

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

CRIMINAL WRIT PETITION NO. 428 OF 2007

1. Shri Maulik Kotak
age adult, occupation printer,
Publisher.
2. Shri Bharat Kapadia
age adult occu. Asst. Publisher and
editor.
3. Shri Dnyanesh Maharao,
age adult, occu. executive editor.
4. Shri Bipin Kotak,
age adult, occ. Director.
5. Shri Ajit Popat
age adult occ. Reporter.
6. Shri Mahesh Shah
age adult, occ. Reporter.
7. Smt Jyoti Rawal,
age adult, occu. Reporter.
Petitioners 1 to 7 having their
address as

c/o Weekly Chitralkha
age 62, Vaju Kotak Marg,
Mumbai 400 001.

Petitioners.

VERSUS

1. The State of Maharashtra
 2. Dr. Shri Balaji Pita Bansilalji Toshniwal,
age 52 yrs, Occ.Agriculturist,
residing at Hadgaon, Tq. Hadgaon,
Dist Nanded.
- Respondents.

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APP for Respondents: Mr Bharaswadkar

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CORAM : V.K. JADHAV, J.
Dated: November 18, 2016

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ORAL JUDGMENT :-

1. None present for the petitioner and respondent no.2.

2. By way of this petition, the petitioners are seeking quashment and setting aside of the order dated 20.8.2002 passed by the Judicial Magistrate First Class, Hadgaon District Nanded in Criminal Case no.946/2002 and also seeking dismissal of the complaint filed by respondent no.2.

3. Brief facts, giving rise to the present writ petition are as follows :-

Respondent no.2 herein filed a complaint before the Magistrate bearing Criminal Case no.946/2002 against the present petitioners for having committed an offence punishable u/s 500 read with section 34 of IPC. The petitioners are working in a weekly named and styled as "Chitralkha" published in Marathi and

Gujrathi languages. Petitioners are working in the said weekly "Chitrlekha" in different capacities. On 1.7.2002 one article was published in a weekly Chitrlekha focusing on Pandurang Shastri Aathvale who was head of Svadhyaya Parivar. Respondent no.2 is member of said Svadhyay Pariwar and he is one of the follower found said article defamatory and thus approached the court by filing private complaint as aforesaid. Learned J.M.F.C. Hadgaon by considering the allegations made in the complaint issued a show cause notice to the applicants-original accused directing them to appear before the court on 30.9.2002 to explain as to why process should not be issued against them. By filing this petition, applicants thus challenged said show cause notice on various grounds.

4. This petition was filed before the Principal Seat at Bombay and it was transferred to this Bench as Hadgaon is situated in Nanded District. After transfer, notices were issued to the petitioners however, they failed to appear in the present criminal writ petition even though notices were accepted by said weekly

Chitralkha on their behalf.

5. The learned APP submits that, in response to the show cause notice issued by the Magistrate, the applicants can raise all grounds as raised in the present writ petition before the Magistrate and it is pre-mature at this stage to challenge show cause notice when applicants-accused failed to appear before the court and submit their explanation to the allegations made in the complaint.

6. It appears from the order passed by the learned Magistrate that, Magistrate has not issued process directly against applicants for having committed an offence punishable u/s 500 r/w 34 of IPC but taken care to issue show cause notice to them to submit their explanation to the allegations made in the complaint. Thus, the petitioners-original accused can submit before the Magistrate either in person or through their counsel their explanations to the allegations made in the complaint and Magistrate may pass an appropriate order in accordance with law. With these observations,

criminal writ petition is disposed off. All points kept open. Petitioners in response to show cause notice issued by the Magistrate may submit their explanation to the Magistrate and learned magistrate shall pass an appropriate order in accordance with law. Rule is made absolute in above terms.

(V.K. JADHAV, J.)

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aaa/-