



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

CRIMINAL APPLICATION NO. 51 OF 2025

Vachistha Nivrutti Raswe
Age : 56 years, Occu. Agriculture,
R/o. Lavul No. 1,
Tq. Majalgaon, Dist. Beed.

.. Applicant

Versus

The State of Maharashtra
Through Police Inspector,
Rural Police Station, Majalgaon,
Tq. Majalgaon, Dist. Beed.

.. Respondent

Mr. M. B. Kolpe, Advocate for the Applicant.
Smt. M. N. Ghanekar, APP for Respondent/State.

CORAM : KISHORE C. SANT, J.

Date on which reserved for order : 12th June, 2025.

Date on which order pronounced : 11th August, 2025.

FINAL ORDER :-

. The petitioner, original informant has approached this Court challenging an order dated 26.07.2024 passed by the learned 2nd J.M.F.C., Majalgaon thereby rejecting his application seeking further investigation under Section 173(8) of the Code of Criminal Procedure (for short "Cr.P.C.").

2. The facts in short are that, the informant lodged a compliant at Police Station, Majalgoan (Rural) on 08.11.2023 against the accused persons for the offences punishable under Sections 306, 506 r/w Section 34 of the Indian Penal Code (for short "I.P.C."). It is the case that, his son namely Sunil Vachistha Raswe was having relations with accused Shital. Because of the relations the accused Shital started blackmailing the deceased. She started harassing him and insisting for marriage. The marriage of deceased son of the informant, however, was settled with some other lady. It is on that the accused started threatening the deceased Sunil through accused No. 2 Divya. It was threatened that, if he performs marriage with any other person, she would make the photographs from her mobile phone viral. Thereafter, the accused persons also met the deceased on 30.10.2023. It is alleged that, because of this the deceased committed suicide by jumping into a well on 30.10.2023. On this the offence came to be registered. Charge-sheet came to be filed. The learned J.M.F.C. on filing of the charge-sheet committed the case to the learned Sessions Court on 30.08.2024.

3. The petitioner thereafter filed an application before the learned Magistrate for direction to the Police to conduct further investigation. The said application was filed in R.C.C. No. 118/2024 on 06.07.2024. The learned J.M.F.C. on going through the application and on hearing the parties rejected the application by impugned order dated 26.07.2024. It is observed that, the case is already committed to the Court of Sessions and therefore, it is the learned Sessions Court where the application needs to be filed. The role of learned J.M.F.C. is only to monitor the compliance of Sections 207 and 208 of the Cr.P.C. The petitioner is thus before this Court.

4. The learned advocate Mr. Kolpe for the petitioner vehemently argued that, the power under Section 173 (8) is only with the learned Magistrate and not with the learned Sessions Court as the wording itself is clear of the section. He further submits that, though the section requires such application to be filed by the learned A.P.P., still the informant has right to file such an application. It is necessary in the interest of justice to bring the evidence on record which can only be done by directing further investigation in the present case.

5. The learned A.P.P. vehemently opposes the petition. She submits that, the petitioner has alternative remedy of filing revision application. Without availing the remedy he has directly approached this Court. The petition thus deserves to be dismissed. Further objection raised by the learned A.P.P. is that the accused is not made a party. So far as prayer to change the investigating agency, she submits that no such prayer can be made before the learned J.M.F.C. Presently the case is committed to the Court of Sessions. It is open for the petitioner to apply to the learned Sessions Court by making accused as party.

6. During the course of argument the learned advocate for the petitioner relied upon the judgment in the case of **Vinubhai Haribhai Malaviya and others Vs. State of Gujarat and another** reported in **(2019) 17 SCC 1**. Three judges Bench of the Hon'ble Apex Court while dealing with the provisions of Sections 173(8), 156(3), 228 and 240 of the Cr.P.C. held that, the power under Section 156(3) of the Cr.P.C. is available to the learned Magistrate even at post cognizance stage till the trial commences i.e. framing of the charges. It is further held that, this power can be exercised even suo motu by the learned Magistrate himself. The power is

held to be wide. The Hon'ble Apex Court by relying upon the judgment in the case of **Common Cause Vs. Union of India** reported in **(1996) 6 SCC 775** has decided the case. In the case of ***Common Cause (supra)***, it is held that, the trial of the warrant case by the learned Magistrate in cases instituted upon police report shall be treated to have commenced when charges are framed under Section 240 of the Cr.P.C. In the cases instituted otherwise than on police report such trial shall be treated to have commenced when charges are framed against the accused under Section 246 of the Cr.P.C. On relying this judgment the learned advocate submitted that, till now the charges are not framed and since charges are not framed the trial has not yet commenced and therefore, the learned Magistrate has every power to direct the investigation.

7. The learned advocate for the petitioner further relied upon the judgment in the case of **Dharam Pal and others Vs. State of Haryana and another** reported in **(2014) 3 SCC 306**. The consideration was mainly of the Section 319 of the Cr.P.C. It is held that, the learned Sessions Court has jurisdiction on committal of a case to it, to take cognizance of the offences of the persons

not named as offenders, but whose complicity in the case would be evident from the material available on record. Thus, it is seen that, it is the learned Sessions Court after the case is committed has the power to take cognizance against the accused persons not named in the complaint.

8. The learned advocate for the petitioner further relied upon the judgment in the case of **Athul Rao Vs. State of Karnataka and Ors.** reported in **AIR 2017 SC 4021**. There the party had moved an application before the Trial Court for further investigation in two offences. The Trial Court rejected the application. The High Court set aside the said order. In that case, one of the questions was as to whether the informant can file an application for further investigation. It is held that, after the appearance of the accused neither the learned Magistrate suo motu, nor on an application filed by complainant/informant direct further investigation. It is open only on the request of the investigating agency in the circumstances warranting further investigation on detection of material evidence to secure fair investigation.

9. The learned advocate further relied upon the judgment in

the case of K. Vadivel Vs. K. Shanthi & Ors. in SLP Criminal No. 4360/2022. The Hon'ble Apex Court dealt with the aspect of Section 173(8) of the Cr.P.C. In that case, an application was filed for further investigation after considering of the evidence. It was answered relying upon the case of Vinubhai Haribhai Malaviya (*supra*) that further investigation could at best have been ordered till commencement of trial.

10. The question in this case is thus only about the stage the application can be moved.

11. The learned A.P.P. relied upon the judgment in the case of Avinash Trimbakrao Dhongade and ors. Vs. The State of Maharashtra and ors. reported in 2017 All MR (Cri.) 5289. This Court finds that, the said case is of no use in the present case. She further relied upon the judgment in the case of Mohit Alias Sonu and another Vs. State of U.P. and another reported in (2013) 7 S.C.R. 86. The Hon'ble Apex Court in the said case considered powers of the High Court under Section 482 of the Cr.P.C. and Sections 319 and 397 (2) of the Cr.P.C. This Case is also of no use in the present case.

12. Considering all the judgments cited, this Court finds that, the question in the present case is only as to whether the order passed by the learned J.M.F.C. needs to be quashed and set aside with a direction to the Police to carry further investigation. In the present case, this Court finds that, since now the case is already committed to the learned Sessions Court, it was necessary for the informant to move the learned Sessions Judge by filing an application. It is for the learned Sessions Judge before whom the application would be filed to consider the said application as to whether to pass such order on an application by the informant ? whether case is made out to direct further investigation ? will be decided by the learned Sessions Court. This Court does not find it appropriate to answer those questions till the same are considered by the learned Sessions Court.

13. Considering above, I pass the following order :

ORDER

- (i) Criminal application stands dismissed.
- (ii) Liberty is granted to the petitioner to apply afresh to the learned Sessions Judge.

(iii) With this, criminal application stands disposed of.

(KISHORE C. SANT, J.)

PS.B.