

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

CRIMINAL WRIT PETITION NO. 753 OF 2012

ABDUL MOTESHAM ABDUL NAIM AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioners : Mr Salunke Sudarshan J
APP for Respondents: Mr N T Bhagat
Advocate for Respondent 2 : Mr P P Dawalkar h/f Mrs.
C S Deshmukh

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CORAM : V.K. JADHAV, J.

Dated: July 25, 2016

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PER COURT :-

1. The petitioners are challenging the judgment and order passed by the Additional Sessions Judge, Majalgaon, in Criminal Revision Application No.22/2011 dated 1.8.2012 arising out of the order of issuance of process passed by the learned Judicial Magistrate First Class, Majalgaon in Criminal M.A.No.127/2010 dated 21.10.2011.

2. Brief facts giving rise to the present writ petition are as under :-

Respondent No.2 herein approached the Trial Court by way of filing Criminal M.A.No.127/2010. In the

complaint he has referred a civil dispute between the parties and injunction granted by the Civil Court in the pending RCS No.126/1992. He has further alleged in the said application that, on 20.5.2010 at about 9.30 a.m. when he had gone to his agricultural field at Block No.21 situated village Mogra, accompanied by the witnesses mentioned in the complaint, he had noticed that all the petitioners (original accused) alongwith 60-70 labours reaping the cotton crop. Furthermore, petitioners/original accused chased respondent no.2 and others and at that time they were armed with the weapons like sticks, axe and iron rod and also threatened to kill them. It has also alleged that accused committed theft of 100 quintal cotton crop worth Rs.3.00 lacs. Respondent no.2 original complainant after his verification statement was recorded by the Magistrate has also examined three witnesses as named in the complaint in support of his allegations made in the complaint. The learned Magistrate, Majalgaon, by order below Exh.1 in Criminal M.A. 127/2010 issued summons against the petitioners/(original accused) for the offence punishable u/s 147, 148, 395 and 506 of

Indian Penal Code and further directed that case be registered as Regular Case. Petitioners/accused have further challenged said order before the Sessions Court, Majalgaon, by filing Criminal Revision No.22/2011. Learned Additional Sessions Judge, Majalgaon by its impugned order dated 1.8.2012 rejected the said criminal revision application. Hence, this writ petition.

3. Learned counsel for the petitioners submits that, in view of the provisions of Section 202 (2) of Criminal Procedure code, most particularly, proviso, it is incumbent upon the complainant and even makes it obligatory on the Magistrate to call upon the complainant to produce all his witnesses and examine them on oath. Learned counsel submits that even though four witnesses have been cited in the complaint, the complainant has examined only three witnesses. Learned counsel further submits that, the Magistrate has not recorded his satisfaction with regard to the *prima facie* case on the basis of specific allegations made in the complaint. Learned counsel submits that, therefore, the order passed by the learned Judicial

Magistrate First Class, Majalgaon cannot stand and the same is liable to be quashed and set aside. Learned counsel submits that the Additional Sessions Judge, Majalgaon has not considered this important aspect of the case. Learned counsel in order to substantiate his contentions places reliance on following Judgments :-

1. Shyamkumar Wamanrao Pawar and others Vs. State of Maharashtra and others, reported in 1980 Cri. L.J 1388(1).
2. M/s GHCL Employees Stock Option Trust Vs. M/s India Infoline Ltd. and ors. reported in AIR 2013 SC page 1433.
4. Learned counsel appearing for respondent no.2/original complainant submits that, learned Magistrate has considered the complainant's evidence and also the evidence of witnesses and observed that there is *prima facie* substance in the complaint and complainant had made out a case. Learned counsel submits that it is not expected at this initial stage from the Magistrate to pass a detailed order while issuing the process. It reflects from the impugned order passed by the Magistrate that he has applied his mind and accordingly issued summons to the accused. Learned

counsel submits that the impugned order passed by the Magistrate therefore calls for no interference. Learned Additional Sessions Judge has rightly considered the same and accordingly dismissed the Criminal Revision Application.

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

6. It appears from the record that the complainant has examined three witnesses in support of allegations made in the complaint. Witness No.4 is P.S.O. of Police Station Dindrud and obviously he is not a witness to the incident. He is merely a formal witness on the point that after the incident the complainant has approached the Police Station and even though he has orally narrated the incident to the police, no cognizance of his complaint was taken. In Shamkumar's case (supra) this Court has observed that in case of private case, obviously there being no earlier investigation by the police, and therefore, the statement of the witnesses u/s 161 and/or 162 of the Criminal Procedure Code are not

available. Therefore, having regard to the various provisions of the Code of Criminal Procedure, it was obligatory on the part of the Magistrate to call upon the Complainant to produce all his witnesses and examine them on oath and if this is not done, then obviously the order passed issuing the process is patently in violation of the mandatory requirements of the proviso to Section 202 (2) of the Criminal Procedure Code.

7. In the case in hand, no such contingency has arisen. Complainant has examined three witnesses as mentioned in the complaint and they have supported the allegations made by him in the complaint.

8. Learned counsel further places his reliance on a case M/s GHCL Stock Vs. M/s India Infoline (supra), wherein in paragraph no.14 of the judgment, the Apex Court has made following observations.

14. Be that as it may, as held by this Court, summoning of accused in a criminal case is a serious matter. Hence, criminal law cannot be set into motion as a matter of course. The order of Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The Magistrate has to record his satisfaction with regard to the existence of a prima facie case on the basis of specific allegations made in the complaint supported by satisfactory evidence and other material on record.

9. In the case cited above, private complaint of cheating and criminal breach of trust came to be filed against company dealing in securities and its officers. It has alleged in the complaint that, accused/officers were looking the day to day affairs of the company and no specific allegations have been made against the officials. In the backdrop of the same, the Apex Court has observed that “the order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and law applicable thereto.” In view of the observations as stated above, the Apex Court has observed that order issuing summons against the officers of the company is unjustified.

10. In the case in hand, specific allegations have been made against the petitioners/original accused. Despite the order passed by the Civil Court and despite of passing of various orders by the Court from time to time including this Court, prima facie it appears that the applicants/accused entered in the agricultural land which is subject matter of the Civil Suit and committed

theft of one quintal cotton crop worth of Rs.3.00lacs under threats to kill the complainant by chasing him and his associates armed with the dangerous weapons like sticks, axe and iron rod. I do not find any fault in the order passed by the Magistrate. The learned Additional Sessions Judge, Majalgaon has considered the case from all angles and observed that the order passed by the Magistrate is free from any error apparent on record. In view of the above, I do not find any substance in the writ petition. Hence, order.

O R D E R

- I. Criminal Writ Petition is hereby dismissed.
- II. Record and Proceeding be returned forthwith.

sd/-

(V.K. JADHAV, J.)

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