

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO. 90 OF 2005

The City & Industrial Development
Corporation, Aurangabad, through
its Chief Administrator, Udyog Bhavan,
Cidco, Aurangabad.

... **APPLICANT**

VERSUS

1. Bhausahab s/o Abasaheb Hiwale,
age: 55 years, Occ: Agril. & Service,
R/o Golegaonkar Colony,
Station Road, Aurangabad.

... Ori. Complainant

2. State of Maharashtra.
[Copy to be served on the
Public Prosecutor, High Court,
Bench at Aurangabad]

... **RESPONDENTS**

...
Mr. A. S. Bajaj, Advocate for the Applicant.
Mr. S. P. Tiwari, APP for Respondent No.2 / State.
...

CORAM : **V. K. JADHAV, J.**
DATE : 17th November, 2016.

ORAL JUDGMENT:

. By way of this criminal application, the Applicant is
challenging order dated 29th November, 2004, passed below

Exhibit – 4, by the Judicial Magistrate First Class, Aurangabad, directing thereby to issue witness summons to the Applicant for production of the documents mentioned therein. By this criminal application, the Applicant though not the accused in a criminal case, seeking quashment of the complaint filed by Respondent No.1, which is numbered as Regular Criminal Case No.1476 of 2004, pending before the IV Judicial Magistrate First Class, Aurangabad.

2 Brief facts giving rise to the present criminal application are as under:

Respondent No.1 – original Complainant has filed a private complaint before the Chief Judicial Magistrate, Aurangabad against eight accused persons. Accused Nos.1 to 4 are the officers of CIDCO, Aurangabad and Accused Nos.5 to 8 are attached to T.I.L.R. Office, at Aurangabad. Respondent No.1 – original Complainant has made certain allegations in respect of certain property and requested the Court to take action against those accused persons for having committed offence punishable under Sections 420, 409, 464, 465, 468 and 471 read with 34 of the Indian Penal Code. The learned Magistrate has also recorded the statement of Respondent No.1 – Complainant. However, on 5th November, 2004, Respondent No.1 –

Complainant has filed an application before the Chief Judicial Magistrate, Aurangabad in the aforesaid case requesting therein that the present Applicant be summoned to produce the documents as detailed in the application. The learned Chief Judicial Magistrate by order dated 29th November, 2004, directed to issue witness summons to Mr. Vijay Saurabh, the then Chief Administrator, Cidco, Aurangabad for production of the documents mentioned in the said application Exhibit – 4. Being aggrieved by the same, the Applicant has filed the present criminal application.

3 The learned counsel for Applicant submits that the Magistrate was not at all empowered to take cognizance of the complaint in absence of sanction from the Government as contemplated under Section 197 of the Code of Criminal Procedure and even the Magistrate does not have jurisdiction to make any enquiry as contemplated under Section 202 of the Code of Criminal Procedure. The learned counsel submits that Respondent No.1 – original Complainant has filed the said application Exhibit – 4 with malafide intention. Respondent No.1 – original Complainant has filed said Application Exhibit – 4 with some oblique motive calling said witness Mr. Vijay Saurabh, the then Chief Administrator, for the

purpose of examining him as a witness and to produce the unconcerned record, which itself amounts to abuse of the process of law. The learned counsel submits that the complaint itself is liable to be quashed and the order dated 29th November, 2004, passed below Exhibit – 4 is also liable to be quashed and set aside.

4 None present for Respondent No.1 though duly served.

5 I have also heard the learned APP for Respondent / State.

6 On perusal of the application Exhibit – 4 and the order passed thereon, it appears that Respondent No.1 – original Complainant has filed the said application under Section 91 of the Code of Criminal Procedure for production of certain documents. It further appears that the learned Magistrate has decided to inquire into the allegations made in the complaint by himself and accordingly, examined Respondent No.1 – Complainant. The learned Magistrate has not issued any process against the Accused. It further appears that in response to the order passed by the Magistrate dated 29th November, 2004, the application came to be submitted before the Court with the prayers that appearance of Applicant be exempted and the time of one month may be granted for production of the

documents through concerned officer. The learned Magistrate has simply granted time to the witness as prayed.

7 Section 91 of the Code of Criminal Procedure reads as under:

“91. Summons to produce document or other thing. (1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed—

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.”

8 Applicant – Mr. Vijay Saurabh, who happened to be a Chief Administrative Officer, is from IAS cadre and the learned Magistrate has directed him to produce certain documents before the Court. In view of Sub-Section (2) of Section 91 of the Code of Criminal Procedure, if any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

9 In view of the above, the Magistrate ought to have exempted attendance of said Applicant – Mr. Vijay Saurabh, the then Chief Administrator, Cidco, Aurangabad in terms of the provisions of Sub-Section (2) of Section 91 of the Code of Criminal Procedure.

10 The Applicant is not an accused in Regular Criminal Case No.1476 of 2004. The original Accused persons may challenge the order of issuance of process, if passed by the Magistrate by raising various grounds including the ground of sanction as provided under

Section 197 of the Code of Criminal Procedure. In view of this, prayer clause [c] of the application cannot be entertained. The Applicant has no locus standi to seek quashment of the complaint filed by Respondent No.1 – original Complainant, which is numbered as Regular Criminal Case No.1476 of 2004, pending before the IV Judicial Magistrate First Class, Aurangabad.

11 The Applicant has never raised any objection to the order passed by the learned Magistrate dated 29th November, 2004, directing to produce certain documents before the Court and on the other hand the Applicant sought one month time for production of the documents through concerned officer by seeking exemption of appearance of said officer Mr. Vijay Saurabh, the then Chief Administrator, Cidco, Aurangabad before the Court. However, the learned Magistrate has not granted exemption to the Applicant in terms of the provisions of Sub-Section (2) of Section 91 of the Code of Criminal Procedure. Thus, the order passed by the Magistrate calls for interference to that extent and this application can be disposed of by such modification in the order passed by the Magistrate. Hence, the following order :

ORDER

- I. The criminal application is hereby partly allowed.
- II. Order passed by Judicial Magistrate First Class, Aurangabad dated 29th November, 2004 below Exhibit – 4 is hereby modified to the following effect.
- III. The Applicant shall produce the documents before the Court and in terms of the provisions of Sub-Section (2) of Section 91 of the Code of Criminal Procedure, if the said documents are produced before the Court through concerned Officer of the Applicant, the Applicant shall be deemed to have complied with the requisition and attendance of Applicant personally before the Court to produce the same stands exempted.
- IV. Rest of the order stands confirmed.
- V. Rule is made absolute in above terms.

[V. K. JADHAV, J.]