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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITIOIN NO. 458 OF 2004

Vijay Kanhaiyalal Nayar

..Petitioner

Vs

Kaluram Ghanashyamdas Tuteja & Anr

.Respondents

Mr. Amol Doijode for petitioner.

Mr. S.S. Hulke, APP for State.

CORAM : A.S.GADKARI, J.

DATE : 17th September 2018.

P.C.:

1] By the present petition under Article 227 of the Constitution of India, the petitioner has prayed for quashing of entire proceedings bearing Summary Case No.2261 of 2002 pending on the file of Judicial Magistrate First Class, Palghar and Order of issuance of process dated 17.1.2003 passed therein.

2] Heard the learned counsel appearing for the petitioner. Record indicates that, the respondent No.1 has been served with the notice of the present petition. Despite service none appears for the respondent No.1.

3] As per the pleadings and record, the petitioners were the employees of Tarapur Rubber Products Pvt. Ltd. The said Company was sold to M/s Agarwal Sales Corporation, along with machinery and other material for Rs.30.00 lakhs. The material worth Rs.21,71,000/- was already shifted from the premises of the said Company after M/s Agarwal Sales Corp. had paid Rs.21,71,000/- to the petitioner's Company. The petitioner No.2 signed the gate passes for six trucks and the machinery was shifted outside the factory premises. An amount of Rs.4,50,000/- was balance at the behest of M/s Agarwal Sales Corp. towards the price of transformer and other material. The respondent No.1 was appointed as a security personnel at the said premises at Tarapur Rubber Products. That the respondent No.1 in connivance with M/s Agarwal Sales Corp. removed material amounting to Rs.4,50,000/- from the factory premises of Tarapur Rubber Products. After noticing the said fact, the petitioner No.1 lodged a crime with Boisar Police Station under sections 408, 420 read with 34 of the Indian Penal Code. After completion of investigation, the same is culminated into Criminal Case No.139/P/2002.

4] In this back ground, the respondent No.1 has filed the present proceedings bearing Summary Case No.2261 of 2002 in the Court of

Judicial Magistrate First Class, Palghar under sections 420, 323, 504, 506 of the Indian Penal Code.

It is to be noted here that, the respondent No.1 in his complaint has admitted the said fact of lodgment of criminal proceedings against him due to which he had obtained anticipatory bail on 25.8.2002 from the Sessions Court at Palghar. The complaint proceeds on the footing that, the petitioners came to the factory premises on 23.8.2002 and removed the respondent No.1's workers from the site. It is also stated that, on 24.8.2004 the petitioner No.1 assaulted the respondent No.1 with 'piler' (as mentioned in para-10 of complaint) on his left hand thumb and caused injury to it. The learned Judicial Magistrate First Class, Palghar issued process on 17.1.2003. In the premise the petitioners have approached this Court challenging the prosecution launched by the respondent No.1 by way of Summary Case No.2261 of 2002 and the Order of issuance of process dated 17.1.2003.

6] Perusal of the complaint would indicate that, general and vague allegations are made against the petitioners therein. No medical certificate in respect of injury suffered by the complainant has been brought on record. As noted earlier, the petitioners have lodged the crime under

sections 408, 420 read with 34 of the Indian Penal Code against the respondent No.1 prior in point of time and the respondent No.1 had obtained anticipatory bail in that case. The police after completion of investigation have submitted chargesheet in the Court of competent jurisdiction which is culminated into CC No.139/P/2002.

The learned counsel for the petitioners submitted that, the respondent No.1 has lodged the present private complaint as a counter-blast and with a view to harass the petitioners. I find substance in the submission of Shri Doijode, the learned counsel for the petitioners.

7] As noted earlier, a plain reading of the complaint would make it apparent that, except vague allegations, no specific case is made out from the said complaint and it is filed by the respondent No.1 as a counter-blast to the crime registered by the petitioners.

8] In view thereof, the complaint deserves to be quashed.

Rule is accordingly made absolute.

9] Petition is allowed in terms of prayer clause (b).

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(A.S.GADKARI, J.)