

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

CRIMINAL WRIT PETITION NO. 1306 OF 2017

Hajibhai Mohmmad Isak Hannure,
Age: 61 years, Occupation- Business,
R/o. Gandhi Nagar, Kallam,
Tq. Kallam, Dist. Osmanabad.

... **PETITIONER**
(Orig. Complainant)

Versus

1] The State of Maharashtra,
Through A.P.P. High Court of
Judicature of Bombay, Bench
At Aruangedabad.

2] Jayprakash S/o Premraj Runwal
Age: 50 Years, Occu.: Business,
R/o: Main Road Kallam,
Tq. Kallam, Dist. Osmanabad.

3] Sunita W/o Jayprakash Runwal
Age: 47 Years, Occu.: Household,
R/o: As above.

4] Mayur S/o Jayprakash Runwal
Age: 24 Years, Occu.: Business,
R/o: As above.

... **RESPONDENTS**
(Resp.No. 2 to 4 Orig. Accused)

Mr. B. R. Sontakke Patil, Advocate for the Petitioner.
Mr. V.M. Kagne, APP for Respondent no.1 / State.
Mr. A. T. Jadhavar, Advocate for respondent nos. 2 to 4

CORAM : MANGESH S. PATIL, J.
RESERVED ON : 26.06.2018
PRONOUNCED ON : 02.07.2018

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JUDGMENT:

Rule. Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally.

2. This is Writ Petition under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure.

3. The facts leading to the filing of this writ petition may be summarized as under.

The petitioner filed Criminal Case No. 370 of 2015 in the Court of Judicial Magistrate First Class at Kallam, Dist.Osmanabad against the respondents no. 2 to 4 *inter alia* alleging that these respondents were disgruntled with him since he had purchased a plot which was adjacent to their plot. They wanted to purchase it but instead he had succeeded in buying it. On account of such annoyance, on 01.08.2015 at 9.30 a.m. they allegedly abused and assaulted him. He approached the police and a non-cognizable Case No. 302 of 2015 was registered under Sections 323, 504, 506 of the Indian Penal Code on the same day. He then filed a complaint on 02.09.2015 in the Court of the Judicial Magistrate First Class. The learned Magistrate

recorded his statement under Section 200 of the Code of Criminal Procedure which is popularly known as a statement under verification. By the order dated 09.02.2016 the learned Magistrate directed a process to be issued against them under Section 203 of the Code of Criminal Procedure.

4. Aggrieved by such order the respondent nos. 2 to 4 preferred Criminal Revision Application No. 42 of 2016 before the Sessions Judge at Osmanabad. By the impugned judgment and order the learned Sessions Judge allowed the revision and by quashing and setting aside the order issuing process, dismissed the complaint. Hence this writ petition.

5. The learned advocate for the petitioner would strenuously submit that the impugned order is patently illegal and has been passed without application of mind. The observations are perverse and arbitrary. The learned Sessions Judge has ignored the scope and the powers of the revisional court under Section 397 of the Code of Criminal Procedure. The order passed by the Magistrate did not suffer from any apparent illegality, perversity or arbitrariness without which the Sessions Judge could not have substituted his own views by exercising revisionary powers. It was absolutely not necessary for the petitioner to have examined any witnesses at that stage since the Magistrate was invoking the powers under Section 200 of the Code of

Criminal Procedure and had not proceeded to direct any enquiry under Section 202 of the Code of Criminal Procedure by deferring the process. The learned Magistrate after application of mind had passed the order of issuance of process. Even he had specifically mentioned about having gone through the statement of verification. Such a statement/verification to be recorded under Section 201 of the Code of Criminal procedure is only to enable the Magistrate to ascertain whether there is a substance in the allegations being levelled. It was not supposed to be an evidence, the stage for recording of which would occur subsequently.

6. The learned advocate would further point out that the petitioner had approached the police before filing the private complaint. He had specifically mentioned this fact in the complaint before the Magistrate as well as in his statement under verification and still the learned Sessions Judge clearly over looked such material and made a perverse observation to the effect that he had not filed any complaint with the police before approaching the Magistrate. The learned Sessions Judge has also erred in reaching the conclusion, sans any material that it was a purely civil dispute and no incident had taken place. Thus according to the learned advocate, the impugned order suffers from gross illegality, perversity and arbitrariness and needs to be interfered with.

7. The learned A.P.P. submitted that the writ petition may be decided on its own merits.

8. The learned advocate for respondent nos. 2 to 4 submitted that no sufficient and cogent reasons were assigned by the learned Magistrate while directing the process to be issued. He had ignored the material aspects and had readily accepted the request of the petitioner without any basis. The learned Magistrate ought to have allowed the petitioner to substantiate his allegations which he had failed to do so. Even according to the petitioner primarily the dispute was on the ground of his purchasing a plot. It would be farfetched to think that simply because the respondent nos. 2 to 4 were intending to purchase it they would assault him. It was also highly improbable that the petitioner having purchased the plot in the year 2015 and without there being any intervening incident, after couple of years the respondents no. 2 to 4 could have assaulted him for that reason. Similarly even there was a delay in filing the complaint. Though the incident is alleged to have taken place on 01.08.2015, the complaint was filed on 02.09.2015 and no explanation was given either in the complaint or even in the statement under verification. Therefore no fault can be found with the observation of the learned Additional Sessions Judge in referring to this circumstance to disbelieve the petitioner.

9. I have carefully gone through the record. Since it has some bearing on the issue it would be apposite to refer to and understand the scheme of Chapter-XV of the Code of Criminal Procedure, 1973. Section 200 of Cr.P.C. refers to examination of complainant and *inter alia* requires a Magistrate taking cognizance of an offence on a complaint to examine the complainant on oath as well as the witnesses present if any. It also requires the Magistrate to record the substance of such examination in writing. Section 201 then lays down the procedure to be followed by a Magistrate to whom a complaint is made is not competent to take cognizance of the offence. Section 202 then lays down that a Magistrate on receipt of a complaint of which he is authorized to take cognizance if he thinks fit may post pone the issuance of process and (a) either enquire into the case himself or (b) direct an investigation to be made by a Police Officer or such other person. Section 203 then lays down that after considering the statement on oath of the complainant and that of the witnesses and the result of the enquiry or investigation under Section 202 the Magistrate finds that there is sufficient ground for proceeding, he shall dismiss the complaint by briefly recording the reasons.

10. Chapter XVI then begins with Section 204 and lays down that if in the opinion of a Magistrate taking cognizance of an offence there is sufficient

ground for proceeding, he may direct either the summons or warrant to be issued.

11. Bearing in mind such steps to be followed after a private complaint is lodged, let us now turn to the matter in hand. The scheme of Chapter XV only requires the Magistrate taking cognizance to examine the complainant on oath. Examination of witnesses under Section 200 is to be undertaken only if the witnesses are present and not otherwise. When in the matter in hand there is no material to show that when the petitioner was examined on oath by the learned Magistrate under Section 200 of the Code of Criminal Procedure any of his witnesses was present which could have made the Magistrate obligatory to examine such a witness as well. If that is the case, the observations of the learned Sessions Judge expecting the complainant / petitioner to examine independent witness is clearly illegal and arbitrary.

12. Such a contingency could have arisen only if the Magistrate would have resorted to Section 202 of the Criminal Procedure and had postponed the process to be issued and had taken up the enquiry unto himself. Since apparently he had not proceeded to defer issuance of such process and had not directed any enquiry, no question of examination of any witness by

the petitioner would have arisen. The learned Sessions Judge seems to have fallen in error in not appreciating the scheme of Chapter XV of the Code of Criminal Procedure and has committed an error.

13. True it is that the incident is alleged to have taken place on 01.08.2015 still the complaint was lodged before the Magistrate on 02.09.2015. However it was farfetched for the learned Sessions Judge to have expected the petitioner to explain such delay at that stage of the proceeding. It is to be remembered that as is mentioned above a Magistrate taking cognizance can issue process under Section 204 of the Code of Criminal Procedure when there is sufficient ground for proceeding. Thus at the stage of issuance of process it is only expected that the complainant should be able to make out sufficient ground for proceeding. The words are self explanatory and nowhere require the complaint to *prima facie* establish the offence. Though there was some delay in lodging of the complaint, drawing any inference that the delay had occasioned to infer that no incident had occurred would be like stabbing a person in the back. Had the learned Magistrate sought to enquire into the complaint by resorting to the provision of Section 202 of the Code of Criminal Procedure certainly even the aspect of delay could have been gone into. Since the Magistrate in his discretion had not thought it fit to resort to that provision and was content with the examination

of the complainant under Section 200, there was no occasion for the petitioner to have explained the delay. As is clear from the wording of Section 200 only a substance of the examination has to be reduced into writing. Therefore there was no scope for the complainant to have explained the delay. Since it was an examination by the Magistrate, unless the Magistrate had asked a question in that regard there was no occasion for him to have explained the delay.

14. That apart, even factually, not exactly for explaining the delay but to ascertain the genuineness of the grievance / allegations made by the petitioner, it would have been suffice for the learned Sessions Judge to have perused the complaint minutely. Had he done so it would have transpired that the petitioner had already lodged a non-cognizable Case No. 302 of 2015 in respect of the incident promptly by approaching the concerned police station. Even in his examination under Section 200 he had specifically stated about having lodged such a report with the police station. This would have clearly demonstrated that though the complaint was filed belatedly, at least the matter was reported to police promptly and that would have ruled out the hypothesis of the complaint having been filed without any substance or basis, simply on the ground of delay. Thus the learned Sessions Judge has also committed a gross error in expecting the petitioner to have explained the

delay in lodging the complaint and to make it as a ground to dismiss the complaint.

15. It is also important to note that in spite of the specific averment in the complaint as well as in his examination under Section 200 of the Code of Criminal Procedure by the petitioner about having lodged a report with the police about the incident, the learned Sessions Judge has recorded an observation that there was no evidence on the record to show that before filing of the complaint he had approached the police. He has also gone ahead and committed an error in further observing that even in the examination of the petitioner during recording of his verification he had not stated anything about that. These observations are clearly perverse. The learned Sessions Judge has taken it as an additional ground to hold that there was no sufficient ground for proceeding.

16. It is equally astonishing as to how the learned Sessions Judge has taken a frog's leap while concluding that the dispute was of civil nature. The allegations are that the respondents no. 2 to 4 were intending to purchase the adjoining plot but it was purchased by the petitioner. One cannot comprehend as to how this could be termed as a civil dispute particularly when in addition the petitioner has been alleging about they having assaulted

him. One could have understood had the learned Sessions Judge simply concluded that there were no sufficient grounds to proceed and that would have been suffice.

17. Be that as it may, considering the scheme of Sections 200 to 204 of the Code of Criminal Procedure, a Magistrate can direct the process to be issued if there are sufficient grounds to believe that an offence has been committed. Obviously such a satisfaction cannot be arbitrary and should be governed by reasons. However conspicuously, though Section 203 requires a Magistrate to record brief reasons if he decides to dismiss the complaint, Section 204 does not require him to record any such reasons. Still, since he is discharging a judicial function, it is imperative that he assigns some reasons even while directing a process to be issued by invoking the powers under Section 204 of the Code of Criminal Procedure. A perusal of the order passed by the Magistrate clearly shows that he had read the complaint as well as the statement under verification and the complaint *prima facie* revealed to him that the respondents no 2 to 4 had voluntarily caused hurt to the petitioner because he had purchased the plot and had also intimidated him.

18. It is thus apparent that the learned Magistrate had *prima facie* applied his mind and had exercised the powers under Section 204 of the Code

of Criminal Procedure judiciously by directing the process to be issued. There was no apparent illegality, arbitrariness or perversity. Still the learned Sessions Judge ignored this and has concluded that there was no sufficient ground to proceed against the respondents no. 2 to 4. On the other hand, as is demonstrated herein above, the order passed by the learned Sessions Judge is clearly illegal and perverse. In my considered view the impugned order is liable to be quashed and set aside and the order passed by the learned Magistrate deserves to be restored.

18. The Writ Petition is allowed.

19. The order passed by the learned Sessions Judge, Osmanabad dated 16.06.2017 in Criminal Revision Application No. 42 of 2016 is quashed and set aside.

20. The order passed by the learned Judicial Magistrate First Class, Kallam in Criminal Case No. 370 of 2015 (S.C.C. No. 87 of 2016) dated 09.02.2016 is restored.

21. Rule is made absolute in above terms.

[MANGESH S. PATIL, J.]