

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

WRIT PETITION NO. 666 OF 2004

The State of Maharashtra
(Through A.R.Mulik,
Age 45 years, Occ. Service,
R/at Excise Office, Saswad,
Pune)

...Petitioner
(Orig. Applicant)

Versus

Tanaji Shankarrao Jagtap,
Age Adult, Occu.: Agriculture,
Re/at. Mangalwar Peth,
Near Stand, Bhore, Pune.

...Respondent
(Orig. Opponent)

.....

Mr.A.R.Patil, APP for the Petitioner -State.
None for the Respondent.

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**CORAM : S.S.SHINDE J.
DATE : 19 JUNE, 2019**

JUDGMENT

1. This Petition is filed challenging the order dated 09.10.2002 in C.C. No. 744 of 2001 passed by the learned Judicial Magistrate First Class, Bhore, thereby rejecting the application filed by the petitioner for recalling the order of issuance of process and also the order passed by the learned 7th Addl. District Judge, Pune in Criminal Revision Application No. 618 of 2002 on 26.12.2003.

2. The respondent herein is the complainant in Criminal Case No. 744 of 2001 pending before the Judicial Magistrate First Class-1, Bhor. In said complaint, he alleged that on 25.09.2001 while the Sub-Inspector from the State Excise Office, Pune, visited the hotel (permit room) of the respondent for serving order imposing penalty issued by the Collector, Pune bearing No.FLR/11/2/001/9789/F3 dated 20.09.2001, for compounding of breach case which has been lodged by the petitioner in respect of permit room of the respondent on 13.08.2001, whereby the respondent was fined Rs. 10.000/-. At that time the owner of the hotel Ms.Haunsabai Tanaji Jagtap was not present, instead her husband Tanaji Shankarrao Jagtap, who was looking after the said business was present, and he abused said Sub-Inspector i.e., accused, and threatened him that, he will see him, and will not allow the said Sub-Inspector to go out of the hotel (permit room). He assaulted the said Sub-Inspector and also tried to assault by using iron rod. However, due to intervention of constables working in Excise Department, the respondent was pacified. Thereafter, offence came to be registered at Bhor Police Station vide C.R.No. 142/2001 against the respondent punishable under Sections 332 and 353 of the Indian Penal Code on the basis of the complaint filed by the said Sub-Inspector.

3. It is the case of the petitioner that C.R. No. 142 of 2001 was registered against the respondent and in that crime the respondent was arrested and produced before the Court on 27.09.2001.

4. It is further the case of the petitioner that, to take revenge of registering the aforesaid C.R. against the respondent, respondent filed a false complaint against Shri A.R.Mulik, petitioner herein, who, at the relevant time, was working as Sub-Inspector in Excise Department. The said complaint was filed before the Court of Judicial Magistrate First Class, Bhore bearing Case No. 744 of 2001 alleging therein that, on 25.09.2001 at 9.20 p.m., the said Sub-Inspector assaulted the complainant and committed the offence punishable under Sections 323, 504 and 506 of the Indian Penal Code.

In the said complaint, the learned Magistrate was pleased to issue process. The said Sub-Inspector filed an application for recalling the order of issuance of process, however, the learned Magistrate rejected the said application. Being aggrieved by the order passed by the learned Magistrate, the said Sub-Inspector filed Criminal Revision Application No. 618 of 2002 before 7th Additional District Judge, Pune principally on

the ground that, the said Sub-Inspector is public servant and, therefore, without having sanction or insisting for sanction, to prosecute the said Sub-Inspector, the learned Magistrate issued the process. However, by impugned judgment and order dated 26.12.2003, the Court of 7th Additional District Judge, Pune confirmed the order passed by the learned Magistrate. Hence, this petition.

5. The learned Additional Public Prosecutor appearing for the petitioner -State relying upon an averments and grounds taken in the Petition, submitted that the said Sub-Inspector visited the hotel (permit room) of the respondent in discharge of his official duty, and there was occasion for the said Sub-Inspector to commit an alleged offence alleged by the respondent/ complainant. The aforesaid false complaint has been filed against the said Inspector, since C.R. No. 142 of 2001 was registered, on instructions given by him, against the respondent. It is submitted that in discharge of official duties, the said Inspector visited the hotel (permit room) of the respondent and, therefore, an allegation made in the complaint is not true.

6. Heard the learned APP appearing for the petitioner -State at length. Though respondent is duly served, none appears for the respondent / Complainant.

7. On perusal of the reasons assigned by the Sessions Court, it appears that the learned Sessions Judge after going through an allegation made in the complaint, was *prima facie* satisfied that an alleged offence i.e., the said Sub-Inspector has assaulted the respondent/complainant herein and as a result respondent/complainant sustained the injuries has been disclosed. The learned Sessions Judge therefore came to a conclusion that, there would not have been question of obtaining sanction under Section 197 of the Criminal Procedure Code, since an alleged act of the said Inspector was not in discharge of his official duty.

8. Even on an independent scrutiny of the allegations made in the complaint, it cannot be construed or said that the alleged act/ assault to respondent by the said Inspector, which would attract the sentence punishable under Sections 323 and 304 of the Indian Penal Code, was a part of his official duty or he acted in due discharge of his duties at the

relevant time. Whether the said allegations in the complaint are true or otherwise, is a matter of evidence before the trial Court. However, certainly, the said act as alleged in the complaint against the petitioner was not in due discharge of his official duty. Therefore, there is no reason to cause interference in the impugned orders passed by the learned Judicial Magistrate First Class, Bhore as well as the learned 7th Addl. District Judge, Pune.

9. Hence, Writ Petition is devoid of any merits, and accordingly same stands rejected. Rule stands discharged.

(S.S.SHINDE, J.)