

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1113 OF 2016

Jabin Nazir Sayyed,
Age 29 years, Occu. Nil,
R/o. C/o. Sayyed Muzaffar
Sayyed Faizoddin, Ibrahim
Shah Colony, Aurangabad.

....Petitioner.

Versus

1. The State of Maharashtra
Through Police Inspector,
Kotwali Police Station,
Ahmednagar, Tq. & Dist.
Ahmednagar.
2. The Superintendent of Police,
Ahmednagar, Dist. Ahmednagar.
3. Nasir Hussain Sayyed,
Age 35 years, Occu. Business,
R/o. Panchpeer Chowdi,
Ahmednagar, Tq. & Dist.
Ahmednagar.

....Respondents.

Mr. Chaudhari M. Mujeebuddin, Advocate for petitioner.

Mr. G.O. Wattamwar, APP for respondent Nos. 1 and 2.

Mr. N.C. Garud, Advocate for respondent No. 3.

CORAM : T.V. NALAWADE, J.
DATED : 23rd January, 2017.

ORAL JUDGMENT :

- 1) Rule. Rule made returnable forthwith. By consent,
heard both the sides for final disposal.

2) The present proceeding is filed to challenge the order of issue process made by the learned Judicial Magistrate, First Class, Ahmednagar in R.T.C. No. 79/2014 and the decision of Criminal Revision No. 6/2015, which is given by the learned Additional Sessions Judge, Ahmednagar. Both the sides are heard.

3) The petitioner is the wife of respondent No. 3. She has already filed proceeding against the husband for offence punishable under section 498-A etc. of Indian Penal Code. The respondent filed private complaint against the present petitioner on 27.1.2014 and he contended that present petitioner committed offence as against him between 14.1.2013 and 10.12.2013. He has made allegations that after 4-5 days of the cohabitation after the marriage, she left his company. He has made allegations that after that, she came with accused Nos. 2 to 5 and then she gave threat to him and he was even assaulted by present petitioner and other accused. In the complaint, specific incident dated 10.12.2013 is mentioned and it is contended that on that day, accused Nos. 2 to 5, who are relatives of present petitioner on parent's side came to him, gave threat of life and assaulted him. Allegations are made that accused Nos. 2 to 5 assaulted him on the instigation given by

present petitioner. The learned J.M.F.C. has issued process for offences punishable under sections 323, 504, 506 and 34 of I.P.C.

4) The contents of the complaint shows that only one specific incident is mentioned and that is of 10.12.2013. The allegations as they are do not show that present petitioner had come to the house of complainant on that day. For using section 34 of I.P.C. in present case, presence of accused on the spot is necessary and actual participation needs to be made out. This requirement of law is not considered and so, there was no application of mind. The other allegations are very vague in nature and no incident as such is mentioned in para No. 1 of the complaint. In view of these circumstances, this Court holds that allowing the proceeding to go on will be the abuse of process of law. This Court holds that the order needs to be set aside.

5) In the result, petition is allowed. The order of issue process made against the present petitioner by the J.M.F.C., Ahmednagar is set aside. The decision of the Sessions Judge, Ahmednagar in Criminal Revision is also set aside. The complaint as against the present petitioner is dismissed. The proceeding is to go on against the remaining accused.

Rule is made absolute in aforesaid terms.

[T.V. NALAWADE, J.]

ssc/