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

CRIMINAL WRIT PETITIOIN NO. 795 OF 2017

Mrs. Kashish Anil Bhatia & Ors

..Petitioners

Vs

The State of Maharashtra & Anr.

..Respondents

Mr. R.M. Yamgar a/w Meenal Waksay for petitioners.

Ms. Veera Shinde, APP for State.

Mr. H.H. Nagi a/w C. Solanki I/b Nagi & Associates for respondent No.2.

CORAM : A.S.GADKARI, J.

DATE : 21st August 2018.

P.C.:

1] The petitioner has impugned the Order dated 30.1.2014 passed below Exhibit-1 in C.C. No.31/ I & R/2013 (24/SS/2014) by the learned Metropolitan Magistrate, 27th Court, Mulund, Mumbai, thereby issuing the process against the petitioners under Sections 323, 504, 506 read with 34 of the Indian Penal Code.

2] Petitioner No.1 is the daughter-in-law of respondent No.2. Petitioner No.2 is the brother and the Petitioner No.3 is mother of Petitioner No.1. The petitioner No.1 has instituted the proceedings against her husband and the respondent No.2 under the provisions of the Protection of Women From Domestic Violence Act, 2005 and the learned

Metropolitan Magistrate by its Order dated 12.3.2013 permitted the petitioner No.1 to occupy the matrimonial house. When in pursuance of the said Order, the petitioner No.1 along with her family members had been to her matrimonial house the alleged incident in question has taken place. The respondent No.2 in her complaint has stated that, on the date of incident she was alone at her house and the petitioners abuses and assaulted her. That the police did not take cognizance of her complaint and simplicitor lodged a non-cognizable offence bearing No.259 of 2013 under section 323 of the Indian Penal Code and therefore the respondent No.2 was constrained to approach the learned Metropolitan Magistrate for redressal of her grievance.

3] The record indicates that, the learned Magistrate issued Order under section 202 of Cr. P.C. directing the concerned Police to enquire into the matter. The police after conducting enquiry submitted a report dated 23.11.2013 expressing their opinion that there is no evidence on record to reach to the conclusion that the applicants in fact assaulted the respondent No.2. The report mentions that, a Non-Cognizable Offence bearing No.259 of 2013 has been registered at the instance of respondent No.2. The learned Magistrate after recording verification, perusing the report of the police,

rejected the report submitted by the police and proceeded to issue process under the aforesaid sections by its impugned Order dated 30.1.2014.

4] The learned counsel for the petitioners submitted that, despite the fact that the police submitted its report stating therein that no evidence could be gathered during the course of investigation and reached to the conclusion that the petitioners have in fact not committed the said crime, the learned Magistrate proceeded to issue process against the petitioners.

5] It is to be noted here that, the police on 25.3.2013 had lodged Non-Cognizable Office bearing No.259 of 2013 under section 323 of the Indian Penal Code on the complaint made by the respondent No.2. Prima facie it appears that, the police with a view to shrug off their responsibility, registered the crime simplicitor as a non-cognizable offence though cognizable offence was made out at the behest of respondent No.2.

It is the settled position of law that, the Magistrate taking cognizance is not bound by the report submitted by the police and if he reaches to the conclusion that the case of issuance of process is made out, he can issue process in that behalf.

6] The learned counsel for the petitioners then would contend that, the verification as recorded by the Magistrate is not as per the settled

principles of law, as it is a typed version of the informant prepared by an Advocate, submitted before the Court and therefore the said verification is bad in law.

7] I have personally perused the said verification and it appears that, the concerned Magistrate has personally recorded the said verification of the informant and has put his signature after it is fully recorded. Prima facie, no fault can be found from the said verification statement.

May that as it may, a bare perusal of the complaint would reveal that, a strong prima facie case as alleged by the respondent No.2 is made out from the said complaint which is further duly supported by her verification statement dated 22.5.2013.

8] After perusing the complaint and the verification statement, it cannot be said that, no case at all is made out against the petitioners for offence alleged against them.

9] In view thereof, I am of the view that no error is committed by the Trial Court either in law or on facts while passing the impugned Order dated 30.1.2014. I find no merits in the present petition and the same is accordingly rejected.

(A.S.GADKARI, J.)

Anil
Chandrakant
Dond

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Chandrakant Dond
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