

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

**CRIMINAL APPLICATION NO.233 OF 2009
WITH
CRIMINAL APPLICATION NO. 414 OF 2017**

1. Deepak s/o Bapurao Balsekar,
Age : - 44 year, Occ. Legal Practitioner,
R/o. Shivaji Nagar, Parbhani.
2. Smt. Ujawalatai w/o Bapurao Balsekar,
Age 65 year, Occu. Household,
R/o as above.
3. Ajeet s/o Bapurao Balsekar,
Age 38 year, Occu. Advocate,
R/o as above.
4. Sou. Smita w/o Vijay Suryawanshi,
Age 35 year, Occu. Household,
R/o Bidar, Karnataka State

**... APPLICANTS
(Ori. Accused)**

VERSUS

Ranjeeta w/o Deepak Balsekar,
Age – 35 year, Occu. Service,
R/o C/o Kishanrao Warkhinde,
opposite Zilla Parishad, Primary
School, N.D.-4, CIDCO, Nanded.

**... RESPONDENT
(Ori. Complainant)**

...

Advocate for Applicant nos. 1 to 3 : Mr. D. M. Shinde
Advocate for Respondent : Mr. V.S. Malte

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CORAM : MANGESH S. PATIL, J.

DATE : 26.08.2019

JUDGMENT :

The applicant no. 1 is the husband of the respondent. The applicant no. 2 is his mother and applicant nos. 3 and 4 are his brother and sister. By this application the applicants are impugning the order of the learned Magistrate directing the process to be issued against them on a complaint filed by the respondent, for the offences punishable under Section 498-A, 323, 504 read with Section 34 of the Indian Penal Code, which order has been confirmed by the learned Sessions Judge in Criminal Revision Petition No.94/2008 by the impugned order dated 10.12.2008.

2. I have heard both the sides in extenso.

3. The allegations in brief levelled by the respondent in her complaint are to the effect that her marriage was solemnized on 17.06.1997. A twin was born out of the wedlock. She was maintained properly for the initial period but was subjected to cruelty on account of applicants' demand for dowry. All the applicants were cohabiting with her in the same house. She was beaten and abused. Somehow her parents could pay some money but could not satisfy them. She was threatened to kill if the balance was not paid and ultimately she was driven out of the house. Since thereafter, she has been residing in

her parental home. The learned Magistrate recorded her statement under verification purportedly in compliance with Section 200 of the Code of Criminal Procedure. Apparently, the learned Magistrate then took over the inquiry upon himself and deferred the process to be issued, apparently in compliance with Section 202 of the Code of Criminal Procedure. By the order dated 15.06.2005 he directed the respondent to lead evidence. Accordingly, her statement was recorded on 03.10.2007 and by the impugned order dated 05.10.2007, he directed the process to be issued. Being aggrieved the applicants preferred the criminal revision which was dismissed.

4. The learned advocate Mr. Shinde for the applicants vehemently submitted that the learned Magistrate had failed to follow the procedure prescribed under Section 202 of the Code of Criminal procedure. Since the applicants were not residing within the territorial jurisdiction of the learned Magistrate, he ought to have before summoning the applicants inquired into himself or directed investigation. However, the learned Magistrate simply recorded the statement of the respondent and did not call upon her to examine her witnesses. The learned advocate would submit that when the law required the Magistrate to conduct an inquiry, he was under obligation to call upon the respondent to examine her witnesses. The allegations

in the complaint were vague and she should have been called upon to justify them before directing the process to be issued. The applicant No. 4 was married on 06.07.2003 and was residing in Karnataka State since thereafter and was even not aware about the marriage solemnized between the applicant no. 1 and the respondent. She is being falsely implicated. There was no sufficient basis and all the necessary ingredients were not made out so as to enable the Magistrate to take cognizance and issue process. The order was illegal, arbitrary and capricious. The learned Sessions Judge also failed to appreciate all these aspects and refused to intervene under the revisional jurisdiction. Thus, both the orders have resulted in miscarriage of justice and should be quashed and set aside.

5. The learned advocate would submit that when Section 202 of the Code of Criminal Procedure requires the Magistrate to conduct inquiry himself, the statement of the respondent could not have been recorded by her advocate. It was not a stage for recording of testimony and was merely a stage of inquiry, wherein, the advocate representing her ought not to have participated. In support of his submission, the learned advocate also placed reliance on following decisions in the case of *Naganagouda Veeranagouda Patil and Anr. V/s. Malatesh H. Kulkarni; 1998 Cri.L.J. 1707.*

6. At the outset it is necessary to note that as the applicants are impugning the order directing the process to be issued and confirmed in the revision, the scope of the present application is limited to ascertain as to if there was sufficient material before the Magistrate to take cognizance and direct the process to be issued. It is pertinent to note that after recording the statement of the respondent in compliance of Section 200 of the Code of Criminal Procedure, the learned Magistrate had deferred the issuance of process and had taken upon himself the inquiry as contemplated under Section 202. He called upon the respondent to lead evidence in support of her allegations, it is accordingly that her statement was recorded and thereafter, impugned order directing the process to be issued was passed. True it is that the inquiry contemplated under Section 202 of the Code of Criminal Procedure is a pre-cognizance stage and it is only after the Magistrate undertakes to either conduct any inquiry himself or directs an investigation by police that he is expected to either take the cognizance and direct the process to be issued or dismissed the complaint under Section 203.

7. Apparently, as far as procedural aspect is concerned, no fault can be found with the Magistrate in recording the statement of the respondents before passing the impugned order. At that stage, it is not at all expected of the complainant to lead all the evidence in his

possession and it is suffice that he leads the evidence which would sufficiently make out the offences prima facie. The subjective satisfaction of the Magistrate and the discretion which he can exercise under that provision can only be interfered with when the material before him is not sufficient to draw any inference as to the commission of offence. The stage is not of expecting a proof from the complainant but it only expects him to lead evidence which would be sufficient to make out the offences. Looked at from this angle, she having corroborated her version in the statement recorded before the Magistrate, it cannot be said that the order directing the process to be issued was either perverse, arbitrary or capricious, in the absence of which, the Sessions Court also could not have interfered with under the limited jurisdiction vested upon it under Section 397 of the Code of Criminal Procedure.

8. As far as the compliance with the amended provision of Sub-section 1 of Section 202 is concerned, true it is that the provision is mandatory and requires a Magistrate to invariably hold an inquiry before directing the process to be issued when the accused persons do not reside within his territorial jurisdiction. Apparently, the Magistrate in the mater in hand has not directly issued the process but has called upon the respondent to lead evidence and accordingly, he has

examined her and it is only thereafter that the process has been directed to be issued. Therefore, no illegality has been committed by him in this regard.

9. So far as the objection of the applicants to the manner in which the statement of the respondent is recorded by the learned Magistrate, in my considered view, merely because the learned Magistrate has taken aid of her learned advocate while recording her statement during inquiry under Section 202, it cannot be said that he was intending to record her testimony. Being the Officer of the Court, her learned advocate must have been allowed by the Magistrate to participate and help him in conducting the inquiry. In my considered view, there is absolutely no illegality committed by the Magistrate in following such a procedure. This circumstance cannot be taken as a ground to question the procedure adopted by him.

10. Considering all these aspects, there is no apparent illegality committed by the learned Magistrate in law or on procedure. The learned Additional Sessions Judge has considered all these aspects and has rightly dismissed the revision.

11. Before parting it is necessary to note that the matter is awaiting trial since the year 2005. The R and P be sent back

immediately to the trial court and the trial court shall make every endeavor to decide the matter as early as possible.

12. The Criminal Application is dismissed. The Criminal Application No.414/2017 is allowed and disposed of.

(MANGESH S. PATIL, J.)