

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

CRIMINAL APPLICATION NO. 1354 OF 2006

1. Ramkrushna Sukhdeo Lodhe
Age: 47 years, Occu.: Service and Agri.,
R/o Majaleshahar, Tq. Shevgaon,
Dist. Ahmednagar.
Presently residing at
Shri Swami Samarth Nagar,
4 Bunglow, Andheri (W), Mumbai.
2. Digambar Ambadas Garje
Age: 42 years, Occu.: Agri.,
R/o Wadule Antarwali, Tq. Newasa,
Dist. Ahmednagar.
3. Haribhau Ramrao Lipne
Age: 40 years, Occu. Agri.,
R/o Sakhari Nandur, Tq. Newasa,
Dist. Ahmednagar.

..APPLICANTS

VERSUS

1. State of Maharashtra
2. Dnyandeo Bajirao Phasate
Age: 44 years, Occu.: Agri.,
R/o Majaleshahar, Tq. Shevgaon,
Dist. Ahmednagar.

..RESPONDENTS

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Mr. S.V. Suryawanshi, Advocate h/f Mr. P.B. Shirsath, Advocate for applicants.

Mr. K.D. Mundhe, A.P.P. for Respondent No.1 – State.

Mr. Y .V. Kakade, Advocate for Respondent No.2.

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CORAM : T.V. NALAWADE, J.

DATED : 12th JANUARY, 2017

ORAL JUDGMENT :

1. The proceeding is filed under Section 482 of the Code of Criminal Procedure for relief of quashing of proceeding of Criminal Case No. 295 of 2004 which is pending in the Court of Judicial Magistrate, First Class, Shevgaon and relief of setting aside of order of issuance of process made in the matter for the offences punishable under Sections, 323, 504, 506 read with 34 of the Indian Penal Code is also claimed. Both sides are heard.

2. Private complaint is filed by present Respondent No.2 – Dnyandeo against the present applicant for the offences punishable under Section 323, 504 read with Section 34 of the Indian Penal Code. Accused No. 1 – Ramkrushna was working in Regional Transportation Office, Mumbai (Andheri (West)). At the relevant time, for sometime the complainant had worked in the field of Accused No.1. As there was some dispute, complainant had left the job of Accused No.1 and so Accused No.1 had become angry with him.

3. It is the case of complainant that he was cultivating the land which is situated adjacent to the land of Accused No.1. It is contended that he had taken boarwell in his land and as there is sufficient water to

his boarwell but there was no sufficient water to the well in the land standing in the name of wife of Accused No.1, the Accused No.1 had become angry with him.

4. The complainant made allegation that on 07th December, 2003 at about 9.00 a.m. To 9.30 a.m. when he was present in his field, accused came to him, they took up quarrel with him and gave abuses. He made allegation that he was given beating by using even stick. The complainant has made allegation that he was then forcibly taken away to Pune and there he was detained in one room till 09th December, 2003. He has made allegation that on 09th December, 2003 after 8.30 a.m. he was allowed to go and then he returned to Shevgaon and gave report to the police. He has made allegation that police did not take any action though he was referred to the government hospital for examination and so he was required to file private complaint.

5. The complaint was filed on 15th January, 2004 when incident took place on 07th December, 2003. It appears that verification of complainant was recorded on 30th January, 2017. After recording of verification, the Judicial Magistrate, First Class, Shevgaon made order under Section 202 of the Code of Criminal Procedure and directed the

police to make investigation. It appears that police submitted report after making investigation under Section 202 of the Code of Criminal Procedure and they informed that no offence as such was committed on the date mentioned in the complaint. It was also informed that Accused No.1 was discharging the duty at Andheri (West) and at the relevant time. After receipt of this report, the order of issuance of process came to be made on 02nd September, 2004.

6. The aforesaid circumstances show that the Judicial Magistrate, First Class, Shevgaon had felt that statement of complainant was not sufficient for issuance of process and so order of issuance of process was postponed and order was made under Section 202 of the Code of Criminal Procedure. The report under Section 202 of the Code of Criminal Procedure was negative and submissions made show that there was nothing with the report which could have been used by the Magistrate as additional material, the material in addition to the verification of the complainant. In spite of that, order of issuance of process was made on 02nd September, 2004 even against Accused No.1.

7. The aforesaid circumstances show that there was non application of mind. Learned Counsel for complainant placed reliance on

the observations made by the Apex Court in the case reported as **(2004) 7 SCC 768 (Gangadhar Janardan Mhatre Vs. State of Maharashtra and Others)**. This Court has carefully gone through the observations made by the Apex Court. It is true that when report under Section 173 is filed after making investigation under Section 156(3) of the Code of Criminal Procedure, it is open to the Magistrate either to accept the report which is submitted alongwith report under Section 169 or to reject that report. If Magistrate decides not to accept the report under Section 169 of the Code of Criminal Procedure, it is open to the Magistrate either to direct further investigation or to make enquiry as provided under Section 202 of the Code of Criminal Procedure. After that the Magistrate can take cognisance of the matter under Section 190 of the Code of Criminal Procedure. There cannot be dispute over this proposition. The observations can be used in the present matter also. However the aforesaid facts show that the Magistrate had formed opinion that verification of the complainant was not sufficient for issuing process and that is why the order of investigation under Section 202 was made.

8. The submissions and order show that some material was collected by police which was against complainant but Magistrate used verification for issuing process in the matter. It can be said that only on

the basis of previous verification dated 30th January, 2004, the order of issuing process made on 02nd September, 2004. In view of these circumstances, this Court holds that the order cannot sustain in law.

9. The proceeding is filed for quashing of proceeding itself but the learned Counsel for complainant submitted that revision ought to have been filed as order of issuance of process can be challenged by filing revision in the Sessions Court. On this point learned Counsel for applicant placed reliance on some observations made by the Apex Court in the case reported as *AIR 2016 SCW 45 (Prabhu Chawla Vs. State of Rajasthan)*. In this case, the Apex Court has discussed power of this Court given under Section 482 of the Code of Criminal Procedure. The Apex Court had laid down that this power is available irrespective of provisions of Code of Criminal Procedure.

10. In view of this position of law, this Court holds that objection taken by learned Counsel for original complainant is not acceptable. In the result, application is allowed. The proceeding itself is quashed and set aside. Rule is made absolute in those terms.

(T.V. NALAWADE, J.)

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