

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

CRIMINAL APPLICATION NO. 4966 OF 2012

Amol s/o Bharat Khairnar,
age 35 years, occ. Service,
Presently working as a
Deputy Director of Income Tax
(Investigation), R/o E-1,
Income Tax Colony,
Khutwad Nagar, Kamatwada,
Nashik at Nashik

...Applicant

VERSUS

1] The Police Inspector,
Shani Peth Police Station,
Jalgaon at Jalgaon,

2] Shaikh Mansoor Shaikh Fayyaz,
age 44, occ. Labourer,
R/o Ganeshpuri Nagar,
Mehrun, Tq.&Dist.Jalgaon

...Respondents
[Complainant]

.....
Shri D.B.Thoke, advocate for applicant
Shri S.A.Ambad, A.P.P. for respondent
.....

CORAM : V.M.DESHPANDE, J.

DATED : 4th March, 2015

ORAL JUDGMENT :-

1] Heard learned counsel for the parties.

2] By the present application under Section 482 of the Criminal Procedure Code, the applicant is challenging the order, passed by the learned Judicial Magistrate, First Class, Jalgaon on 24.9.2008 in Criminal Case No. 1292 of 2008, whereby the process is issued by the learned Magistrate for the offences punishable under Sections 323, 341, 504, 506 r/w 34 of the Indian Penal Code. The further prayer is also for dismissal of the complaint filed against the present applicant.

3] Though, the original complainant is joined as non-applicant no.2 in the present case, he chose not to remain present and participate in the present proceedings.

4] The present applicant, at the relevant time, was working as Taluka Deputy Registrar, Cooperative Societies, Jalgaon. Presently, the applicant is discharging his duties as Deputy Director of Income Tax (Investigation).

5] The complaint was filed against the present applicant and others by the present non-applicant no.2. Sum and substance of the complaint would show that on 6.4.2008 the accused nos. 1 and 3 accosted the complainant near Subhash chowk and gave kick and fist blows. It is alleged that, that time the present applicant has asked as to why the complainant has lodged complaint against him.

6] If the statements made in the complaint are accepted, non-applicant/complainant lodged report of the incident dated 6.4.2008 on 11.4.2008 through U.P.C., however, the copy of the said report was not filed on record by taking the plea in the complaint itself that he has lost the office copy of the said report.

7] The learned Magistrate, on 4.7.2008 directed the police to conduct the investigation and submit the report as per Section 202 of the Code of Criminal Procedure.

8] In pursuance to the said directions, on 10.9.2008 the police authority Shani Peth police station, Jalgaon submitted the negative report with the learned Magistrate. Along with the report, the police officer has also submitted all the statements recorded during the course of the investigation.

9] The learned Magistrate, thereafter, on 24.9.2008 passed an order whereby the process was issued against the present applicant and others for the offences punishable under Sections 341, 323, 504, 506 r/w 34 of the Indian Penal Code.

10] It is clear that on 4.7.2008 the learned Magistrate was not satisfied that the non-applicant/complainant has made out a case for issuance of process. Therefore, he directed the

investigation to be conducted by the police and further directed that the police should file the report. Accordingly, a negative report is filed.

11] Merely because negative report is filed that does not bar the learned Magistrate from taking the contrary view. The said police report is not binding on the learned Magistrate. However, once the police report is called and may be the police report is negative, it is obligatory on the part of the learned Magistrate to explain as to why he wish to differ with the report. It is expected from the learned Magistrate to record detailed reasons to that effect. This issue is squarely covered by two reported judgments of this court (1) **Suhas Balkrishna Desai and ors. Vs Chandrakant Ramchandra Parab and ors.** reported in **2001 (Supp.2) Bom.C.R.90**; and **Vaidya Kuldip Raj Kohil vs State of Maharashtra and anr.** reported in **2003 Bom.C.R. (Cri.) 247**.

12] The order of issuance of process does not reflect any reason as to why learned Magistrate wish to differ from the police report. The learned Magistrate ought to have seen the effect of summoning person as accused in criminal court. Therefore, it is expected from the learned Magistrate to record reasoning as to why the learned Magistrate is not accepting the police report which was in favour of the present applicant.

13] In that view of the matter, the present Criminal Application needs to be allowed, and accordingly, it is allowed. The order, dated 24.9.2008, passed by the Judicial Magistrate, First Class, Jalgaon in Criminal Case No. 1292 of 2008 issuing process against the present applicant for the offences punishable under Sections 341, 323, 504, 506 r/w 34 of the Indian Penal Code is hereby quashed and set aside.

Criminal Complaint No. 1292 of 2008 pending on the file of Judicial Magistrate, First Class, Jalgaon is hereby dismissed qua present applicant only.

Rule is made absolute.

[V.M.DESHPANDE, J.]

dbm/crap4966.12