

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application [APL] No.241 of 2018

Bhagyashri Dhotre w/o Subodh Gawande & others

vs.

State of Maharashtra, through PSO Ajni, Nagpur & another

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri P.W. Mirza, Advocate for the Applicants.

Shri K.L. Dharmadhikari, A.P.P. for Non-Applicant No.1.

Ms. A.P. Gupta with Shri J.M. Gandhi, Advocate for Non-Applicant No.2.

CORAM : S.B. SHUKRE, J.

DATE : 4th SEPTEMBER, 2018.

Heard.

Admit.

Heard finally by consent

Initially an objection as to the tenability of this application has been taken. However, considering the law recently settled by the Hon'ble Apex Court, the objection cannot be accepted. There could be exceptional cases in which the allegations on their face appear to be ridiculous, absurd, frivolous or mischievous and it would be obvious that no probe into such allegations even by resorting to the power of the Magistrate under Section 202 of the Code of Criminal Procedure (for short, the Cr.P.C.) would produce any fruitful result. In such a case, if any

inquiry or investigation is ordered under Section 202, it would be an exercise in futility and would amount to giving encouragement to the attempt of complainant to further abuse the process of law. Such cases are rare but as and when they are discovered, the Court would be ordinarily inclined to invoke its inherent power under Section 482 of Cr.P.C. in favour of such an applicant. So, it is not the law that Section 482 Cr.P.C. power is not available and the law is about limits of such power. Therefore, the objection about the maintainability of this application is rejected.

It is true that ordinarily the accused would not be in picture at the inquiry conducted under Section 202 of Cr.P.C. as held in the case of Smt. Nagawwa vs. Veeranna Shivalingappa Konjalgi & others - AIR 1976 SC 1947 and the Courts should be very slow in thinking of making any interference with the inquiry undertaken by the Magistrate. But, as stated earlier, when the case is frivolous or mischievous and is a patent abuse of process of law, the Courts can make intervention by resorting to their inherent jurisdiction under Section 482 of the Cr.P.C.

The question is, as to whether or not such jurisdiction should be invoked in the present case.

Upon considering the allegations made in the complaint, I am of the view that expressing any opinion on this aspect as such would amount to prejudging the controversy and arriving at a premature conclusion. Only inquiry under Section 202 of the Cr.P.C. by the Police Officer has been ordered and the inquiry has not been completed because of the stay granted by this Court. It is not known, whether the statement of the son of the complainant has been recorded or not. Recoding of his statement, having regard to the allegations made in the complaint, would be important as it would help the Court in having a clarity in it's mind about the nature of allegations so that appropriate conclusions in accordance with law could be made. After all, as held in the case of *Smt. Nagawwa (supra)*, the purpose of such an inquiry is to find out the truthfulness or falsehood of the allegations made in the complaint. Therefore, if such inquiry is allowed to be completed, it would only help the cause of justice.

At this juncture, a concern has been expressed by the learned Counsel for the applicants about the way the police inquiry is being conducted. It is submitted that accused No.2-applicant No.1 is a

woman and the accused Nos.1 & 3, who are applicant Nos.2 & 3 are the senior citizens. But, neither their gender nor their ages are being considered by the Police Officer conducting inquiry and they are being called upon by the Police Officer to visit the Police Station frequently or in the odd hours of night or in the morning. I think, this concern can be taken care of by issuing necessary directions to the Police Officer conducting inquiry under Section 202 of the Cr.P.C.

In this view of the matter, I am of the view that this application deserves to be rejected with some directions issued to the concerned Police Officer.

The application is rejected.

The concerned Police Officer is directed to conduct the inquiry strictly in accordance with law. He is further directed to not call the applicants to the Police Station unless their statements are to be recorded and in that case, he shall call the applicants only during ordinary and normal office hours.

The inquiry report shall be submitted by the concerned Police Officer to the concerned Court of the Judicial Magistrate First Class within six weeks from the date of the order.

The observations made in this order are confined to the purpose of this application and shall not be considered by any Court while passing orders on merits and all questions involved in the matter are kept open to be determined at appropriate time by the appropriate forum. Liberty is also given to the applicants to resort to such remedy as is available under the law to them in case any adverse orders are passed.

The application is disposed of accordingly.

**sandesh*

JUDGE

Sandesh
Daulatrao
Waghmare

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