

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

CRIMINAL WRIT PETITION NO. 1435 OF 2014

- 1] Pandhari @ Punda Tukaram Waghe,
age major, occ. Nil.,
- 2] Prashant Trimukh Waghe,
age 25 years, occ. Agril.,
Both R/o Saigaon,
Tq. Bhalki Dist. Bidar
- ...Petitioners

VERSUS

- 1] The State of Maharashtra,
through Investigating officer,
Gandhi Chowk Police Station, Latur,
Tq. And Dist. Latur,
- 2] Chaya Vyankat Biraedar (Bodke),
age major, occ. Service,
R/o Govt. Hospital, Latur
- ...Respondents

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Shri R.P.Adgaonkar, advocate for petitioners
Shri D.R.Kale, A.P.P. for respondent no.1
Shri L.C.Patil, advocate for respondent no.2
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CORAM : V.M.DESHPANDE, J.

DATED : 21st January, 2015

ORAL JUDGMENT : -

- 1] Rule. Rule is made returnable forthwith. With the consent of the learned counsel for the parties heard finally.

2] Respondent no.2 has filed a private complaint for the offence punishable under Sections 494 and 109 of the Indian Penal Code in the court of Judicial Magistrate, First Class, Latur. It was registered as Criminal Case No. 449 of 2012. In the said criminal case, in all 18 persons were shown to be the accused. The present petitioners are accused nos. 13 and 14 in the said criminal case.

3] The learned Magistrate has passed the order of issuance of process on 21.12.2012. The said order clearly shows that no process was issued against the present petitioners.

4] The accused persons, against whom the process was issued, filed Criminal Revision No. 66 of 2014. Worth to note, the original complainant/wife did not challenge the order, dated 21.12.2012, whereby the learned Magistrate refused to issue process against the present petitioner.

5] Curiously, the learned Additional Sessions Judge while exercising his revisional powers has directed to frame the charge against the present petitioners for the offences punishable under Sections 494 and 109 of the Indian Penal Code. It is to be noted that once the process was not issued against the present petitioners, in so far as present petitioners

are concerned, the complaint was already dismissed and the said order was not at all challenged by the original complainant. In that view of the matter, the order passed by the learned Additional Sessions Judge directing to frame the charge against the present petitioners cannot stand to the scrutiny of law.

6] Hence, present petition needs to be allowed and accordingly it is allowed. The order, passed by the 2nd Additional Sessions Judge, Latur, dated 3.11.2014 in Criminal Revision Application No. 66 of 2014 is hereby set aside to the extent it directs framing of the charge against the present petitioners. Rule is made absolute accordingly.

[V.M.DESHPANDE, J.]

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