

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE**

CRIMINAL WRIT PETITION NO.4600 OF 2013

Gorakh @ Gaurav Atmaram Pagare & Ors. ... **Petitioners**

V/s.

The State of Maharashtra & Anr. ... **Respondents**

....

Mr.Murtuza Nazmi with A.A.Siddiquie i/b. A.A.Siddiquie & Associates,
Advocate for the Petitioners.

Smt.P.P.Bhosale, APP for the Respondent/State.

Mr.Gautam Kanchanpurkar i/b. Mr.Ulhas L.More, Advocate for the
Respondent No.2.

....

CORAM : M.L.TAHALIYANI J.

DATED : 12TH FEBRUARY, 2015

P.C.

1. Heard Mr.Murtuza Nazmi – the learned counsel for the petitioners and Mr.Kanchanpurkar – the learned counsel for the respondent No.2. Heard Mr.Patil – the learned Additional Public Prosecutor for the Respondent No.1/State.

2. The respondent No.2 had filed a Criminal Case in the Court of Judicial Magistrate, First Class at Ulhasnagar against the petitioners alleging the commission of offences punishable under Sections 323, 354, 452, 504 and 506 Part II and 120B of the Indian Penal Code. The learned Magistrate recorded the statement of the complainant. The learned Magistrate after recording the statement of the respondent No.2 on oath, directed by his order dated 3rd February 2012 to Inspector of Vitthalwadi Police Station to inquire into the allegations. This order was

passed under section 202 of the Code of Criminal Procedure. The Inspector of Vitthalwadi Police Station has conducted inquiry and submitted that there was no substance in the complaint and it was filed due to the enmity between the respondent No.2 on the one hand and the petitioners on the other hand. The learned Magistrate, however, by his order dated 28th December 2012 issued process against all the petitioners to answer the said charges.

3. The grievance of the petitioners is that the police report was not considered by the learned Magistrate. I have gone through the order. The only consideration given to the police report is as under :

“Perused the report of Investigation u/s. 202 of Cr.P.C.”

4. It is, thus, obvious that the learned Magistrate has not recorded any reasons, as to why did he not agree with the police and rejected the police report.

5. In my view, once the learned Magistrate felt it necessary that police inquiry was imperative in the matter before him and once the inquiry report is submitted, it was obligatory on the part of the learned Magistrate to record reasons for not accepting the said report and taking a contrary view of the matter.

6. For all these reasons, the order passed by the learned Magistrate on 28th December 2013 in Regular Criminal Case No. 613 of 2011 issuing process against the petitioners is set aside.

7. The learned Magistrate is directed to consider the police report along with the statement of the complainant on oath and pass order, as may be found necessary, on the basis of material in the statement of the complainant and the police report. It follows that if police report is not accepted, the reasons for the same shall be recorded.

8. The petition stands disposed of accordingly.

JUDGE