

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

CRIMINAL WRIT PETITION NO. 527 OF 2019

- 1] Gorakh s/o Thawra Jadhav,
Age : 54 years, Occu:Service,
R/o Ambajogai, Tq.Ambajogai
Dist.Beed At present R/o. Beed.
- 2] Yogesh s/o Shekhu Sankpal,
Age : 30 years, Occu.Service
R/o Sillod, Tq. Sillod,Dist.Aurangabad
At present R/o:Waregaon,Phulambri,
Tq.Phulambri, Dist.Aurangabad.
- 3] Pandurang s/o Dattatraya Kalaskar
Age : 46 years, Occu.Service,
R/o Parli Vaijanath, Tq. Parli(V),
Dist.Beed.
- 4] Avinash s/o Bhujangrao Gaikwad
Age : 34 years, Occu. Service,
R/o Chakur, Tq. Chakur,
Dist.Latur.
- 5] Balasaheb s/o Dagadu Garkal,
Age : 57 years, Occu.Service,
R/o Ambajogai, Tq. Ambajogai
Dist.Beed.

.. PETITIONERS

VERSUS

- 1] The State of Maharashtra
Through its Secretary,
Home Department,
Mantralaya, Mumbai-32
- 2] Madhukar s/o Rajaram Pande,

Age : 55 years, Occu.Agri
R/o Radi, Tq.Ambajogai,
Dist.Beed.

.. RESPONDENTS

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Mr. V.B.Anjanwatikar h/f Mr.S.K.Naikwade, Advocate for the petitioners
Mr. P.K.Lakhotia,APP for respondent No.1.
Mr.G.S.Shembole,Advocate for respondent No.2.

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CORAM : MANGESH S. PATIL, J.
DATE : 10.10.2019

ORAL JUDGMENT :-

Heard both sides. Rule. Rule is made returnable forthwith. The learned APP waives service for the respondent no.1 and Mr.G.S.Shembole,learned Advocate waives service for the respondent no.2. With the consent of both sides, the matter is heard finally at the stage of admission.

2] The petitioners are the accused impugning the order of issuance of process under Section 204 of the Cr.P.C. passed by the learned Judicial Magistrate, First Class, Ambajogai on 29/11/2017 for the offences punishable under Sections 294, 323, 324, 392, 504, 506 read with Section 34 of the IPC and which order has been confirmed by the learned Additional Sessions Judge by dismissing the Revision preferred by them under Section 397 of the Cr.P.C.

3] Shorn of details the allegations in the complaint filed by the respondent no.2 are to the effect that the petitioners are all employees who were then posted in the Land Survey Department at Ambajogai. He owns a land and wanted it to be surveyed/measured. He therefore, approached the office of the

Surveyor and submitted an application. He paid necessary fees for carrying out the measurement and for fixing the boundaries. One Mr.Ghuge carried out the measurement on 18/4/2011 but the boundaries were not fixed. The petitioner no.2 then prepared a map showing that couple of other persons were in possession of some portion and thereby his land which was totally admeasuring 6 Hectares 92 Are was shown less by 3 Acres. He alleged that he had approached superior officer of the petitioners who had issued directions to them to fix the boundaries. However the petitioners started harassing him and demanded money.

4] He then alleged that on 11/4/2017 between 9.30 to 10 a.m. when he was going to the office of the D.I.L.R., Beed the Petitioner no.1 met him at Ambajogai bus stand. When he inquired the Petitioner no.1 as to when the land would be measured, he replied by saying that it would be measured only after money was paid. The Petitioner no.1 also threatened him by saying that he (complainant) had filed lot of complaints with his superior and if he troubles him any more he (the complainant) would be implicated in a false case. When the complainant retorted by saying that he would report to the superiors of the Petitioners, the Petitioner no.1 called the other Petitioners to the bus stand. They all abused and assaulted him. In the process an amount of Rs.2000/- was also snatched from his pocket. They threatened him. Some persons intervened. He then alleged that he immediately went to the police station on the same day but he was called lateron. On 13/4/2017 he again went to the police station and a Non Cognizable Report No.245/2017 was registered. He alleged that the police were protecting the Petitioners. He therefore, lodged the complaint with the Superintendent of Police.

4] The learned Magistrate after recording the statement under verification directed an investigation to be carried out by police under Section 202 of the Cr.P.C. The police submitted a report mentioning that there was no substance in the allegation and the complaint was filed as a counter blast to the FIR registered at the instance of the Petitioner no.1. The learned Magistrate by the impugned order directed the process to be issued.

5] The learned advocate for the Petitioners submits that there is a delay in lodging the complaint. The incident has taken place on 11/4/2017. The complaint has been filed on 11/5/2017. The delay has occasioned only because the complaint is a concocted one and filed as a counter blast to the FIR lodged by the Petitioners against respondent no.2. Therefore, for this reason alone the Magistrate ought not to have issued process more so when the report submitted by police pursuant to the direction under Section 202 of the Cr.P.C. was in the negative.

6] The learned advocate for the Petitioners would further submit that the learned Magistrate also failed to consider that the Petitioners being public servants, no cognizance could have been taken without previous sanction under Section 197 of the Cr.P.C. in view of the provisions of Section 190 of the Cr.P.C.

7] *Per contra*, the learned advocate for the respondent no.2 submits that the delay has been properly explained in the complaint itself. There were independent witnesses with whom police had made an inquiry during the

investigation and there was sufficient basis to form an opinion about there being sufficient material to proceed. The Magistrate had rightly exercised the discretion. The revisional Court has also considered all the aspects and has dismissed the revision. There being concurrent findings of the two Courts below, this Court should not intervene.

8] At the outset it is necessary to note that even according to the Petitioners and as is mentioned in the report submitted by the police before the Magistrate, pursuant to the order passed under Section 202 of the Cr.P.C., the Petitioner no.1 has also filed an FIR against the respondent no.2 alleging that on the same day, time and place, i.e. on 11/4/2017 between 9.30 and 10 a.m. at the bus stand of Ambajogai the respondent no.2 caused obstruction to them in discharge of their official duties, abused and threatened them and accordingly Crime No.238/2017 was registered against him for the offences punishable under Sections 353, 332, 504 and 506 of the IPC. At this juncture this much of material is sufficient to infer that the Petitioners as well as the respondent no.2 were present at the bus stand on that day and time and some incident had taken place which culminated in Petitioner no.1 filing the FIR against the respondent no.2. According to the respondent no.2 in the same episode he was assaulted by the Petitioners and he was robbed of money.

9] As can be seen from the report of the police submitted under Section 173 of the Cr.P.C. there were atleast 2 witnesses Salba Mahadev Gochade and Anand Namdeo Bhalerao who stated before police that the Petitioners as well as the respondent no.2 were present and some episode of quarrel had taken place wherein the respondent no.2 was questioning the Petitioners as to when his land would be measured and they having assaulted him as well as robbed

him of money. At this juncture this much of material is sufficient to form an opinion that there is indeed substance sufficient enough to direct the process to be issued.

10] So far as delay is concerned, as has been pointed out by the learned advocate for the respondent no.2, in paragraph no.7 of the complaint the respondent no.2 has given details which led to the delay. He specifically alleges that he had been to the police station on the very day of the incident but was asked to come back lateron. When he again went there, a Non Cognizable Report No.245/2017 was registered on 13/4/2017. He alleged that police had assured him to conduct necessary inquiry. However when he again visited the police station he realized that police were reluctant to act. He then alleged about having approached to the Deputy Superintendent of Police and having submitted a written complaint. But when it was refused to be taken he sent the complaint to the Superintendent of Police and Deputy Superintendent of Police by Registered Post A.D. on 27/4/2017. However, no cognizance of his complaint was taken by the police and it is thereafter that the present complaint was filed on 11/5/2017. At this juncture, this much of explanation is sufficient to infer that there was indeed some genuine reason which had caused the delay.

11] The learned advocate for the Petitioners places reliance on the decision in the case of **Raghuvir V/s The State of Maharashtra and Anr; 2018 All M.R.(Cri) 4055 (S.C.)** and submits that since the complaint was filed to take vengeance, the present case would fall under one of the categories from the decision in the case of **State of Haryana and others V/S Bhajanlal and others ; AIR 1992 S.C. 604** and the order of issuance of process be quashed.

12] Needless to state that if a case falls under any of the categories formulated in the case of Bhajanlal (supra), the Court cannot permit prosecution to go on. However, in the matter in hand there is *prima facie* material and substance discussed hereinabove, which reveals of there being sufficient reason to proceed. The Petitioners are not entitled to reap any benefit from this decision.

13] So far as question of want of sanction under Section 197 of the Cr.P.C. is concerned, the issue would depend upon some factual aspects. If the respondent no.2 is able to prove that the incident as alleged had taken place, it could not be said that the offence has been committed during the course of discharge of official duty. It therefore, would depend upon what evidence would be led before the trial Court. The issue can very well be gone into and decided only after a fulfilled trial.

14] Considering all the aforementioned facts and circumstances, I find no apparent perversity or illegality in the orders passed by the two Courts below.

15] The Writ Petition is dismissed. The Rule is discharged.

[MANGESH S. PATIL, J.]

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