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

CRIMINAL WRIT PETITION NO.560 OF 2016

Dadarao s/o Parasram Pawar

..PETITIONER

VERSUS

Anil s/o Namdeo Pawar & ors.

..RESPONDENTS

Mr V.C. Patil Ashtekar, Advocate for petitioner;
Mr A.R. Kale, Addl. Public Prosecutor for respondent no.6

CORAM : N.W. SAMBRE, J.

DATE : 28th April, 2016

ORAL ORDER :

Heard Mr Patil, learned Counsel appearing on behalf of the petitioner – complainant.

2. Pursuant to a complaint bearing Criminal Misc. Application No.56 of 2014, learned Judicial Magistrate First Class, Gangakhed, by an order dated 22nd April, 2015 issued process against respondents no.1 to 5 – accused for offences punishable under sections 302, 201, 203, 109, 120-B read with section 34 of the Indian Penal Code.

3. Aggrieved by the aforesaid order, respondents no.1 to 4 – accused nos.2 to 5 preferred Criminal Revision No.20 of 2015, which came to be allowed by the learned Sessions Judge, Gangakhed vide order dated 2nd

(2)

March, 2016. The revisional court set aside the order passed by the learned Magistrate on 22nd April, 2015, to the extent of revision petitioners. The revisional court as such dismissed the complaint as against accused nos.2 to 5. Thus, the present petition.

4. Mr Patil, learned Counsel appearing on behalf of the petitioners would strenuously urge that the scope of inquiry as contemplated under sections 202, 203 and 204 of the Code of Criminal Procedure is very limited as, when the offence is triable by Sessions Judge, the Magistrate is required to look into *prima facie* material and pass a reasoned order as is done by the Magistrate in the present case. He would then submit that the cumulative effect of the pleadings in the complaint, verification and other material as is placed on record before the Magistrate was sufficient enough to take cognizance *qua* the complaint preferred by the petitioner against all the accused.

5. With the assistance, of Mr Patil, I have perused the contents of the complaint, the order passed by the Magistrate and that of the revisional court, which is impugned in the present petition. Admittedly, sections 120-B and 34 of the Indian Penal Code are invoked in the present case as against the respondents – accused. The important aspect of the matter for invoking section 34 of the Indian Penal Code is that, specific role needs to be attributed to the accused, if their presence is not established at the scene of the offence. The plain reading of the complaint so also the order of the revisional court depicts that, but for accused no.1, none of the

(3)

accused were present at the scene of the offence and there are hardly any pleadings connecting the respondents-accused with the crime in question.

6. Learned Sessions Judge, while exercising revisional jurisdiction has promptly appreciated the above referred aspect of the matter and has allowed the revision at the behest of the respondents – accused.

7. In view thereof, in my opinion, no case for interference is made out in extraordinary jurisdiction. Criminal Writ Petition fails and stands dismissed.

(N.W. SAMBRE, J.)

amj