

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1443 OF 2019

Shri Janardan Mitharam Jangale	]	
Indian Inhabitant, Adult,	]	
Aged about 60 years,	]	
Occupation: Retired Teacher,	]	
Residing at 53/B/26,	]	
Research Colony CHS Ltd,	]	
Vithoba Nagar, Kurla (West), Mumbai	]	
Presently residing at Pimprud,	]	
Post Faizpur, Taluka Yaval	]	
Dist. Jalgaon.	]	...Petitioner

Versus

- | | | | |
|----|-------------------------------------|---|----------------|
| 1. | Shri Jagannath Rajaram Patil & Anr. |] | |
| | Adult, Occupation: Retired Teacher |] | |
| | Residing at Village Mundhe |] | |
| | Taluka Karad, Dist. Satara. |] | |
| | |] | |
| 2. | State of Maharashtra |] | ...Respondents |

Ms. Shruti Tulpule for petitioner.
Mr. Rahul Kate for Respondent No. 1.
Mr. A.R. Patil, APP for Respondent/State.

CORAM : **S. S. SHINDE, J**
DATE : **5th August 2019**

JUDGMENT

1. Rule. Rule made returnable and heard with the consent of learned counsel appearing for the parties.
2. This petition takes an exception to the order dated 18.04.2018

passed by 6th J.M.F.C. Karad in Summary Criminal Complaint No. 820/2018 and order dated 22.01.2019 passed in Criminal Revision Application No. 47/2018.

3. Brief facts leading to filing of this petition are as under:-

It is the case of the Petitioner that, on 09.11.2016, the Respondent No. 1 filed a Criminal Complaint under Sections 499, 500 and 501 of the Indian Penal Code, 1860 against the Petitioner. Thereafter, on 02.12.20016, Respondent No. 1 further filed his verification as per Section 200 of the Cr.P.C. by way of Criminal Miscellaneous Application bearing No. 777 of 2016. On 24.01.2017, the Ld. Magistrate was pleased to pass the direct inquiry under Section 202 of Cr.P.C. It appears that, the learned Magistrate was pleased to issue process under Section 204 (1) of the Cr.P.C. vide impugned order dated 18.04.2018, which was served on the Petitioner in April 2018. Being aggrieved and dissatisfied by the order of issuance of process dated 18.04.2018, Petitioner preferred Criminal Revision Application No. 47/2018 before the Court of Extra Joint Additional Sessions Judge, Karad. By impugned order dated 22.01.2019, the learned Extra Joint Additional Sessions Judge, Karad, was pleased to dismiss the Criminal Revision Application of the Petitioner. Hence, this writ petition.

4. Heard learned counsel appearing for the parties. Learned counsel appearing for the petitioner submits that, petitioner-accused is not residing within the jurisdiction of the 6th Jt.JMFC, at Karad, District Satara. Therefore, in view of mandate of Section 202 of Code of Criminal Procedure, judgment of the Hon'ble Supreme Court in the case of **Abhijit Pawar Vs. Hemant Madhukar Nimbalkar & Another (2017) 3 SCC 528** and in particular directions issued in para 12 thereof. It was required for the Magistrate to cause an enquiry as contemplated under Section 202 of Cr.P.C. and pass the reasoned order. However, in the present case, it is clear from the impugned order that, neither the inquiry has conducted by the Magistrate nor the reasons are assigned for issuance of summons.

5. On the other hand, learned counsel appearing for the contesting respondents invites attention of this Court to the reported judgment of this Court (Coram:- J.H. Bhatia, J.) in the case of **Rajeev Sawhney Vs. State Bank of Mauritius Ltd. & Ors. 2011 ALL MR (Cri) 2116** and in particular paragraph 13 thereof and submits that, if the Magistrate heard the Advocate for the complainant and applied its mind to the documents submitted by the complainant, this is a sufficient compliance as held by this Court in the case of **Rajeev Sawhney** (supra).

6. Upon appreciating the rival contentions and perusal of impugned order and also other material placed on record, prima facie it appears that, the learned Magistrate without assigning any reasons in the impugned order, though learned Magistrate was obliged to give reasons so as to reflect in the order, whether the inquiry was conducted or otherwise, proceeded to issue summons to the Petitioner. Certainly, the course adopted by the learned Magistrate is not keeping in view the observations made by the Hon'ble Supreme Court in para 12 of the judgment in the case of **Abhijit Pawar** (Supra). In the facts of the present case, petitioner-accused is residing outside the jurisdiction of 6th Jt.JMFC, at Karad, District Satara, and therefore, it was incumbent upon the learned Magistrate to cause the inquiry himself or entrust the said task with concerned Police officer. However, learned Magistrate by cryptic order proceeded to pass the impugned order.

7. In view of discussion made herein above the impugned order dated 18.04.2018 passed by 6th Jt. JMFC, at Karad, District Satara and also order dated 22.01.2019 passed by Extra Joint Additional Sessions Judge, Karad, in Criminal Revision Application No. 47/2018 is quashed and set aside.

8. Needless to observe that, the complainant at liberty to approach the concerned Court afresh for redressal of his grievance, if he is so advised. If such complaint is filed, the learned Magistrate is not precluded from

entertaining fresh complaint, however after following procedure under Section 202 Cr.P.C. and other relevant provisions. In the light of above, Writ Petition is partly allowed and stands dispose of accordingly. Rule made absolute to above extent.

[S. S. SHINDE , J]