

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

CRIMINAL WRIT PETITION NO. 1279 OF 2014

Abhiman Trimbak Pawar,
age 54 years, occ. Service,
R/o C/o Loni Kalghar Police Station,
Taluka Haveli, District Pune

...Petitioner

VERSUS

1] The State of Maharashtra,
through Kannad Police Station,
District Aurangabad,

2] Sabusingh s/o Parasram Rathod,
age 62 years, occ. Agril.,
R/o Garada, Taluka Kannad,
District Aurangabad

...Respondents

.....
Shri S.S.Jadhavar, advocate for petitioner
Shri D.R.Kale, A.P.P. for respondent no.1
Shri S.W.Munde, advocate for respondent no.2
.....

CORAM : V.M.DESHPANDE, J.

DATED : 13th January, 2015

ORAL JUDGMENT : -

1] Rule. Rule is made returnable forthwith. With the consent of the learned counsel for the parties taken up for final hearing.

2] I have heard Shri S.S.Jadhavar, learned counsel for the petitioner, Shri D.R.Kale, learned Additional Public Prosecutor for respondent no.1/State and Shri S.W.Munde, learned counsel for respondent no.2 in detail.

3] The challenge in the present Writ Petition is to the order passed by the learned Judicial Magistrate, First Class, Kannad on 24.2.2012, in a private complaint filed on behalf of respondent no.2, by which the learned Magistrate issued process under Sections 323, 504 of the Indian Penal Code, together with the judgment and order, passed by the learned Revisional Court in Criminal Revision Application No. 94 of 2013, dated 10.10.2014 by the Additional Sessions Judge, Aurangabad, who dismissed the Criminal Revision Application filed on behalf of the present petitioner and confirmed the order of issuance of process.

4] A private complaint is filed by respondent no.2 on 27.11.2009 against the present petitioner. Present petitioner is a Police Inspector at Police Station, Kannad. The allegations in the complaint are that, on 21.7.2009 officials of Kannad police station arrested respondent no.2 and on 21.7.2009 at 2 O' clock he was brought before the present petitioner. The allegations in the complaint further reveal that when he was brought before the petitioner, the present petitioner used abusive words against respondent no.2 and he has assaulted resulting into the injuries to him. On such allegations, the complaint was filed

against the present petitioner.

5] The respondent no.2 was arrested by Kannad police station in Crime No. 129 of 2009 for the offences punishable under Sections 143,147,148, 149, 324, 323, 307 of the Indian Penal Code on 21.7.2009.

On 22.7.2009 an application was moved by police authorities of Police Station Kannad before the Judicial Magistrate, First Class at Kannad, by which it was pointed out by the police authorities that at the time of arrest, respondent no.2 tried to obstruct the process of law, and therefore, by using minimum force he was required to be arrested, and therefore, a prayer was made that permission be granted to the police authorities to produce him in the handcuffs on 22.7.2009. The learned Magistrate at Kannad passed the order after perusing the said application to take reasonable precautions.

6] On 22.7.2009, respondent no.2 was produced before the learned Magistrate. On the said day, the investigating officer prayed for grant of police custody of respondent no.2. At the time when respondent no.2 was produced before the learned Magistrate for his police custody remand, respondent no.2 made a complaint of illtreatment before the learned Magistrate to the effect that, when he was with the police on 21.7.2009 he was assaulted by the police resulting into the injuries to him. Looking to the said complaint made by respondent no.2, the leaned magistrate passed an order on

22.7.2009 to take him temporarily in the magisterial custody remand for his medical examination, and accordingly he was referred to the Government Medical Hospital at Aurangabad.

7] After his medical examination was done, again on 2.8.2009 he was produced before the learned Magistrate, Kannad in respect of his police custody remand. The learned Magistrate on 2.8.2009 passed a detailed order and remanded respondent no.2 in police custody remand till 5.8.2009.

The order, dated 22.7.2009 referring respondent no.2 for medical examination as well as the order, passed by the learned Magistrate remanding respondent no.2 for police custody remand are available in the compilation at pages 22 and 23.

The perusal of the order, dated 2.8.2009 reveals that the certificate of medical officer of the Government Hospital, Aurangabad was available and the report of the medical officer before the learned Magistrate which shows that there was nothing to substantiate the allegations made by respondent no.2 about assault. Not only that, the medical officer specifically observed that there were no signs or any evidence of such illtreatment alleged by respondent no.2.

8] Be that as it may, after lapse of near about two months, a private complaint bearing Summary Criminal Case No. 1022 of 2009 is filed with the allegations that he was assaulted and abused in the police station on 21.7.2009 and

the order of process is issued. To a specific query made by the court to both the counsel as to whether police custody remand yadi dated 22.7.2009 under which an order dated 22.7.2009 was passed, together with the order, dated 2.8.2009, passed by the learned Magistrate, Kannad was made available before the Revisional Court, both the learned counsel submitted that such documents were available for perusal before the learned Revisional Court. In fact, respondent no.2, who is present in the court, has given instructions to his counsel that those documents were filed before the Revisional Court.

9] The order passed by the learned Magistrate and the learned Revisional Court, if perused, clearly shows that those orders are passed mechanically. Both the courts below failed to consider the order passed by the learned Magistrate, Kannad on 22.7.2009 and the report of the medical officer, Government Medical College, Aurangabad. The learned Magistrate, it appears, has swayed away with the statement of two witnesses who were named in the complaint. Their statement was recorded by the police in the inquiry under Section 202 of the Criminal Procedure Code. Those statements are filed along with the present Writ Petition. I have perused those statements, which clearly show that the witnesses are interested persons. They visited the police station because they got the knowledge that the present respondent no.2 was arrested by Kannad police. That specifically shows that these two witnesses are interested witnesses. Apart from their

statement, there is nothing on record to show their presence in the police station.

10] The learned Revisional Court has mechanically affirmed the order passed by the learned Magistrate of issuance of process. The learned Revisional Court ought to have seen that the issuance of process has drastic effect. Such order subjected a citizen to face a criminal prosecution. In the present case, police officer is subjected to face the criminal prosecution on the allegation that on 21.7.2009 he assaulted the complainant in the police station which was found to be incorrect by the learned Magistrate in his order, dated 2.8.2009 which was passed after considering the medical report from Government Hospital, Aurangabad. Further the order, dated 2.8.2009 was not questioned by complainant rendering the observations made therein as final. Therefore now the learned counsel for respondent no.2 cannot submit anything against such finding.

11] In that view of the matter, this court is of the view that existence of the criminal case No. 1022 of 2009 is nothing but an abuse of process of law against a police officer who was already absolved by the medical report of respondent no.2.

12] Hence, I pass the following order.

(i) Criminal Writ Petition is allowed.

(ii) The order, dated 24.2.2012, passed by the learned Judicial Magistrate, First Class, Kannad in Summary Criminal Case No.1022 of 2009, by which the process against the present petitioner is issued for the offence punishable under Section 323, 504 of the Indian Penal Code, together with the judgment and order, passed by the learned Additional Sessions Judge, Aurangabad on 10.10.2014 in Criminal Revision Application No. 94 of 2013 are hereby quashed and set aside.

(iii) Criminal Complaint bearing Summary Criminal Case No. 1022 of 2009 is hereby quashed and set aside.

(iv) Rule is made absolute.

[V.M.DESHPANDE, J.]