

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1059 OF 2015

Jagdish S/o Chintaman Khodke,
Age : 42 years, Occu : Service/Surplus,
R/o Plot No.8, JB Badgujjar Colony,
Devpur, Dhule,
Tal & Dist. Dhule.

..Petitioner

Versus

- 1 The State of Maharashtra,
Through Incharge Police Inspector,
Police Station, Devpur,
Tal. & Dist. Dhule.
- 2 Gopalrao Kashinath Kele,
Age : Major, Occu : Social Worker,
R/o Patil Nagar Near Netaji Colony
Gajanan Maharaj Mandir D P Road,
Devpur, Dhule, Tal. & Dist. Dhule.
- 3 Prof. D. V. Kothawade,
Age : Adult, R/o Samrat Colony,
Near LIC Colony, Chittod Road,
Saidhan Apartment, Dhule,
Tal. & Dist. Dhule.
- 4 Milind S/o Ramchandra Shirude,
Age : Adult, R/o Plot 7, Shivgiri Colony,
Disuja Colony, College Road,
Nashik, Dist. Nashik.
- 5 Pritesh S/o Gopalrao Lad,
Age : Adult, R/o Flat No.19,
4th floor, Suyog Heights,
Near M.I.T. College, Sneha Paradise,
Don Road, Kothrud, Pune - 400003.
- 6 Jitendra S/o Dharmaraj Songire,
Age : Adult, R/o Plot No.86,
Jai Hind Colony, Devpur,
Dhule, Dist. Dhule.

- 7 Arun S/o Baraku Kele,
Age : Adult, R/o Arvi,
Tal. & Dist. Dhule.
- 8 Natthu S/o Kisan Nerkar (Wani)
Age : Adult, R/o Matruchaya,
In front of Bhavsar Bhavan,
Lane No.5, Dhule, Dist. Dhule,
- 9 Pradip S/o Hari Amrute,
Age : Adult, R/o Plot No.32,
Tulshiram Nagar, Behind Shreyas
Colony, Devpur, Dhule,
Dist. Dhule.
- 10 Suresh S/o Kashinath Borase,
Age : Adult, R/o Siddheshwar,
Plot No.9, Kele Nagar, Nakane
Road, Devpur, Dhule,
District Dhule.
- 11 Sanjay S/o Gopalrao Naik,
Age : Adult, R/o Naik Communication,
Chaitrabhuj Nanji, Agra Road,
Dhule, District Dhule.
- 12 Walmik S/o Pitambar Desale,
Age : Adult, R/o Plot No.51,
Section - 3, Pramod Nagar,
Devpur, Dhule, Dist. Dhule.
- 13 Sau. Nisha W/o Kishor Musale,
Age : Adult, R/o No.17,
Borase Nagar, Near Om Building,
Devpur, Dhule, Dist. Dhule.
- 14 Sau. Ashalata W/o Hansraj Bagal,
Age : Adult, R/o Shivpratap Colony,
Devpur, Dhule, Dist. Dhule.
- 15 Sau. Bharati Bhalchandra Kothawade,
Age : Adult, R/o Veer Bhagatsing
Chowk, Subhash Nagar, Dhule,
Dist. Dhule.
- 16 Manish Manoj Dandhalikar,
Age : Adult, R/o Ransing Plot,

Behind Zende Hospital,
Station Road, Dhule,
District Dhule.

17 Murlidhar S/o Sonu Wani,
Age : Adult, R/o Plot No.71,
Shivaji Colony, Behind Ice Factory,
Devpur, Dhule, Dist. Dhule.

18 Satish Bawiskar,
Age : Adult, R/o 15, Vrandawan Colony,
Deepa Provision, Bondur Road,
Devpur, Dhule, Dist. Dhule.

..Respondents

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Advocate for Petitioner : Shri P.M. Nagargoje
APP for Respondent 1 : Shri Bhagat N.T.
Advocate for Respondents 2 to 18 : Shri V.D.Hon, Sr. Adv.
i/b Shri A.V.Hon

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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 28, 2016

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. This matter was heard at length on 15.6.2016 and 16.6.2016.

On 16.6.2016, this Court has passed the following order:-

“1. The order of issuance of process of the learned Magistrate is on the basis of taking cognizance of a complaint u/s 156(3) of the Cr.P.C. by invoking its powers u/s 190(1)(a). By the impugned judgment of the Additional Sessions Judge, Dhule dated 01/08/2015, the order of the learned Magistrate dated 21/08/2014 has been quashed and set aside primarily on the ground that Section 200 of the Cr.P.C. was not complied with as there was no recording of verification of the complainant.

2. In this backdrop, it is necessary to peruse the record.

3. Learned Advocate for the petitioner submits that he would apply for a certified copy of the verification of the petitioner as has been recorded by the learned Magistrate in Reg. Cri. Case 794/2006.

4. In the light of the statement made, the petitioner is permitted to apply for a certified copy of the verification and produce the same in this Court prior to the next date of hearing in this matter.

5. Stand over to 28/06/2016.”

5. This matter was, thereafter, heard today.

6. I have considered the submissions of Shri Nagargoje, learned Advocate for the petitioner and Shri Hon, the learned Sr. Advocate for respondents 2 to 18 along with the learned APP for the State.

7. The relevant factors as are evident from the record and therefore, undisputed, are as under:-

(a) Regular Criminal Case No.794 of 2006, at the instance of the petitioner under Section 156(3) of the Criminal Procedure Code ("CrPC") was lodged on 4.11.2006.

(b) The learned Magistrate directed police investigation on 5.12.2006.

(c) The concerned police submitted the "B" Summary Report on 2.4.2007.

(d) The learned Magistrate by invoking his powers under Section 200 of the CrPC directed the recording of the statement of the complainant on 24.8.2007.

(e) The complainant led evidence on the point of issuance of process on 7.3.2009.

(f) The order for issuance of process against the accused under Sections 420, 465, 467, 468, 469, 471 read with 120-B of the Indian Penal Code (“IPC”) was passed on 22.9.2009.

(g) These proceedings have travelled upto this Court on two occasions.

(h) The judgment and order dated 16.7.2014, delivered by this Court in Criminal Writ Petition No.148 of 2013 led to a direction to the learned Magistrate to consider the material on record afresh.

(i) By order dated 21.8.2014, the learned Magistrate passed a detailed and reasoned order thereby issuing process against the accused.

(j) The accused preferred Criminal Revision Application No.89 of 2014 for challenging the order of issuance of process.

(k) The learned Additional Sessions Judge, Dhule by an interim order dated 20.6.2015, concluded that Section 200 was complied with and rejected the application for stay after considering the record and proceedings and then returned the R & P to the learned Magistrate for proceeding with RCC

No.794 of 2006.

(l) By the impugned judgment, the same learned Additional Sessions Judge allowed the Revision filed by the accused specifically on the ground that the learned Magistrate has failed to comply with Section 200 of the CrPC and, therefore, directed the said Court to follow the procedure and pass an order on the aspect of issuance of process.

8. Having considered the strenuous submissions of the learned Advocates and having gone through the record available, it is apparent from the dates and sequence of events that the complainant was examined on 7.3.2009 under Section 200 after the “B” Summary report was filed. It was thereafter that the first order of issuance of process was issued on 22.9.2009 and pursuant to the directions of this Court dated 16.7.2014, the learned Magistrate considered the entire material before him and passed a reasoned order dated 21.8.2014 issuing process against the accused.

9. The issue, raised before this Court is as to whether the evidence of the complainant recorded on 7.3.2009 can be said to be in deference to Section 200 of the CrPC and as to whether the same would not tantamount to a verification of the complainant.

10. Shri Hon has strenuously contended that the evidence of the complainant recorded on 7.3.2009 can be said to be a statement on oath, but not a verification as is enshrined under Section 200 of the CrPC.

11. I am unable to accept the submissions of the learned Sr. Advocate since Section 200 of the CrPC does not make a distinction in between a formal verification and a statement recorded in support of the complaint prior to the issuance of process.

12. Section 200 of the CrPC reads as under:-

“Section 200 - Examination of complainant. - A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witness—

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the

case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.”

13. This Court, in the matter of Lance Irwin Lobo (Capt.) Vs. Ismail D'Souza and other [2007 All MR (Cri) 623], has concluded in paragraph No.16 as under:-

“16. I have already observed that the accused after revocation of the power of attorney had also executed a Sale Deed of a bungalow along with undivided right to the property in favour of the complainant's witness Shri Almeida against whom the complainant till date has made no grievance. All that the complainant stated in his examination-in-chief is that the complainant did something which he could not have done by virtue of revocation of the power of attorney. The facts stated by the complainant and reproduced hereinabove, in my view, did not disclose any offence for the accused to be summoned. A conjoint reading of Sections 203 /204 Cr.P.C. shows that process is to be issued after considering the statement on oath of the complainant and of the witnesses and the result of the inquiry or investigation, if any, under Section 202. The recording of the statement on oath of the complainant under Section 200 Cr.P.C. is not an empty formality. Commonly it is nicknamed as verification. To verify means to establish the truth. In other words, verification is done in order to ascertain as to what is pleaded by the complainant is true or not. It is with a view to separate chaff from the grain as many a times complaints do contain unfounded allegations and it is the duty of the Court to ensure

that what is stated in the complaint is also stated by the complainant on oath and it is only then that based on such statement that process can be issued. The corollary of this would be that unless offences are disclosed from the statement on oath, no process can be issued only based on averments in the complaint. The complainant is bound to make a statement on oath as to how the offence was committed and how the accused persons are responsible therefor. After the statement on oath is recorded, a Magistrate is required to apply his judicial mind to the facts of the case and the law applicable thereto and find out what offence/s is made out, notwithstanding that the other party at that stage is unrepresented. As observed by the Apex Court time and again, summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course. A Magistrate is required to examine the nature of the allegations made in the complaint and the evidence both oral and documentary to see if it is sufficient for the complainant to succeed in bringing charge home to the accused. In other words, the examination of the complainant on oath is for the purpose of ascertaining whether a prima facie case is made out against the accused to issue process so that the issue of process is prevented on a complaint which is either false or vexatious or intended only to harass. As observed by the Apex Court in Punjab National Bank and Ors. Vs. Surendra Prasad Sinha 1993 Supp. (1) SCC 499, it is salutary to note that judicial process should not be an instrument of oppression or needless harassment. A Magistrate is required to find out whether the concerned accused should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded then only

process would be issued and at that stage the Court has got to be circumspect in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of Majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance.”

14. The Honourable Supreme Court in the matter of Madhavrao Jiwajirao Scindia Vs. S.C.Angre [(1996) 1 SCC 692], while considering the challenge to the issuance of process has concluded that the test to be applied is as to whether the un-controverted allegations made in the complaint are sufficient to launch the prosecution against the accused. In doing so, the statement of the complainant in support of his complaint was held to be a necessary ingredient in order to enable the Court to pass an order on issuance of process.

15. This Court in the matter of Amarnath Bajinath Gupta Vs. Mohini Organics Pvt. Ltd. & Another [2009 (3) BCR 258], has held in paragraph Nos.19 and 22 as under:-

“19. The Apex Court in the case of Nirmaljit Singh Hoon Vs. The State of West Bengal and another ({1973}3-SCC-753) had an occasion to consider the provisions of Section 200 of the said Code. It will be necessary to refer to what is held by the

Apex Court in paragraph no.22 :-

"22. Where a complaint is presented before him, he can under Section 200 take cognizance of the offence made out therein and has then to examine the complaint and his witnesses. The object of such examination is to ascertain whether there is a prima facie case against the person accused of the offence in the complaint, and to prevent the issue of process on a complaint which is either false or vexatious or intended only to harass such a person. Such examination is provided therefore to find out whether there is or not sufficient ground for proceeding." (emphasis supplied)

This Court had an occasion to consider Section 200 of the said Code in the Case of Captain Lance Irwin Lobo Vs. Ismail D'Souza @ Angelo Ismail de Souza and another (2007-ALL MR {Cri}-623). It will be necessary to refer paragraph 16 of the said judgment in which this Court has held thus :-

"16. The recording of the statement on oath of the complainant under Section 200 Cr.P.C. is not an empty formality. Commonly it is nicknamed as verification. To verify means to establish the truth. In other words, verification is done in order to ascertain as to what is pleaded by the complainant is true or not. It is with a view to separate chaff from the grain as many a times complaints do contain

unfounded allegations and it is the duty of the Court to ensure that what is stated in the complaint is also stated by the complainant on oath and it is only then that based on such statement that process can be issued. The corollary of this would be that unless offences are disclosed from the statement on oath, no process can be issued only based on averments in the complaint. The complainant is bound to make a statement on oath as to how the offence was committed and how the accused persons are responsible therefore. After the statement on oath is recorded, a Magistrate is required to apply his judicial mind to the facts of the case and the law applicable thereto and find out what offence/s is made out, notwithstanding that the other party at that stage is unrepresented. As observed by the Apex Court time and again, summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course. A Magistrate is required to examine the nature of the allegations made in the complaint and the evidence both oral and documentary to see if it is sufficient for the complainant to succeed in bringing charge home to the accused. In other words, the examination of the complainant on oath is for the purpose of ascertaining whether a prima facie case is made out against the

accused to issue process so that the issue of process is prevented on a complaint which is either false or vexatious or intended only to harass. (emphasis supplied).

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"22. On plain reading of Section 200 of the said Code it appears that it is the obligation of the Magistrate to examine the complainant which means that the learned Magistrate is obliged to put questions to the complainant for eliciting the truth from him. The said provision enjoins a judicial duty to be performed by the Judicial Magistrate which requires an application of judicial mind. The said work of recording the statement cannot be done mechanically by simply filling details such as the date of cheque, name of the bank, date of intimation of dishonour of the cheque etc; in a format which is already kept ready. Generally, the complaints are drafted by the lawyers as per the instructions of the complainants. Thus, a complaint is the translated version or a formulated version made by the advocate on the instructions received from the complainant. Therefore, the examination of the complainant under section 200 by the learned Magistrate is very important. During the course of such examination the complainant tells the truth. In fact, the object of the learned Magistrate recording such statement is of eliciting the truth from the complainant. Therefore, while recording a statement under Section 200 of the said Code in such a complaint, the learned Magistrate cannot merely reproduce the data in a preconceived format. He must give an opportunity to the complainant to state and describe the role played by the

accused especially when directors/officers of a company are sought to be held vicariously liable. The object of examination is that a true version on oath of the complainant is brought on record.”

16. It is, therefore, no longer *res integra* that the examination of the complainant under Section 200 of the CrPC is vital for the reason that in the course of such examination the learned Magistrate can arrive at a *prima facie* conclusion as to whether there is any material before him and would assist him in recording a statement for eliciting the truth in the complaint at a *prima facie* stage so as to conclude as to whether the issuance of process would be justiciable.

17. In this matter, I find that the learned revisional Court has failed to apply its mind while passing the impugned order, by which, the order of issuance of process dated 21.8.2014 was interfered with only on the ground that the learned Magistrate had not followed the procedure under Section 200 of the CrPC.

18. In the light of the view taken by this Court in the matters of Capt. Lance (supra) and Amarnath (supra), evidence of the complainant recorded on oath on the point of issuance of process is in due compliance of Section 200 of the CrPC. Such recording of evidence in common parlance is said to be a verification. Verification and recording of evidence of the complainant on issuance of process

is, therefore, one and the same and such recording therefore, amounts to compliance of Section 200.

19. It cannot be ignored that the same learned Additional Sessions Judge, Dhule (as she was then) has recorded a specific finding in paragraph No.7 of her interim order dated 20.6.2015, refusing to stay the proceedings before the learned Magistrate, that the Magistrate had complied with Section 200 of the CrPC as evidence of the complainant was recorded on 7.3.2009 on the point of issuance of process. It is also evident from the said order that the conclusion of the said learned Judge was based upon the record and proceedings placed before her and which were returned to the trial Court after the order dated 20.6.2015 was passed. Surprisingly, the same learned Additional Sessions Judge, in the impugned order dated 1.8.2015 has allowed the Criminal Revision Application on the sole ground that the record reveals that the learned Magistrate failed to record the verification of the complainant and therefore, did not comply with Section 200 of the CrPC.

20. It is pointed out by the petitioner that this conclusion is drawn by the same learned Judge after returning the record and proceedings to the learned Magistrate, pursuant to the passing of the interim order dated 20.6.2015. In my view, the learned Additional Sessions Judge, Dhule has casually arrived at such a conclusion and

which cannot be appreciated.

21. Considering the above, this petition succeeds and is allowed. The impugned judgment and order dated 1.8.2015 passed by the revisional Court is quashed and set aside. Criminal Revision Application No.89 of 2014 stands rejected.

22. Rule is made absolute in the above terms.

23. At this stage, the learned Advocate for the petitioner has placed reliance upon the observations of the Honourable Supreme Court in the matter of Jagdish Ram Vs. State of Rajasthan and another [(2004) 4 SCC 432], which reads as under:-

“13. It is to be borne in mind that the appellant has been successively approaching the High Court every time when an order taking cognizance was passed by the Magistrate. It is because of the appellant that the criminal proceedings before the Magistrate did not cross the stage of taking cognizance. As earlier noticed, since earlier judgments of the High Court have attained finality, we are not going into correctness of these judgments. When third time the appellant was not successful before the High Court, he has approached this Court and at his instance the proceedings before the trial court were stayed. In fact, from 1986 till date the criminal case has not proceeded further because of the appellant. It would be an abuse of the process of the court if the appellant

is now allowed to urge delay as a ground for quashing the criminal proceedings. In considering the question whether criminal proceedings deserve to be quashed on the ground of delay, the first question to be looked into is the reason for delay as also the seriousness of the offence. Regarding the reasons for delay, the appellant has to thank himself. He is responsible for delay. Regarding the seriousness of the offence, we may notice that the ill of untouchability was abolished under the Constitution and the Act under which the complaint in question has been filed was enacted nearly half a century ago. The plea that the complaint was filed as a result of vindictiveness of the complainant is not relevant at this stage. The appellant would have adequate opportunity to raise all pleas available to him in law before the trial court at an appropriate stage. No case has been made out to quash the criminal proceedings on the ground of delay.”

24. He, therefore, submits that as the instant matter virtually amounts to a serious financial scam in the cooperative society, this Court may direct the learned Magistrate to expedite the hearing in Regular Criminal Case no.794 of 2006, in view of the observations of the Honourable Supreme Court. Learned Advocate for the respondents 2 to 18 has opposed the said request.

25. Considering the above and the observations of the Honourable Apex Court in paragraph No.13 of the Jagdish Ram judgment (supra), the learned Magistrate dealing with RCC No. 794 of 2006 is directed to proceed with the said case as expeditiously as possible and decide

the same within a period of nine months from today. Adjournments sought on trivial or unreasonable grounds, shall be refused.

(RAVINDRA V. GHUGE, J.)

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