. Aditya Mithe a/w Mr. Himank Singh a/w Mr. Suyash Bartake i/by Desai and Diwanji	Advocate for the Respondent No. 2
Mr. V. N. Sagare	APP for Respondent-State

CORAM : S. M. MODAK, J.

DATE : 04th APRIL 2024

P.C. :-

1. Heard learned Senior Advocate Shri Kulkarni for the Applicants and learned Advocate Pranav Badheka for Respondent No. 2. Their reply is taken on record.
2. It is true that learned Additional Sessions Judge as per the impugned Order has set aside the order passed by learned Magistrate

and he has directed learned Magistrate to restore the application for sending the matter for investigation under Section 156 (3) of the Code of Criminal Procedure, 1973. About the true interpretation of this order, there are two views of both the sides. They are as follows:-

(a) **According to the Applicant**, now there is no option left to the Magistrate but to sent the matter for investigation.

(b) **According to the Respondent** only matter is remanded and still there is an option available to learned Magistrate to think over whether matter can be sent for investigation and he is required to consider the observation of the revisional Court prior to passing an appropriate order.

3. Learned Senior Advocate Shri Kulkarni is having contention that at the most learned Additional Sessions Judge can be set aside the Order and can remand it and in both eventuality, he can nor order investigation.

4. Whereas according to the Respondent's counsel the issue whether the Order under 156(3) of the Code is revisable or not is pending before three Judges bench. He also submitted that the papers are not traceable before trial Magistrate and even his client has made a

complaint to the Registrar of the Thane District Court. Even trial Magistrate has asked them to give copies of the papers.

5. On this background, learned Advocate for Respondent No. 2 made a statement that till next date, they will not pursue the matter before the learned Magistrate. It is accepted.

6. Even learned Advocate for the Applicants can place the copy of this Order before learned Magistrate.

7. Matter be kept on **29/04/2024, high on board.**

[S. M. MODAK, J.]