

Anand

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

WRIT PETITION NO. 1522 OF 2016

Sanjay Bhaskar Zope

.Petitioner

Vs.

Sadguru Sakharam Maharaj Vitthal Rukmini Sanstha, .Respondents
Amalner & ors.

Mr. Sugandh B. Deshmukh Advocate, for the Petitioner
Mr. Rajendra Deshmukh, Advocate, for the Respondent Nos. 1 & 2
Mr. A. R. Patil, APP, for the Respondent No. 4 – State

CORAM : REVATI MOHITE DERE, J.

DATE : 07.11.2019

ORAL JUDGMENT

. Heard learned counsel for the parties.

2. Rule.

3. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal at the stage of admission. Mr. Deshmukh, Advocate waives service on behalf of the Respondent Nos. 1 & 2 and Mr. Patil, APP waives service on behalf of the Respondent No. 4 – State.

4. By this Petition, the Petitioner (Original Complainant) has

impugned the order dated 04.01.2016 passed by the learned Additional Sessions Judge, Pune, by which the Respondent Nos. 1 to 3's Revision Application was allowed and the order of issue process dated 07.12.2012 passed by the learned Judicial Magistrate First Class, Court No. 9, Pune in Criminal Case No. 3907 of 2008, as against the Respondent Nos. 1 to 3, for the offence punishable under Section 420 r/w 34 of the Indian Penal Code, was quashed & set aside.

5. The principle submission / grievance of the Petitioner (Original Complainant) is that the learned Additional Sessions Judge ought not to have considered the merits of the complaint and recorded his findings in paras 11 & 12 of the impugned order dated 04.01.2016. He submits that the learned Judge once having concluded that the learned Magistrate had not conducted an inquiry prior to issuance of process, as contemplated by the amended provisions of Section 202 of the Code of Criminal Procedure ought not to have gone into the merits of the case.

6. Learned counsel for the Respondent Nos. 1 & 2 opposed the Petition. Learned counsel, however, does not dispute the proposition laid down by this Court in **Satish @ Rajendra s/o Harbans Tiwari & ors. Vs. State of Maharashtra & anr.** passed in **Cri. W. P. No. 431 of 2009** and the Judgment of the Apex Court in **Abhijit Pawar Vs. Hemant**

Madhukar Nimbalkar and anr., reported in ***(2017)3 Supreme Court Cases 528.***

7. Perused the papers. The Petitioner is the original Complainant who has filed a private complaint as against the Respondent Nos. 1 to 3 in the Court of the learned Judicial Magistrate First Class, Court No. 9, Pune (Criminal Case No. 3907 of 2008), alleging an offence punishable under Section 420 r/w 34 of the Indian Penal Code. The said complaint was filed on 18.08.2008. The Petitioner's verification was recorded on 04.10.2008 and thereafter, process was issued by the learned Magistrate on 07.12.2010. Learned Magistrate had, admittedly, not conducted an enquiry as contemplated under Section 202 of the Code of Criminal Procedure, prior to issuing process. Being aggrieved by the order issuing process, the Respondent Nos. 1 to 3 filed Criminal Revision Application No. 236 of 2011 in the Court of the learned Additional Sessions Judge, Pune. As noted above, the learned Additional Sessions Judge in paras 11 & 12 of the order dated 04.01.2016 observed that the learned Magistrate had not conducted an inquiry as contemplated under Section 202 of the Code of Criminal Procedure and had issued process after perusing the complaint and the verification statement. It was further observed that the same was contrary to the what was stated in ***Satish @ Rajendra s/o Harbans Tiwari & ors. (Supra)***. Having come to the said conclusion, the learned

Additional Sessions Judge ought not to have dealt with the case on merits. The learned Judge instead ought to have remitted / remanded the matter back to the Court of the learned Magistrate, after quashing the order of issue process, as there was non-compliance of the provision of Section 202 of the Code of Criminal Procedure.

8. As noted above, admittedly, the inquiry under Section 202 of the Code of Criminal Procedure was not conducted by the learned Magistrate.

9. In view of what is stated above, I proceed to pass the following order.

O R D E R

(i) The impugned order dated 04.01.2016 passed by the learned Additional Sessions Judge, Pune to the extent that it quashes the order of issue process is maintained. However, the observations made in paras 14 to 17 of the impugned order dated 04.01.2016 are quashed and set aside;

(ii) The matter is remitted / remanded back to the trial Court i. e. the learned Judicial Magistrate First Class, Court No. 9, Pune, for fresh consideration, in the light of what is stated in the order;

(iii) The learned Magistrate shall hear the complaint expeditiously.

10. The Petition is allowed and Rule is made absolute on the aforesaid terms. The Petition is accordingly disposed of.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)