

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

CRIMINAL WRIT PETITION NO. 474 OF 2016

Sunil s/o Shamrao Khupse ...Petitioner

VERSUS

Madhukar s/o Baburao Khupse
and another ...Respondents

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Shri K.M.Nagarkar, advocate for petitioner
Shri S.K.Adikine, advocate for respondent no.1
Shri R.V.Dasalkar, A.P.P. for respondent no.2

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CORAM : N.W.SAMBRE, J.

DATED : 4th October, 2016

PER COURT :-

The present respondent filed Summary Criminal Case No. 965 of 2014, in which verification was recorded on 2.8.2014 and learned Judicial Magistrate, First Class, Parbhani ordered issuance of process against the petitioner/accused for offences punishable under Sections 323, 504 and 506 of the Indian Penal Code. The said order

was questioned in Revision, being Criminal Revision No. 20 of 2015, which came to be dismissed on 1.2.2016 by the learned Ad hoc Additional Sessions Judge, Parbhani. As such, the present Writ Petition.

2. The learned counsel for the petitioner would invite my attention to the order passed by the learned Magistrate on 2.8.2014 and would urge that the order does not reflect application of mind. According to him, though the process is ordered to have been issued for the offences punishable under Sections 323, 504 and 506 of the Indian Penal Code, the learned Magistrate failed to record his satisfaction for necessary ingredients of the said Sections. He would then submit that in view of the law laid down by the Division Bench of this Court, in the matter of **State of Maharashtra vs Shashikant Eknath Shinde**, reported in **2013 ALL MR (Cri) 3060**, the order is not sustainable. He would then invite attention of this Court to the observations made in paras

29, 30 and 32 of the said judgment.

3. The learned counsel for respondent no.1 would submit that the verification recorded on 2.8.2014 by the learned Magistrate speaks of the satisfaction of ingredients of Sections 323, 504 and 506 of the Indian Penal Code. According to him, even if the learned Magistrate has not recorded any satisfaction as to the ingredients of the said Sections, the contents of the complaint/verification are required to be harmonious. He would then urge that the present petitioner/accused is a habitual offender.

4. Having bestowed my thoughts to the submissions made, no doubt, in the verification, the complainant, prima facie, appears to have recorded satisfaction about the necessary ingredients of Sections 323, 504 and 506 of the Indian Penal Code. However, the order of the learned Magistrate to that effect, particularly as regards the case of the complainant and the

satisfaction of the ingredients of the Sections under which the offences are punishable and whether the case is made out, is conspicuously absent. The learned counsel for the petitioner, in my opinion, has rightly invited my attention to the judgment of the Division Bench in the matter of **State vs Shashikant** (cited supra).

5. Though the learned counsel for respondent no.1 has urged that the documents i.e. complaint, verification, etc. are required to be harmonious, in the background of the order, still the contents of the complaint and the verification cannot be substituted to the cause, as that ought to have been observed by the learned Magistrate for satisfying the ingredients of the said Sections. The learned Magistrate should have passed a proper order in the matter in tune with the observations of the Division Bench. The learned Sessions Judge has lost sight of the above referred issues and has dismissed the Revision preferred by the present petitioner.

6. For the reasons stated herein above, the present petition is allowed.

The order dated 2.8.2014, passed by the learned Judicial Magistrate, First Class, Parbhani, in Summary Criminal Case No. 965 of 2014 and the order dated 1.2.2016 passed in Criminal Revision No. 20 of 2015 by the learned Ad hoc Additional Sessions Judge, Parbhani, are hereby quashed and set aside.

The complainant agrees that he shall appear before the learned Magistrate on 17.10.2016.

The learned Magistrate shall pass fresh order considering the verification which is already recorded, in the light of the observations in this order.

With the above observations, the Criminal Writ Petition stands disposed of.

(N.W.SAMBRE, J.)