



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

Criminal Writ Petition No.932 of 2024

[Anil S/o Tarachand Goenka and another **VERSUS** State of Maharashtra, through Police Station Officer, Ambazari Police Station, Nagpur and another]

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions Court's or Judge's order
 Registrar's orders.

Shri Shyam Dewani, Counsel for Petitioners.
 Smt. Sangita Jachak, Additional Public Prosecutor for Respondent No.1.
 Shri Rajnish Vyas, Counsel for Respondent No.2.

CORAM : NITIN W. SAMBRE AND MRS. VRUSHALI V. JOSHI, JJ.

DATE : MARCH 21, 2025

1. Heard the learned counsel appearing for the parties.
2. Considering the rival claims, *prima facie*, we are satisfied that the order impugned dated March 18, 2024 goes contrary to the judicial pronouncement of the Apex Court in the matter of *Priyanka Srivastava and another Vs. State of Uttar Pradesh and others*, reported in (2015) 6 SCC 287, particularly Paragraphs 29, 30 and 31, and the Division Bench Judgment of this Court in the matter of *Harry Inder Dhaul Vs. State of Maharashtra, through Police Station Officer and others* with connected matters, reported in 2023 SCC OnLine Bom 200, particularly Paragraph 12.
3. The aforesaid *prima facie* observations are made by this Court keeping in mind the nature of affidavit filed by the complainant in support of complaint preferred under Section 156(3) of the Code of Criminal Procedure and the other mandatory requirements being not satisfied, including that of the order impugned, being a non-speaking order, thereby reflecting the non-application of mind by the Magistrate.
4. However, it is the contention of Shri Vyas, learned counsel for the respondent No.2, that if the order under Section 156(3) of the Code of

Criminal Procedure culminates into filing of chargesheet and the Magistrate pursuant to such chargesheet takes cognizance by issuing summons, then the order under Section 156(3) of the Code of Criminal Procedure directing investigation is required to be ignored.

5. So as to substantiate the said contention, the learned counsel for the respondent No.2 has invited the attention of this Court to the provisions of Section 461 of the Code of Criminal Procedure. According to him, the Magistrate has taken cognizance by issuing summons after having satisfied that the material, viz. the evidence, placed before him in the form of chargesheet discloses a cognizable offence. As such, the order impugned dated March 18, 2024 passed under Section 156(3) of the Code of Criminal Procedure will be non-consequential in view of the submission of chargesheet and the cognizance of same being taken by the Court of Magistrate.

6. In our opinion, the aforesaid contentions warrant deep consideration, as in response to the above, it is claimed by the learned counsel for the petitioner that once the Court is satisfied that the order impugned dated March 18, 2024 is not in tune or in satisfaction with the principles and mandate provided in the authoritative pronouncement of the Apex Court in the matter of *Priyanka Srivastava and another*, and the Division Bench of this Court in the matter of *Harry Inder Dhaul*, cited *supra*, the further proceeding itself will be required to be declared as illegal and without authority.

7. As such, we post this matter on **May 02, 2025**.

8. Until further orders, the proceedings against the petitioner shall remain stayed.

(MRS. VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)