

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

CRIMINAL WRIT PETITION NO.386 OF 2014

Fulabai Tanhaji Nanware .. Applicant

Versus

The State of Maharashtra and another .. Respondents

Mr.A.P. Bhandari, Advocate for the petitioner.
Mr.S.M.Jadhav, APP for the respondent/State.

**CORAM : SMT.SADHANA S. JADHAV,J.
DATED : 20.03.2015**

P.C. :-

1. Rule. Rule made returnable forthwith with the consent of the parties.
2. The petitioner herein is the original complainant in Criminal Application no. 159 of 2009. The petitioner has alleged offence punishable under Section 323, 342 & 504 of the Indian penal Code, against the present respondent no. 2. By an order dated 09.06.2009, the learned Judicial Magistrate First Class, Ashti, Dist. Beed, has been pleased to issue process against respondent no. 2. Being aggrieved by an order of issuance of process, the accused filed Criminal Revision no. 51 of 2009, before the Sessions Court at Beed. The learned

Sessions Court by an order dated 31st December, 2013 has been pleased to allow the revision filed by the original alleged accused.

3. The order that was assailed in the earlier writ petition in respect of remanding the matter after hearing the revision petitioner. This court had relied upon the order passed by the Hon'ble Apex Court in the case of Adalat Prasad V/s. Rooplal Jindal and others reported in 2004 (4) Mh.L.J.-274 on the point that the Magistrate had no power to review or reconsider the question of issuance of process. Hence this court had allowed the petition and had directed the Additional Sessions Judge to depose of the revision application within a period of three months from the date of receipt of the order.

4. Initially, after issuance of process, the accused had filed Revision Petition before the learned Additional Sessions Judge. The learned Sessions Judge had remanded the matter of reconsideration. The order passed by the Revisional Court was challenged before the High Court by filing Criminal Writ Petition no. 1077 of 2011. this Court (Coram: A.M.Thipsay, J.) vide order dated 05.09.2013 was pleased to set aside the order remanding the matter and had directed the Revisional Court to decide the matter on merits.

5. The learned Revisional Court has rightly observed that the Trial Court was not apprised of the provision of the sanction prior to taking cognizance. In fact, the allegations levelled against accused were in respect of the acts committed by the alleged accused in discharge of his official duties. At the time of alleged incident, respondent was on duty at another place and not at a place as alleged by the complainant. In fact, issuance of process amounts to taking cognizance of the complaint. The learned Magistrate had passed an order under Section 190(i)(a) without taking into consideration the bar under Section 197 of the Criminal Procedure Code. The accused herein is a public servant and the learned Magistrate could not have taken cognizance in the absence of sanction under Section 197 of Criminal Procedure Code. In view of this, the petition being *sans* merit and hence deserves to be dismissed and is accordingly dismissed.

[SMT. SADHANA S. JADHAV, J.]