

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

CRIMINAL WRIT PETITION NO. 923 OF 2013

GAHININATH JAGANNATH GHORPADE

V/S

THE STATE OF MAHARASHTRA AND ORS.

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Mr. V.C.Solshe, Advocate for Petitioner.

Mr. V.P.Kadam, A.P.P. for R – 1 State.

Mr. S.J.Salgare, Advocate for R – 2 & 3.

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CORAM : V.M.DESHPANDE, J.

DATE : 25TH FEBRUARY, 2015

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PER COURT :

1. Heard Mr. Solshe, the learned counsel for the petitioner.
2. The present Writ Petition is directed against the concurrent findings recorded by the learned Magistrate in Criminal Misc. Application No. 31/2008 dated 05/04/2010 which is confirmed by the Additional Sessions Judge, Omerga by order dated 14/05/2013 in Criminal Revision No. 9/2010.

3. The present petitioner is the original complainant. He filed Complaint against the respondents. It is his allegation that the present respondents have committed various offences as enumerated in the Complaint. The learned Magistrate after considering the evidence which was adduced by the complainant and his 2 witnesses, found that the *prima facie* case exist against the respondents u/s 323 read with 34 of the Indian Penal Code and, therefore, he issued process only for the said offence by order dated 05/04/2010. The said order is not challenged by the respondents.

4. It is the complainant/present petitioner who has filed Revision before the revisional Court challenging the issuance of process only for the offence punishable u/s 323 of the Indian Penal Code. The learned revisional Court after considering the contention of the petitioner, reached to the conclusion that no illegality is committed by the learned Magistrate.

5. Mr. Solshe, the learned counsel for the petitioner submitted that both the orders are erroneous and can not stand to the scrutiny of law.

6. After hearing the learned counsel, it is clear that prior to issuance of process as per the direction given by the learned Magistrate, the petitioner entered into witness box and he has examined 2 witnesses. The learned Magistrate has correctly recorded the finding that the property which is

mentioned in the sale deed and the complaint are altogether different. The learned revisional Court has correctly recorded that it is not the duty of the revisional Court to minutely scrutinize the evidence at the stage of issuance of process.

7. In that view of the matter, there is no error in the impugned orders and hence the Writ Petition is dismissed.

[V.M.DESHPANDE, J.]

KNP/Cr. W.P. 923.2013