

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

CRIMINAL WRIT PETITION NO.543 OF 2018

1. Umesh s/o. Baban Kundale
Age : 30 years, Occu : Service,
R/o. Hanumant Wadi, Kava Naka,
Latur, District Latur.
 2. Janardhan @ Baban s/o. Venkat Nilewad
Age : 42 years, Occu : Private Driver
R/o. Hadolti, Tq. Ahmedpur,
Dist. Latur
 3. Shalubai w/o Madhav Gojewad
Age : 46 years, Occu : Household,
R/o. Hadolti, Tq. Ahmedpur,
Dist. Latur
- .. Petitioners**

Versus

1. The State of Maharashtra
Through the Police Station
Police Station Ahmedpur,
Tq. Ahmedpur, District Latur
 2. Sunil Dattatrya Patil
- .. Respondent**
.. (Deleted as per order
dt.22.11.2018)

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Advocate for Petitioners : Shri Yogeshwar L. Bidve &
Shri Prithvi A. Rathod ;
APP for Respondent – State : Shri S.P. Sonpawale.

...

WITH

**CRIMINAL APPLICATION NO.1664 OF 2018
IN
CRIMINAL WRIT PETITION NO.543 OF 2018**

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CORAM : PR. BORA, J.

Dated: December 03, 2018

ORAL JUDGMENT :

1. Heard the learned Counsel appearing for the petitioners.

2. The order dated 11.06.2012 passed by Judicial Magistrate, First Class, at Ahmedpur in Regular Criminal Case No.79 of 2012 is questioned in the present writ petition. Vide the impugned order, the learned JMFC had issued process against the present petitioners for the offences under Sections 177 and 205 r.w. 34 of Indian Penal Code. The learned Counsel submitted that, without there being any sufficient material for issuance of process against the petitioners for the aforesaid offences, the JMFC Court has wrongly issued the process against the present petitioners.

3. Material on record reveals that, earlier there were disputes between the present petitioners on one side and Shashikala Balaji Mulke and others on the other side. In the year – 2011, upon happening of one incident both the groups filed criminal cases against each other for the offences under

Sections 143, 147, 148, 149, 324, 323, 504 & 506 of the Indian Penal Code, which were registered as R.C.C. No.181 of 2011 and R.C.C. No.185 of 2011. Both the groups ultimately settled the dispute amongst them amicably and accordingly had applied for compounding of the offences against each other.

4. Material on record further reveals that, on 08.05.2012 both the aforesaid criminal cases were placed before the JMFC Court, at Ahmedpur presided over by JMFC Shri Sunil Dattatraya Patil. On the said date, according to the complaint filed by JMFC Shri S.D. Patil, the present petitioner no.1 appeared before the said Court in place of Ganesh Madhav Gojewad, one of the accused in the said case. The present petitioner no.3 on the said date stated before the Court that, Ganesh is her son and since Ganesh was unable to remain present before the said Court on that date, she had asked the present petitioner no.1 to appear in place of Ganesh. The present petitioner no.2 at that time had allegedly told present petitioner no.1 to tell his name as Ganesh Madhav Gojewad.

5. Having considered the allegations as above against

the present petitioners, it does not appear to me that, the learned Trial Judge has committed any mistake in issuing process against the petitioners for offences under Sections 177 and 205 r.w. 34 of I.P.C.

6. It was sought to be contended by the learned Counsel for the petitioners that, before filing of the complaint against the present petitioners, the procedure as laid down under Section 195 (1) and 340 of the Code of Criminal Procedure has not been followed. It was also the contention of the learned Counsel that, the complainant i.e. JMFC Shri S.D. Patil has filed the complaint only because he has been instructed to file such complaint, whereas it should have been the independent decision of the complainant whether any such case is made out so as to proceed against the present petitioners.

7. I do not see any substance in the argument so made. On perusal of the complaint, it is quite evident that, the learned JMFC only has reported the incident to his Superior Officer as it was his responsibility to communicate the events which had

occurred in his Court. However, to proceed against the present petitioners is certainly the decision of the said JMFC. Thus, there appears no substance in the objection raised by the petitioners that, the proceeding instituted against the petitioners is not in consonance of Section 340 of the Code of Criminal Procedure. All these objections are liable to be turned down.

8. Secondly, the objection raised by the petitioners as about the order passed below Exh.33 on 15.03.2018 is also unsustainable. The learned JMFC has rightly rejected the application filed by the present petitioners seeking copies of the internal correspondence between JMFC, Ahmedpur and the District Judge, Latur. I, therefore, see no merit in the writ petition. It deserves to be dismissed and is accordingly dismissed.

9. By filing Criminal Application No.1664 of 2018, the applicants-petitioners have sought amendment in the writ petition. Perusal of the application reveals that, some legal submissions were sought to be incorporated by way of said

amendment. Sum and substance of the amendment sought to be made is that, the proceedings instituted against the petitioners are not in consonance of Section 340 of the Code of Criminal Procedure. I have already taken note of the argument so advanced and have turned down the said objections. No formal order therefore requires to be passed in the said criminal application and in view of the dismissal of the writ petition, the said application also stands disposed of.

(PR. BORA, J.)