

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 125 OF 2015

Uttam Ambadas Rai (Kalal)

...Petitioner

Versus

The State of Maharashtra & Ors.

.... Respondents

Mr. Sachin Gite for the Petitioner.

Mr. Rajesh More, APP for the Respondent No.1-State.

CORAM:-M.L. TAHALIYANI, J.

DATED : -25th MARCH, 2015.

P.C.:

Heard learned counsel for the respective parties. Admit. By consent of the parties taken up forthwith for final hearing.

2. Leave to amend is granted. Names of Respondent Nos.2, 3, and 4 be deleted.

3. Petitioner has filed a complaint before the Chief Judicial Magistrate, Nashik for the offences punishable under sections 166, 167, 168 and 199 of the IPC against three accused mentioned in the

complaint. After recording statement of the complainant on oath complaint was sent to police for enquiry and report. The police conducted enquiry under section 202 of Criminal Procedure Code and submitted report dated 13th August, 2014 stating *interalia* that the accused Nos.1 to 3 mentioned in the complaint were involved in the alleged offences. Learned Magistrate however, directed the Petitioner /complainant to adduce entire evidence in support of his case. It is submitted by learned Advocate for the Petitioner that the order passed by the learned Magistrate was without jurisdiction and that he was under obligation to take decision on the basis of complaint, verification statement and report submitted by the police.

4. Section 202 (2) of the Criminal Procedure Code authorises the Magistrate to take further evidence of witnesses on oath, if he thinks it fit to do so. In the present case the reasons given by the Magistrate for asking the Petitioner to adduce further evidence is that there was some civil dispute between the Petitioner and Municipal Corporation, Nashik. In my view said dispute has nothing to do with the allegations made against the accused in the complaint. Moreover, if the Petitioner was not

inclined to adduce further evidence though directed by the Magistrate, the Magistrate should have proceeded further to take decision as to whether process could be issued or not.

5. In view thereof, the order passed by the learned Magistrate below Exh.1 in R.C.C. No.230 of 2014 is set aside. Learned Magistrate is directed to decide on the basis of complaint, verification statement and the police report as to whether a process against the accused can be issued on the complaint made by the Petitioner.

6. The writ petition stands disposed of accordingly.

(JUDGE)