

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.437 OF 2014

Dagade Sayappa Hake .. Petitioner
-Versus-
State of Maharashtra & Ors. ..Respondents

Mr.Lokesh Zade i/b. Khandeparkar & Associates for petitioner
Mr.H.J.Dedhia, APP for State.

CORAM : DR. SHALINI PHANSALKAR JOSHI, J.

DATE : 15th February 2016.

P.C.

1] By this petition, the original accused is challenging the order of issuance of process against the him passed by JMFC, Devgad in R.C.C. No. 66 of 2013 for the offences punishable under sections 323, 324, 504, 506 and 330 IPC read with 34 of IPC. The petitioner is the Police Inspector. He is challenging the order of issuance of process in Criminal Revision Application No.23 of 2013 passed passed by JMFC Devgad, before the Sessions Judge Sindhudurg at Oras. However, his revision application came to be dismissed by the judgement and order dated 23rd August 2014.

2] According to the learned Counsel for the petitioner, in the absence

of sanction and material on record adduced against the petitioner, the trial court has issued process against him, when admittedly, the petitioner is a police officer and whatever acts or omissions are alleged against him, are in the discharge of his official duty, sanction of the competent authority under section 197 Cr.P.C. was very much essential before the order issuing process was passed. However, without obtaining such sanction, on a complaint filed by respondent Nos. 2 and 3 against him, the trial court has committed grave error in issuing process against him. On these two grounds, the learned Counsel for the petitioner submitted that the order of issuance of process is required to be quashed and set aside.

3] In this case, the respondent Nos. 2 and 3 had in the complaint filed before the trial court has specifically made averments to the effect that on 1st November 2011, in the night hours, they were called at Devgadh police station by the petitioner herein along with their senior official Mr.Krishna Hirlekar. On their reaching the police station, enquiry was made with them in respect of one missing person by name Mr.Amol Chavan. In the said enquiry, the petitioner herein not only verbally abused them but also slapped and beat them. They were taken to two separate rooms at the police station and were tortured by the petitioner herein. The respondent No.2 also sustained injuries as a result of the assault by petitioner with fists and blows. Only when the father of respondent No.2 intervened the

respondents were released in the night at about 1.00 a.m. Subsequent thereto the respondents had been to the family Doctor Mr.S.A.Chavan and got themselves examined and medically treated and, thereafter, they have filed appropriate criminal case against the petitioner in the trial court.

4] Before taking cognisance of the offence, learned Judicial Magistrate thought it fit to direct enquiry under section 202 of Cr.P.C. in the said enquiry. Both the respondents examined themselves on oath. On examining the evidence of their senior Officer Mr.Krishna Hirlekar and Dr.Chavan and on being satisfied with this piece of evidence, the trial court was pleased to issue process against the petitioner.

5] Needless to say that when there is evidence and statement on oath of four witnesses, sufficiently disclosing the necessary ingredients of the offence and further concurrence of the evidence, the trial court was prima facie deemed to be satisfied for issuance of process. The presence of Mr. Krishna Hirlekar is spoken of in the complaint itself. Similarly, in the complaint itself it was stated that the respondent had visited their family Doctor. His evidence also revealed that on examination of the respondents, he had found simple and blunt injury marks and accordingly the the basis these injuries he had issued medical certificate to

respondents. In the considered opinion of the trial court and this court, prima facie thus, there is sufficient material brought on record before the trial court for the purpose of issuance of the process.

6] As regards the second contention raised by the petitioner that for taking cognisance of case against him, sanction of the competent authority under section 197 of Cr.P.C. was required and the same was not taken. The said contention also cannot be accepted or upheld for sanction is required only when an act is committed in discharge of official duty. If the act complained of has no nexus to the discharge of official duty, then, such sanction is not essential at all. Giving abuse or threatening to the person detained or using physical force on them by the police officer can never fall in the discharge of his official duty, since it is the exercise of authority vested in him and in such case, the law is settled that sanction under section 197 is not at all warranted for taking cognisance when there is a complaint of torture or ill-treatment at the hands of police officer, while the complainants are in police custody.

7] Thus, looked at it from any angle, I do not find that the trial court had committed any error, much less, any illegality in issuing process against the petitioner. This petition is, therefore, dismissed.

8] At this stage, however, it is made clear that whatever observations are made herein are only for the purpose of deciding this petition and the trial court is not to be influenced in any way by the same.

(JUDGE)