



IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION No. 178 OF 2025.

Sheikh Sadik Sheikh Jamil,
Aged about 30 years, Occupation
Business, resident of Jamb Bajar,
Tahsil Pusad, District Yavatmal.

... PETITIONER.

VERSUS

1.State of Maharashtra,
Through Police Station Officer,
P.S. Pusad City, Tahsil Pusad,
District Yavatmal.

2.Dr.Akhil s/o Jusabhai Menon,
Aged about 62 years, Occupation
Business, resident of Gujar Chowk,
Tahsil Pusad, District Yavatmal.

... RESPONDENTS.

Mr. H.S. Chawhan, Advocate for the Petitioner.
Mr. A.M. Joshi, A.P.P. for Respondent No.1.
Mr.S.S. Shinde, Advocate for Respondent No.2.

CORAM : M.M. NERLIKAR, J.
DATE : SEPTEMBER 19, 2025.

ORAL JUDGMENT.

Heard. Issue Rule, returnable forthwith. Learned A.P.P. for Respondent No.1 and Shri Shinde, learned Counsel for Respondent No.2, waive notice. By their consent, the matter is taken up for final disposal.

2. By this petition under Article 227 of the Constitution of India, the petitioner is challenging the order dated dated 07.01.2025 passed by the Judicial Magistrate, First Class, Pusad below Exh.12 in R.C.C. No.258/2022, whereby the application filed by the complainant/ respondent no.2 is allowed.

3. Brief facts of the case are as under :

First information report was registered against the petitioner for the offence punishable under Sections 420, 409, 468 and 506 of the Indian Penal Code, alleging misappropriation to the tune of Rs.18,44,250/-. After registration of the first information report, investigation was carried out and charge sheet came to be filed on

30.07.2022. After filing of the charge sheet, cognizance was taken and charge was framed against the petitioner on 19.08.2024. Thereafter on 07.01.2025, an application at Exh.12 was filed by the original complainant/ present respondent no.2 praying that the documents enlisted at List "A" be permitted to be produced on record. On the very same day, the learned Judicial Magistrate First Class, Pusad passed one word order "Allowed". Being aggrieved by this order, the petitioner /accused has approached this Court.

4. The learned Counsel for the petitioner submits that firstly the order is without jurisdiction; secondly he submits that after farming of charge said application was filed, which is not permissible and thirdly, no notice was given to the petitioner/accused before passing the impugned order.

5. On the other hand, the learned Counsel for the respondent no.2 submits that the documents are necessary for adjudication of the controversy. The Court below has rightly passed the order and that no prejudice is caused to the petitioner. He therefore, prays for dismissal of

the petition.

6. I have perused the application, as well as gone through the impugned order. I am surprised that the impugned order was passed without recording reasons therefor. The Court below has only observed “Allowed”. I have also perused the application at Exh.12, and I do not find any reason mentioned therein. Further nothing is mentioned as to why those documents are relevant in the criminal proceedings.

7. It is necessary to note that after filing of the charge sheet, the proceedings have further progressed and even charge is framed on 19.08.2024. However, the application was filed on 07.01.2025, and the same day the said application was allowed. It would be useful to refer to the procedure contemplated under the Code of Criminal Procedure. Firstly the first information report can be registered under Section 154 of the Code, after conducting investigation and collecting necessary documents, charge sheet can be filed under Section 173 of the Code. Further, Section 173[8] provides for further investigation and on completion of this further investigation, supplementary charge sheet can

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be filed. When these provisions contemplate registration of offence, collection of evidence, collecting documentary, as well as oral evidence, and after completing investigation report under Section 173 and further investigation under Section 173[8] of the Code, and thereafter, supplementary charge sheet is also permissible. However, a novel procedure which is unknown to the Code of Criminal Procedure was adopted by the respondent no.2 by filing an application dated 07.01.2025 for production of documents, and to the utter surprise the Court has allowed the same without recording any reasons.

8. When the law contemplates that a particular thing is to be done in a particular manner, that it is expected from the Courts to do that thing in a particular manner only. The application dated 07.01.2025 ought not to have been entertained. That application was not filed by the prosecution. Further it is to be noted that it was filed after framing of the charge, and the concerned court has allowed the same even without issuing notice to the petitioner/ accused. Such exercise would tantamount to violation of principles of natural justice, as well as illegal, as there is no such procedure provided in the Code of Criminal

Procedure.

9. The Hon'ble Supreme Court in its judgment in case of **Central Bureau of Investigation .vrs. R.S. Pai and another – (2002) 5 SCC 82**, has held that “*the Code of Criminal Procedure does not contemplate any procedure for a witness to directly produce document during the course of trial. The procedure known to law whereby additional documents can be produced on record and then relied upon in a Sessions Trial is through the channel of further investigation, contemplated under Section 173[8] of the Criminal Procedure Code.*” Even going through the provisions of the Criminal Procedure Code, in the entire scheme contemplated therein, what can be seen is that there is no provision available for a witness to directly seek production of additional documents during the course of Trial, and at the time of recording of evidence. The additional documents can be produced by following the further process of investigation as contemplated under Section 173[8] of the Code, and the prosecutor is the person who can take a call as to whether such documents needs to be produced in order to

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prove the charge against the accused.

10. However, in the present case, a novel method is innovated by the respondent no.2 by directly filing an application before the concerned Magistrate and the Magistrate has also allowed the said application without there being any reason for allowing the same. It is further to be mentioned that even the Magistrate has not bothered to issue notice to the petitioner/accused. Production of such document has caused serious prejudice to the accused and the same amounts to denial of opportunity, particularly to the petitioner/accused and therefore, the order does not sustain in law and deserves to be quashed and set aside. Hence, the following order.

ORDER

- (i) Criminal Writ Petition is allowed and disposed of.
- (ii) The order dated 07.01.2025 passed by the Judicial Magistrate, First Class, Pusa below Exh.12 in R.C.C. No.258/2022, is hereby quashed and set aside.
- (iii) Rule is made absolute in aforesaid terms.

JUDGE