

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

CRIMINAL WRIT PETITION NO. 1431 OF 2016

1. Jitesh Laxman Mahajan .. Petitioners
Age. 25 years, Occ. Education,
2. Laxman Yadav Mahajan
Age. 55 years, Occ. Nil,
3. Sow. Hemlata Laxman Mahajan
Age. 48 years, Occ. Household,
4. Sow. Harsha Liladhar Rane
Age. 28 years, Occ. Household,

All R/o. N-9, K-42/4, Pawannagar,
CIDCO, Aurangabad,
Tq. & Dist. Aurangabad.

Versus

1. Sharad Pundlik Rane .. Respondents
Age. 52 years, Occ. Agri.,
R/o. Nanded, Tq. Dharangaon,
Dist. Jalgaon.
2. The State of Maharashtra

Mr.A.G. Talhar, Advocate for the petitioners.
Mr.Vijay B. Patil, Advocate for respondent No.1.
Mr.S.M. Ganachari, APP for respondent No.2/State.

**CORAM : T.V. NALAWADE, J.
DATED : 11.04.2017**

ORAL JUDGMENT :-

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

2. In the present matter the order of issue process made by the learned J.M.F.C. in Criminal Misc. Application No. 231 of 2015, which was pending in the Court of J.M.F.C., Dharangaon and the judgment in Criminal Revision Application No.153 of 2016, which was pending before the Additional Sessions Judge, Jalgaon are challenged. The Criminal Misc. Application was filed for order under section 156(3) of the Cr.P.C. by respondent - Sharad Rane. The learned J.M.F.C. did not make order under section 156(3) of the Cr.P.C. but instead directed to record verification statement of the complainant and witness. Accordingly statement of verification of complainant and his witness-Kailas came to be recorded. The learned J.M.F.C., then made order to make investigation under section 202 of the Cr.P.C. The police filed report on 26.05.2016 under section 202 of the

Cr.P.C. and informed that the incident had not taken place on 28.06.2015 in Dharangaon. It was reported that on 28.06.2015 probably meeting was held in Jalgaon itself in the office of one Arun Barhate and after that both sides must have filed complaints against each other. The report indicates that on 28.06.2015 meeting was arranged in Jalgaon and not at Dharangaon.

3. The order of issue process made by the learned J.M.F.C.shows that he placed reliance on the verification statement and issued process. The learned Judge of the Sessions Court has held that probably after submission of report under section 202 of the Cr.P.C., one more statement of Kailas was recorded at Exh.4 and there was additional material for making order of issue process. The submissions made and copy of the other verification produced on record show that verification statement of Kailas was recorded on 03.12.2015 i.e prior to the date of submission of report under section 202 of the Cr.P.C.

4. It can be said that the learned J.M.F.C. was satisfied with the material available, before making order under section 202 of the Cr.P.C. to issue process. It can be said that the report of police under section 202 of the Cr.P.C. is not in favour of the complainant. In-spite of these circumstances, the order of the J.M.F.C. does not show that reasons are given as to why the Magistrate was thinking proper to issue process. No material at all is discussed by the learned J.M.F.C.

5. The submissions made show that son of respondent - Sharad Rane has filed divorce proceedings against Harsha Rane. Some matrimonial dispute is going on. The wife had filed report under section 498-A of the I.P.C. against the husband and relatives. In view of these circumstances, it is necessary for the learned J.M.F.C. to consider possibility of false implication and for that, application of mind is necessary. The learned Counsel for the original complainant submits that the complainant may be able to give more material for the

satisfaction of the learned Magistrate for making such order. In view of the submissions made, this Court holds that the order passed by the learned J.M.F.C. cannot sustain in law.

6. In the result, the writ petition is allowed. The order passed by the learned J.M.F.C. is hereby set aside. The Revision filed against the said order is hereby allowed. However, the matter is remanded back to the learned J.M.F.C. The learned J.M.F.C. is to give opportunity to the complainant to give more material and only after that the order is to be passed by the learned J.M.F.C. All points are kept open.

7. The Criminal Application is allowed in above terms. Rule made absolute accordingly.

[T.V. NALAWADE, J.]