

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

CRIMINAL WRIT PETITION NO. 1036 OF 2015

1. Pravin s/o Ashok Gadekar,
Age: 28 years, Occu: Agril.
2. Pushpa w/o Ashok Gadekar,
Age: 50 years, Occu: Household,
3. Ashok s/o Jijaba Gadekar,
Age: 55 years, Occu: Service,

All R/o Shahunagar, Behind
S.T. Bus Stand, Beed,
Tq. & Dist. Beed

...Petitioners

versus

1. The State of Maharashtra
2. Sow. Vanita w/o Pravin Gadekar,
Age: 27 years, Occu: Household,
R/o. C/o Krushna Ranjeet Bomble,
Vidyanagar, Shevaon, Tq. Shevgaon,
Dist. Ahmednagar

...Respondents

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Mr. S. J. Salunke, Advocate for petitioners
Mr. R. V. Dasalkar, A.P.P. for respondent/State
Mr N. S. Jaju, Advocate for respondent No. 2

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CORAM : N.W. SAMBRE, J.

DATE : 20th APRIL, 2016

ORAL ORDER :

Heard respective Counsel.

2. In a complaint bearing Regular Criminal Case No. 41 of

2015 initiated pursuant to the provisions of Section 156(3) of Code of Criminal Procedure, learned Judicial Magistrate, First Class, Shevgaon ordered issuance of the process for the offence punishable under Sections 498-A, 504, 506 read with Section 34 of the Indian Penal Code. The complaint came to be dismissed in respect of offence punishable under Section 323 read with Section 34 of the Indian Penal Code.

3. The said order of issuance of process was subject matter of challenge before learned Sessions Judge, Ahmednagar in Criminal Revision No. 121 of 2015. Learned Sessions Judge, by an order dated 16/07/2015 set aside the order of issuance of process against accused Nos. 4 and 5 pursuant to the provisions of Section 202 of Code of Criminal Procedure. As such, present writ petition by original accused Nos. 1 to 3.

4. Heard Mr. Salunke, learned Counsel for the petitioners and Mr. Jaju, learned Counsel for the respondent-complainant.

5. Mr. Salunke, learned Counsel for the petitioners would urge that the order of issuance of process is without application of mind, as learned Magistrate has not satisfied himself with the ingredients of sections under which the offence is punishable with.

He would then urge that in revision, the order of issuance of process is quashed and set aside as against accused Nos. 4 and 5 and the said order is not questioned by the original complainant. In view thereof, he would submit that even the order of issuance of process is not sustainable as against present petitioners i.e. original accused Nos. 1 to 3.

6. Mr. Jaju, learned Counsel for the respondent-complainant would urge that learned Magistrate has taken recourse to the provisions of Section 200 of the Code of Criminal Procedure instead of provisions of Section 202 of Code of Criminal Procedure, as the accused were residing outside the jurisdiction of the Magistrate. He would then urge that let the Magistrate apply his mind afresh to the entire case qua accused Nos. 1 to 5, which upon inquiry under Section 202 of the Code of Criminal Procedure may pass appropriate order in the matter.

7. Having considered rival submissions, it is noticed that the order of issuance of process, in my opinion, is already quashed against accused Nos. 4 and 5, which is not questioned by the present respondent-complainant before this Court and said order passed by learned Sessions Judge setting aside the order of issuance of process as against accused Nos. 4 and 5 has already

attained finality.

8. In view thereof, in my opinion, it will be inappropriate, to interfere with the order passed by learned Sessions Judge to that effect.

9. So far as the order of issuance of process as against accused Nos. 1 to 3 is concerned, in view of law laid down by the Division Bench of this Court in the matter of ***State of Maharashtra vs. Shashikant s/o Eknath Shinde*** reported in ***2013 ALL MR (Cri) 3060***, particularly paragraphs-29, 30, 31, 32 and 35, the order is not sustainable, as the order passed by learned Magistrate issuing process is without satisfying the ingredients of sections under which the offence is alleged to have been committed and punished with. Learned Magistrate has also not disclosed any reason and then passed order of issuance of process as against accused No. 1 to 3.

10. In view thereof, the order impugned passed by learned Magistrate as against accused No.1 to 3 ordering issuance of process is set aside. The complaint stood restored to learned Magistrate only to the extent of accused Nos. 1 to 3. Learned Magistrate shall deal with the contents of the complaint in accordance with the provisions of Section 202 of the Code of

Criminal Procedure and shall pass appropriate order in the matter. Learned Counsel for the complainant submits that the complainant shall appear before learned Magistrate on 05/05/2016.

11. The criminal writ petition stands allowed in above terms.

[N.W. SAMBRE, J.]