

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Criminal Revision No. 12 of 2017
[Shaikh Munnawar Abdul Sattar Vs. State of Mah, City Kotwali PS, Akola & others]

**Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.**

Court's or Judge's orders

Mr. Junaid Ahmed, Adv., for the Applicant.
 Mr. C. A. Lokhande, Addl. Public Prosecutor for non-applicant no.1.
 Mr. S. V. Sohoni, Adv., for non-applicant nos. 2,4 and 5.
 Mr. S. P. Dharmadhikari, Sr. Adv., with Mr. U. P. Dable, Adv., for non-applicant no.3.

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CORAM : A.S. CHANDURKAR, J.

**Date when
arguments
were**

concluded : 29th November, 2017

**Date when
order is**

pronounced : 15th December, 2017

01. This Criminal Revision Application has been filed by the Complainant as he is aggrieved by the judgment dated 14th October, 2016 passed by learned Additional Sessions Judge-2, Akola, setting aside the order issuing Process and remitting the matter to the Trial Court to reconsider that aspect in the light of observations made in the impugned order.

02. Facts, in brief, are that the complainant is the proprietor of a Firm doing work of maintenance and repairs of vehicles in the Fire Department of the Municipal Corporation. According to him, in the matter of making payments of amounts to which he was entitled, commission to the extent of twenty per cent was demanded from him. He, therefore, on 19th January, 2016 filed a Complaint before the learned Judicial Magistrate First Class alleging commission of offence under Sections 120-B, 420, 409, 468, 471, 504 and 506 of the Indian Penal Code. On 15th February, 2016, the learned Magistrate directed the Complainant to proceed in accordance with provisions of Section 200 of the Code of Criminal Procedure, 1973 [for short, "the Code"] by examining himself and his witnesses. Thereafter, the complainant examined himself and his witnesses. On 28th March, 2016 after perusing the complaint and statement of the complainant, the learned Magistrate postponed the issuance of Process as the accused persons were residing beyond the jurisdiction of the Court of learned Magistrate. Directions were issued to the Police Station Officer to investigate and submit a report under Section 202 of the Code. Pursuant thereto, the Police Station Officer submitted his report vide Exh.8. In this report, the Police Station Officer observed that prima facie the dispute was of a civil nature. Thereafter, on 16th July, 2016, the learned Magistrate proceeded to issue Process

against the accused persons herein and directed the complaint to proceed as a Regular Criminal Case. Being aggrieved, the non-applicant nos. 2 to 5 filed a Revision Application before the Sessions Court under Section 397 of the Code. By the impugned order that Revision Application was allowed and the matter was remitted to the learned Magistrate for re-consideration. This order is under challenge in the present proceedings.

03. Shri Junaid Ahmed, learned counsel for the complainant, submitted that the learned Magistrate was justified in the facts of the case in directing issuance of Process. The learned Judge of the Sessions Court was not justified in remanding the proceedings in exercise of revisional jurisdiction under Section 397 of the Code. Referring to the provisions of Chapters-XV & XVI of the Code, it was urged that these provisions operate in different fields. As per the judgment of the Honourable Supreme Court in **Nupur Talwar Vs. Central Bureau of Investigation & another** [AIR 2012 SC 1921], the learned Magistrate was not required to record reasons as to why he was not accepting the report submitted by the Police Station Officer under Section 202 of the Code. That report was not binding on the learned Magistrate and hence on the basis of material available on record, issuance of Process was justified. It was then submitted that sanction for prosecution under Section 197 of the Code was not necessary considering the nature of allegations made against the accused persons. From

said allegations, it could be seen that the alleged acts were not committed in discharge of official duty. It was, therefore, submitted that the order passed by the Revisional Court was liable to be set aside, especially when such revisional power was expected to be exercised sparingly. The learned counsel also placed reliance on the following decisions:-

- [a] **Kishan Lal Vs. Dharmendra Bafna & another** [2009 Cri. L.J. 3721],
- [b] **Inspector of Police & another Vs. Battenapatla Venkata Ratnam & another** [(2015) 13 SCC 87],
- [c] **Bhagat Ram Vs. Surinder Kumar & others** [(2004) 11 SCC 622],
- [d] **Rakesh Kumar Mishra Vs. State of Bihar & others** [(2006) 1 SCC 557],
- [e] **K. T. Joseph Vs. State of Kerala & another** [(2009) 15 SCC 199], and
- [f] **Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi & others** [(1976) 3 SCC 736].

04. Per contra, Shri S. P. Dharmadhikari, learned Senior Counsel for non-applicant no.3 and Shri S. V.

Sohoni, learned counsel for non-applicant nos. 2,4 and 5, supported the order of remand. The learned Senior Counsel submitted that having directed the Police Station Officer to submit a report after postponing the issuance of Process, the learned Magistrate ought to have considered that report and should have made some prima facie observations as to why he was not inclined to accept the same. It was submitted that even though that report was not binding upon the learned Magistrate, in absence of any fresh material other than that which was on record prior to calling such report, Process was not liable to be issued. The order issuing Process was, therefore, based on the same material which was already on record and the same had prompted the learned Magistrate to direct the Police Station Officer to submit a report under Section 156 (3) of the Code. For said purpose, the learned Senior Counsel placed reliance on the decision of Honourable Supreme Court in **Mohammad Ataullah Vs. Ram Saran Mahto** [(1981) 2 SCC 266]. It was then submitted that the accused persons were entitled for protection under Section 197 of the Code and as the allegations made against them had a direct connection with the discharge of official duty, it was necessary for the complainant to have first obtained a sanction for prosecuting them. It was urged that by the impugned order, the proceedings had merely been remanded and the complainant would get a fresh opportunity to satisfy the learned Magistrate that a case was made out for

issuance of Process.

Shri C. Lokhande, learned Addl. Public Prosecutor appeared for non-applicant no.1.

05. I have heard the learned counsel for the parties at length and I have also perused the documents placed on record.

06. The factual aspects of the matter are not in dispute. After the complaint came to be filed, the learned Magistrate initially directed the complainant to proceed as per provisions of Section 200 of the Code by examining himself and his witnesses. After this was done and the learned Magistrate perused that material, he postponed the issuance of Process and called for a report under Section 202 of the Code. Pursuant thereto, this report was submitted at Exh.8. As per that report, it was opined that the dispute was of a civil nature. On consideration of the material that was then placed before the learned Magistrate, he issued the order issuing Process on 16th July, 2016.

07. In *Mohammad Ataullah* [supra], somewhat similar facts were considered by the Honourable Supreme Court. On receipt of a complaint, investigation was directed under Section 202 of the Code. A report merely stating that a prima facie case was made out against three accused and no case was made against other three accused was submitted. On that basis, the

learned Magistrate issued Process against those accused persons who were prima facie named in that report. On this order being challenged, the High Court rejected the petition. Before the Honourable Supreme Court, it was urged that in absence of any additional material and merely on the basis of the conclusion of the Investigating Officer, the Process was issued. It was observed that when the learned Chief Judicial Magistrate took cognizance of the case and ordered issuance of Process against the accused persons, there was no additional material placed before him, except that which was already available when the investigation was ordered. The order issuing Process was, thus, set aside.

08. Perusal of the order passed by the learned Magistrate issuing Process indicates that he has not at all referred to the report submitted by the Police Station Officer. He has referred to the statement of the complainant and the statement of one Shri Manmothe that was already on record. Though there cannot be any dispute that the report of the Police Station Officer is not binding on the learned Magistrate, having postponed the issuance of Process as the material already available was not found sufficient, it was expected that the learned Magistrate would refer to that report and at least observe prima facie that he was not inclined to accept the report of the Police Station Officer. In absence of any such additional material being available on record and by issuing Process on the basis of the

material which was already existing, it could be said that the order issuing Process amounted to reviewing the earlier order by which a report under Section 202 of the Code was called. Noticing this aspect of the matter, the learned Judge of the Sessions Court remanded the proceedings for fresh consideration. In these facts, therefore, the decisions relied upon by the learned counsel for the applicant do not assist his case. Similarly, it is not necessary at this stage to adjudicate the aspect of sanction under Section 197 of the Code which can be urged before the learned Magistrate. I do not find any jurisdictional error committed by the Sessions Court warranting exercise of revisional jurisdiction under Section 401 of the Code. Moreover, right of the complainant to invoke revisional jurisdiction is not a statutory right and in absence of any irregularity or illegality, that jurisdiction is not required to be exercised in the facts of the present case.

09. In view of the foregoing discussion, I do not find any merit in the Criminal Revision Application. The same is accordingly dismissed by clarifying that the learned Magistrate shall consider the matter on its own merits and in accordance with law.

Judge