

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 3493 OF 2013

Damji Ramji Shah and anotherPetitioners

V/s.

Municipal Corporation of Greater MumbaiRespondents
and others

WITH
CRIMINAL WRIT PETITION NO. 3494 OF 2013

Damji Ramji ShahPetitioner

V/s

Municipal Corporation of Greater MumbaiRespondents
and others

Mr. Vivek B. Pandey for Petitioner
Ms. A. A. Mane APP for the State

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : AUGUST 24, 2015.

PC :

Heard. Petitioner herein is challenging the order of issuance of process passed by Metropolitan Magistrate, 42nd Court, Shindewadi on 06/09/2012. The summons was issued to the accused on 06/09/2012, since the case is summons triable. Petitioner is being prosecuted for

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offence punishable under section 394 & 471 of Mumbai Municipal Corporation Act.

2) Learned counsel for the petitioner has drawn the attention of this Court to the inspection report of Municipal Council. Inspection report is dated 27/07/2012. The petitioner had filed reply to the Municipal Council.

3) That the petitioner is not running eatery house and therefore, there was no necessity of licence under section 394 of Mumbai Municipal Corporation Act (MMC). In the reply, petitioner had disclosed to Municipal Council that the said premises are used by his staff as "Pantry" for making tea and coffee for the staff members and the said premises is not meant for public use. In the reply, the petitioner has stated that 20 tenants/occupants in the said building are filing false and frivolous complaints against them to stall the process of redevelopment. Complaint is filed on 06/09/2012. On the same day, summons were issued to the petitioners and at the same time, process has been issued against them. According to learned counsel for the petitioner, section 251 of Code of Criminal Procedure, 1973

contemplates that it is incumbent upon the Magistrate to summon the accused and upon his appearance the particulars of the offence of which he is accused shall be stated to him and he shall be asked whether he pleads guilty or has any defence to make. But it shall be necessary to frame a formal charge. According to learned counsel, he was given no opportunity to put up his defence. Learned counsel further submits that order of issuance of process does not, in any way, indicate that there has been application of mind at the stage of issuance of process.

4) In the case of **U. P. Pollution Control Board Vs. M/s Mohan Marketing Ltd. and Others** reported in (2000) 3 S.C.C. 745 Hon'ble Apex Court has observed that :

“The Legislature has stressed the need to record reasons in certain situations, such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. Process issued to the accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order.”

5) In view of this observation, the submission of learned counsel for

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the petitioner, cannot be considered by this Court.

6) In the case of **Bhushan Kumar v. State (NCT of Delhi), (2012) 5 SCC 424** Hon'ble Apex Court observed as follows:

“It is inherent in Section 251 of the Code that when an accused appears before the trial Court pursuant to summons issued under Section 204 of the Code in a summons trial case, it is the bounden duty of the trial Court to carefully go through the allegations made in the charge sheet or complaint and consider the evidence to come to a conclusion whether or not, commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accused and ask him whether he pleads guilty otherwise, he is bound to discharge the accused as per Section 239 of the Code.”

7) In the present case, as on today, the plea is not recorded and therefore, there is no reason to quash the proceedings on the ground that the evidence of the accused has not been taken into consideration.

8) In the case of **Subramaniam Sethuraman Vs. State of Maharashtra and another 2004 (13) S.C.C. 324** Hon'ble Apex Court has held:

“The issuance of process under Section 204 is a preliminary step in the stage of trial contemplated in Chapter XX of the Code. Such an order made at a preliminary stage being an interlocutory order, same cannot be reviewed or reconsidered by the Magistrate, there being no provision under the code for review of an order by the same Court.”

The Hon'ble Apex Court has further held that

“Once a plea is recorded in a summons case it is not open to the accused person to seek a discharge. The case involving a summons case is covered by Chapter XX of the Code which does not contemplate a stage of discharge like Section 239 which provides for a discharge in a warrant case. Therefore, once the plea of the accused is recorded under section 252 of Code of Criminal Procedure, 1973, the procedure contemplated under chapter XX has to be followed which is to take the trial to its logical conclusion.”

9) In the present case, the petition seeking quashing of process was filed on 17/09/2013. On 13/12/2013, 10/01/2014 and 30/01/2014 none appeared for the petitioner. On 07/02/2014, this Court (Coram: Sadhana S. Jadhav, J.) issued notice to respondent nos. 1 & 2.

Thereafter, no steps were taken by the learned counsel for the petitioner sought time and leave to file copy of impugned order. On 06/08/2014, petitioner sought liberty to delete respondent no. 2. On 05/09/2014, matter was adjourned at the request of learned counsel for the petitioner. On 15/09/2014, matter was again adjourned at the request of learned counsel for the petitioner. Hence, the matter has remained pending at pre-admission stage for almost 2 years.

10) Learned counsel for the petitioner submits that petitioner has been attending the dates before the Magistrate, however, he is unable to make a statement whether plea is recorded or not. Today, learned counsel seeks liberty to withdraw the petition.

11) Liberty as prayed for is granted in the interest of justice. Petitioner is at liberty to file his defence statement before learned Magistrate which shall be considered on its own merits and proceedings shall be taken to its logical end.

12) Petitions stand dismissed as withdrawn.

(SMT. SADHANA S. JADHAV, J.)