

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 775 OF 2007

1. Amar s/o Vijay Jadhav
Age : 43 years, Occu : Deputy Commissioner
of Police (Crime),
R/o Flat No. 403, SEA WOOD Estate,
Palm Beech Road, Nerul,
Navi Mumbai.
2. Medha w/o Jaiprakash Kadam
Age : 45 years, Occ : Police Inspector,
R/o 42, Arundatta Co-operative Housing Society,
4th Floor, Akas Ganga Complex, Rabodi No.2,
Thane (West).
3. Ramesh s/o Ratan Patil
Age : 47 years, Occ : Dy. S.P.
R/o Detective Training Center,
Nashik.
4. Mohan s/o Baban Zine
Age : 65 years, Occ : Retired (Pensioner),
R/o Plot No. 82, Naskin Nagar,
Savedi, District Ahmednagar.
5. Murlidhar s/o Raghunath Avhad
Age : 37 years, Occ : Police Constable,
R/o Shevgaon, Tq. Shevgaon,
Dist. Ahmednagar.
6. Arun s/o Asaram Aghade
Age : 46 years, Occ : Head Constable,
R/o Rahata Police Lane,
Rahata, Dist. Ahmednagar.

7. Kailas s/o Bhagwan Londhe
Age : 41 years, Occ : Police Constable,
Dist. Ahmednagar.
8. Baban s/o Natha Sathe
Age : 42 years, Occ : Driver,
R/o Kopargaon, Tq. Kopergaon,
Dist. Ahmednagar.

... Petitioners.

Versus

1. The State of Maharashtra
(Copy to be served on Public
Prosecutor, High Court of
Judicature of Bombay, Bench
At Aurangabad).
2. The Police Inspector,
Kopargaon Police Station,
Kopargaon, Tq. Kopargaon,
Dist. Ahmednagar.
3. The Judicial Magistrate
First Class-4. Kopargaon,
Tq. Kopargaon, Dist Ahmednagar.
4. Sanjay Baburao Chavan
Age : 38 years,
R/o Gandhi Nagar, Kopargaon,
Tq. Kopargaon, Dist. Ahmednagar.
5. Sham Kiran Manjul
Age : 36 years,
R/o Mahadeo Nagar, Kopargaon,
Tq. Kopargaon, Dist. Ahmednagar.
6. Ganesh Ashok Jadhav
Age : 33 years,
R/o Indira Nagar, Kopargaon,
Tq. Kopargaon, Dist. Ahmednagar.

7. Machindra Gulab Gaame
Age : 30 years,
R/o Madi Budurk,
Tq. Kopargaon, Dist. Ahmednagar.
8. Kailash Ashok Manjul
Age : 26 years,
R/o Mahadeo Nagar, Kopargaon,
Tq. Kopargaon, Dist. Ahmednagar.
9. Santosh Ramdas Hone
Age : 26 years,
R/o Mahadeo Nagar, Kopargaon,
Tq. Kopargaon, Dist. Ahmednagar.
10. Ritesh Ramchandra Kudale
Age : 36 years,
R/o Gandhi Nagar, Kopargaon,
Tq. Kopargaon, District Ahmednagar.
11. Gorakh Dagdu Sonawane
Age : 26 years,
R/o Mahadeo Nagar, Kopargaon,
Tq. Kopargaon, Dist. Ahmednagar. ... Respondents.

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Mr. V. R. Dhorde, Senior Advocate for the Petitioners.

Mr. B. V. Virdhe, APP for Respondent Nos. 1 to 3.

Mr. A. S. Khedkar, Advocate h/f Mr. N. R. Bhavar, Advocate for
Respondent Nos. 4 to 11.

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CORAM : V. K. JADHAV, J.
RESERVED ON : 19.09.2018
PRONOUNCED ON : 30.10.2018.

JUDGMENT :

1. Being aggrieved by the order of issuance of process dated

11.04.2001 under Sections 323, 324 r/w 34 of IPC passed by Judicial Magistrate, First Class, Kopargaon in R.T.C. No. 115 of 2001, the present petitioners, who are serving on various posts in the police department, preferred application Exhibit 22 to recall the said order of issuance of process passed against them before the same Court and the learned Judicial Magistrate, First Class, by order dated 15.02.2006, rejected the said application. Hence this Writ Petition.

2. Brief facts giving rise to the present criminal writ petition are as follows:

a. Around 24th May and 25th May of 2000, a communal riot took place in Kopargaon town. There was an organization known as Vande Mataram Organization. There is a temple known as Shri Jabreshwar Hanuman Mandir, also one Dargah near the said temple. There are allegations that the management of the said Dargah made encroachment on the site of the temple. The members of the said Vande Mataram Organization started making demand to remove the said encroachment around the temple and on 20th May, 2000, also gone on fast. On 24th May, 2005, the said organization gave a call for “Kopargaon Band” indefinitely. Even

the members of the said organization had tried to install the idol of Lord Hanuman and displayed on the notice board to that effect in the town. In consequence thereof, the peace and tranquility of Kopergaon town came to be disturbed heavily. As a result thereof, the orders under Section 144 of Cr.P.C. came to be issued in Kopergaon town with effect from 25.05.2000 to 30.05.2000 up to 12 'O' Clock and it was specifically informed that more than five people should not come together alongwith deadly weapons etc. Furthermore, the District Magistrate had issued the prohibitory orders under Section 31(1)(3) of the Bombay Police Act. However, in spite of those two orders issued by the District Magistrate, the overall atmosphere of Kopergaon town was tense because of the call given by the said organization and as a result thereof, the riot broke on 25.05.2000. There were incidents of fire and arson in Kopergaon town. The shops and the properties belonging to a particular community were set on fire. The truck of one Aminabee was set on fire and it was burnt. Further, there was an attempt to set on fire her house in the night of 25.05.2000. In order to control the situation and also to maintain peace and tranquility in the town, the police resolved to lathi charge between the night of 25.05.2000 to 26.05.2000. Even the police authorities had taken

steps to arrest some of the accused persons who were responsible for setting the public and private properties on fire.

b. According to the petitioner, thereafter, the offence came to be registered bearing C.R. No. 117 of 2000 under Sections 143, 147, 120-B, 435, 436 r/w 511 of the IPC and under Section 37(1) r/w Section 135 of the Bombay Police Act. Similarly, prior to this, there was another crime which came to be registered bearing C.R. No. 115 of 2000 under Sections 143, 147, 120-B, 435, 436 r/w 511 of IPC and under Section 37(1) read with 135 of the Bombay Police Act. Some accused persons came to be arrested in connection with crime no. 117 of 2000. They were arrested in the early morning at about 4.00 to 4.30 a.m. and immediately the arrest panchnamas were drawn. Those accused persons had injuries sustained by them during the lathi charge and accordingly, those persons were referred for their medical examination in the morning at about 10.00 a.m. They were examined by the Government Medical Officer, Kopergaon on 26.05.2000. All those accused persons were produced before the learned Judicial Magistrate, First Class on 26.05.2000 at about 4.30 p.m. and they were remanded in police custody till 30.05.2000. Thereafter, those accused persons were

produced before learned Judicial Magistrate, First Class on 30.05.2000. Even the Investigating Officer demanded their police custody remand for further investigation into the crime. However, on 30.05.2000, those accused made a complaint before the learned Judicial Magistrate, First Class about the ill-treatment and beating extended to them by the police during their police custody remand and further complained about the injuries sustained by them in the said police custody torture. In the result, the learned Magistrate gave them magisterial custody and the learned Magistrate, on 30.05.2000 itself, sent them for medical examination to the Medical Officer, Kopergaon. The Medical Officer, Kopergaon examined those persons at about 8.30 p.m. and again on 01.06.2000 at about 9.00 a.m. The said Medical Officer has issued medical certificates. Those accused persons were examined by two Medical Officers. The learned Judicial Magistrate, First Class, Kopergaon, thereafter, recorded statements of the accused persons on 05.06.2000. Those accused persons have made allegations with regard to the torture and beating extended to them during police custody remand. Those accused persons on 28.06.2000, for the first time, made a statement involving names of the present petitioners as persons who have beaten them in police custody on 25.05.2000.

The learned Magistrate, considering their statements, has registered the complaint *suo motu* under Sections 324, 323 r/w 34 IPC bearing R.T.C. No. 115 of 2001 and issued process against the petitioners by order dated 11.04.2001 under Section 324, 323 r/w 34 of IPC. Hence this Writ Petition.

3. The learned senior counsel for the petitioners submits that when those accused persons (respondent nos. 4 to 11 herein) were produced before the Judicial Magistrate, First Class on 26.05.2000 at about 4.30 p.m. in connection with crime no.117 of 2000, they had no complaint about ill-treatment in the police custody. The learned counsel submits that thereafter, the learned Magistrate had extended the period of police custody till 30.05.2000. However, during their police custody remand, certain political leaders and local leaders of Shivsena party came to meet them. They had informed those accused persons (respondent nos. 4 to 11 herein) to make allegations against the police authorities before the Magistrate about police torture and ill-treatment. On 30.05.2000, an entry to that effect was made in the station diary at about 21.55 hours mentioning therein that various political leaders of Shivsena parties and local MLAs met the accused and further advised them

to implicate the police officials by making allegations against them. Learned Senior counsel submits that due to the riots in the Kopargaon town in the night between 25.05.2000 and 26.05.2000 and since there were incidents like looting, arson, setting the public and private properties on fire by the mob, the action was taken by the police officials with a view to control the situation and accordingly, they had taken recourse to lathi charge to disperse the mob. Even the Kopargaon Police Station had also effected arrest of the present respondents/accused persons in connection with crime no. 115 of 2000 and 117 of 2000 registered with Kopargaon Police Station. Some eight accused persons (respondent nos. 4 to 11 herein) were arrested in connection with crime no. 117 of 2000 registered with Kopargaon Police Station and immediately the arrest panchnama was prepared which clearly demonstrates that they had certain injuries. The respondent nos. 4 to 11, after their arrest in connection with crime no. 117 of 2000, were sent for their medical examination to the Medical Officer at about 10.00 a.m. and they have made statements that they have sustained said injuries in the lathi charge. Even on 26.05.2000, when they were produced before learned Judicial Magistrate seeking their further police custody remand, they have categorically made statements

before the Magistrate that they were not ill-treated by the police officials during their police custody. In consequence thereof, the learned Judicial Magistrate remanded them in police custody till 30.05.2000. Learned senior counsel submits that so far as the medical certificates which came to be issued on 30.05.2000 and 01.06.2000 in respect of respondents-accused persons are concerned, they have sustained injuries before six to seven days and the injuries are similar as per the medical certificates which came to be issued on 26.05.2000 at about 10.00 a.m. after their medical examination conducted on arrest. Learned senior counsel submits that the Learned Magistrate has erroneously taken cognizance of the said complaint, may be due to the pressure of the then situation. However, no case is made out at all against the present petitioners who are the Deputy Superintendent of Police and other police officials working in the police department.

4. Learned Senior counsel submits that the act alleged as against the present petitioners can be said to be an act in discharge of their official duty and as such, previous sanction of the competent authority would be a pre-condition for the court for taking cognizance of the offence.

5. Learned Senior counsel, in order to substantiate his contentions, placed reliance on the case of *Abdul Wahab Ansari vs State of Bihar & Anr.*, reported in *2001 All M.R. (Cri) 183 (SC)*.

6. Learned APP has made submissions in the same manner as per the submissions of the learned senior counsel for the petitioners. Learned APP submits that those accused persons dishonestly and mala-fidely made false and incorrect statements against the present petitioners. Names of the petitioners/Police Officials came to be implicated almost after a period of one month and thereafter, their statements were recorded on 28.06.2000. Learned APP submits that no case is made out to issue process against the present petitioners.

7. Learned counsel for the respondents/accused persons submits that under the directions of the Magistrate, the Assistant Superintendent of the Court has lodged the complaint bearing Criminal Case No. 115 of 2001 in terms of the statements of those accused persons recorded by the Magistrate. There are allegations against each and every petitioner with a specific role ascribed to them. The learned counsel submits that the alleged act of beating

by the police officials to those accused persons during their police custody remand falls completely outside the scope of duties of the police officials and as such, they are not entitled for protection. Learned counsel submits that the learned Magistrate has correctly issued process. There is no substance in the Writ Petition. He submits that the Writ Petition is liable to be dismissed.

8. Learned counsel for respondent nos. 4 to 11, in order to substantiate his contentions, placed reliance on following cases:

1. *State of Maharashtra vs Atma Ram*, reported in *AIR 1966 SC 1786*.
2. *Choudhury Parveen Sultana vs State of West Bengal & Anr.*, reported in *AIR 2009 SC 1404*.

9. Admittedly, there was a tense situation in Kopargaon town on the relevant dates due to the communal riots. The District Magistrate had issued prohibitory orders. However, even then, there were incidents such as arson, looting, setting on fire the public as well as private properties etc. In consequence thereof, the police officials on duty resorted to lathi charge on an unruly mob. Furthermore, two crimes came to be registered in Kopargaon Police Station and the police officials also effected arrest of certain

accused persons in connection with those crimes. On careful perusal of the copy of FIR of crime no. 117 of 2000 which came to be registered on 26.05.2000, it appears that the crime came to be registered for the offence under Sections 435, 143, 147, 149 etc. on 26.05.2000. Even the concerned Investigating Officer has prepared a separate arrest panchnama in respect of each and every accused person (respondent nos. 4 to 11 herein). On careful perusal of the said arrest panchnamas, I find that in almost each and every arrest Panchnama, the injuries on the person of the said accused persons (respondent nos. 4 to 11 herein) have been specifically noted. It is necessary to repeat here again that in order to control over the situation and also the unruly mob, the police officials on duty resorted to the lathi charge and also registered crime by effecting arrest of respondent nos. 4 to 11. It is also part of the record that respondent nos. 4 to 11 were sent for their medical examination on 26.05.2000 and they were examined on that day and the medical certificates came to be issued in respect of the injuries on their person. The injuries as mentioned in the arrest panchnamas and the injuries on the person of respondent nos. 4 to 11 recorded by the concerned Medical Officer during their medical examination on 26.05.2000 are shown in the following chart.

Sr.	Name of accused	Injuries as per the arrest panchnama dated 26.05.2000	Injuries as per the Medical Certificate dated 26.05.2000
1.	Sanjay Baburao Chavan	1. Swelling of left wrist. 2. bruised skin of the finger of left hand. 3. Swelling of the middle portion of right thigh.	1. Contusion of left 1/3 rd forearm 3x2 semitend. 2. Blackish discoloured left finger proximal 4x2 tend 3. Contusion on left thigh 1/3 rd 5x2 black 4. Contusion (red discoloured) thorax (black oblique) 30x2
2.	Sham Kisan Manjul	1. Pain in left and right forearm. 2. Swelling on back horizontal. 3. Swelling at the back side of left shoulder. 4. Swelling on back side of right leg.	1. Pain and Tendon on left and right forearm 1/3 rd 2. Cont. on Thorax part horizontal through spina 15x3 tendon. 3. Cont. On left infra scapular region 3x2 tendon. 4. Swelling right leg.
3.	Ganesh Ashok Jadhav	1. Red skin on left and right shoulders.	1. Pain over right palm. 2. Reddish skin thorax (scapular region 30x5 tend) 3. P and T right leg mid 1/3 rd
4.	Machindra Gulab Gaame	1. Red skin near spine. 2. Reddish skin of both palms.	1. Pain over scapular region left side. 2. Tenderness and pain over left leg just below knee. 3. Wound over right great toe yellowish discolouration.
5.	Kailash Ashok Manjul	1. Swelling on back horizontal. 2. Swelling at the back side of shoulder. 3. Swelling on left hand. 4. Abrasion on left leg.	1. Cont. on right forearm 1/3 rd amount 7x3 tendon bluish. 2. Abrasion on leg mid 1/3 rd amount 1x1. 3. P and J leg amount mid 1/3 rd . 4. Swelling left forearm 1/3 rd 2x2. 5. Contusion on back horizontal inferior to scapular 15x1½ & 15x2 right and left scapular region. 6. on left arm part proximal 1/3 rd 3x2.

6.	Santosh Ramdas Hone	1. Swelling on right side of chest. 2. Swelling on backside of right shoulder. 3. Swelling on right leg.	1. Swelling right side chest 2x2. 2. Swelling on right calf 4x2. 3. Contusion left scapula 5x2.
7.	Ritesh Ramchandra Kudale	1. Swelling on backside of left shoulder. 2. Pain in right hand.	1. Tendon on right hand palm. 2. Contusion on left supra scapular region 5x2. 3. Bitten by stick.
8.	Gorakh Dagdu Sonawane	1. Swelling and discolouration on right leg. 2. Swelling and discolouration on right shoulder.	1. Cont. on right calf 4x2. 2. cont on right scapular region 10x2 oblique. 3. Horizontal stick marks blackish.

Note: As per the remarks of the Medical Officer, those injuries might have been caused within 24 hours.

10. On careful perusal of the medical certificates issued in respect of respondent nos. 4 to 11 on their examination on 30.05.2000 and 01.06.2000, I find almost the same injuries with the specific remarks of the Medical Officer that those injuries are caused within 5/7 days. There is a change in colour because of the examination of said injuries after a period of 5/7 days of the incident.

11. It is also a part of record that respondent nos. 4 to 11 have not made any complaint before the Magistrate when they were produced before the Magistrate in connection with their arrest in

crime no. 117 of 2000. There is also an entry in the station diary about the advice given by the political leaders to the respondents for making complaint about the police torture so that they will be remanded in magisterial custody. Needless to say that the purpose behind such advice is that after the remand in magisterial custody, the respondents would get bail from the court. It is to be mentioned here that even on 30.05.2000, the Investigating Officer in the said crime no. 117 of 2000 had demanded police custody.

12. It appears that the Learned Magistrate has not gone through those papers. In fact, the learned Magistrate should have taken care to go through all the relevant papers when allegations have been made about torture in police custody to respondent nos. 4 to 11 after their arrest in connection with crime no. 117 of 2000. Thus, considering the entire aspects of the case, it appears that in the facts and circumstances of the present case, previous sanction of the competent authority is also necessary. In view of the same, the order of issuance of process passed by the Magistrate is liable to be quashed and set aside. Even the learned Magistrate has not considered the application filed by the present petitioners for recalling the said order of issuance of process. This Writ Petition

came to be filed in the year 2007. It would, thus, be inappropriate and unjustifiable to send the petitioners to file a revision before the Sessions Court against the order of issuance of process. It appears that the allegations have been made with some ulterior motive. Hence, I proceed to pass the following order:

ORDER

- I. Criminal Writ Petition No. 775 of 2007 is hereby allowed.
- II. The order of issuance of process under Sections 324, 323 r/w 34 of IPC dated 11.04.2001 passed by the Judicial Magistrate, First Class, Kopargaon in Criminal Case bearing R.T.C. No.115 of 2001 is hereby quashed and set aside.
- III. The complaint bearing R.T.C. No.115 of 2001 pending before the Judicial Magistrate, First Class, Kopargaon is hereby dismissed as against the present petitioners.
- IV. Rule is made absolute accordingly. The Criminal Writ Petition is disposed of.

(V. K. JADHAV, J.)

vre/