

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

CRIMINAL WRIT PETITION NO. 2888 OF 2018

Prashanto Pradeepkumar Chatterjee	]	
Age : 39 years, Occupation : Service,	]	
Residing At : Row House No. 6, B	]	
Wing, Siddhant Residency, Viman Nagar,	]	
Pune, 411014.	]	...PETITIONER

-Versus-

1.	The State of Maharashtra	]	
2.	Ranjana Rajesh Rachcha	]	
	Age : 44 Years, Occupation : Business	]	
	Residing At : Row House No. 5,	]	
	B-Wing, Sidhant Residency,	]	
	Plot No. 30, Viman Nagar, Pune, PIN	]	
	411014.	]	...RESPONDENTS

Mr. Tapan Thatte, Advocate for the Petitioner.
Mr. Ramiz Shaikh, Advocate for Respondent No. 2
Mr. A.R. Patil, APP for Respondent No. 1 – State.

CORAM	:	S. S. SHINDE J.
DATED	:	3rd JULY 2019

ORAL ORDER

1. This Petition takes an exception to the judgment and order dated 21st June 2018 passed by the learned Sessions Court at Pune in Criminal Misc. Application No. 232 of 2016, thereby confirming the order of issuance of process under Section 204 of the Code of Criminal Procedure (for short “Cr.P.C.”) for the offences punishable under Sections 340, 441, 427, 506, 120-B, 107 r/w Section

34 of the Indian Penal Code passed by the 28th Judicial Magistrate First Class, Pune in Criminal Misc. Application No. 2585 of 2013 dated 4th September 2015.

2. It is the case of the Petitioner that, one Ranjana Rajesh Rachcha i.e. Respondent No. 2, had filed Criminal Misc. Application before the Court of Judicial Magistrate First Class, Pune (for short, trial Court). It was alleged that, the accused No. 16 mentioned therein was a slumlord. It is alleged in the said application that, there was meeting of accused Nos. 1 to 15 on 03/10/2013, in front of her house, and they called accused No. 16 at the place of meeting, Accused arrived at spot. Accused No. 1 asked accused No. 16 and accused No. 5 (the present Petitioner) to bring hammer and scissors. The accused no. 5 and 16 brought such articles. The accused No. 3 caught hold of the complainant and locked her in her house and threatened her to kill. The accused No. 7 and 11 instigated accused No. 16 to cut a green cloth on compound wall of Respondent No. 2. The accused Nos. 5, 8 and 16 destroyed the green cloth. The accused No. 9 and 11 along with accused No. 5 and 16 removed such cloth. The accused No. 9 took the cloth with her. Since the door of the house of the complainant was locked, she could not come out. Only after her husband returned home, she was set free. Thus, the complainant alleged that all the accused jointly conspired on 30/09/2013 and caused the incident to happen as mentioned. She also alleged that, they had common intention and there was abetment.

3. It is submitted that initially, the trial Court passed the order calling report the police investigation U/Sec. 156(3) of the Code of Criminal Procedure. After investigation, the Police Station Vimantal by causing filed 'B'-Summary Report. Thereafter, the trial Court called say thereon of the complainant by issuing notice and after recording her statement, passed the impugned order.

4. It is submitted that, being aggrieved by such order, the revision petition was filed mainly contending that, the revision petitioners are innocent and the complaint is false and filed out of vengeance. No any specific role was attributed to any of the applicants. The trial Court failed to appreciate that, there was report of police that an allegations made in the complaint are false, still the trial Court brushed aside the report of police and issued process.

5. Learned counsel appearing for the Petitioner further submits that, the Respondent No. 2 has instituted a false criminal complaint against the Petitioner and 15 others out of vengeance. A bare perusal of the complaint by Respondent No. 2 bring out no specific role ascribed to the Petitioner. Learned Judicial Magistrate First Class at Pune and the Sessions Court at Pune failed to appreciate that while concluding the investigations into the complaint by the Respondent No. 1, the police had recorded a specific finding stating that the accusations made by the Respondent No. 2 are false and the same was supported by recording statements of independent witnesses. Under the circumstances, the learned

Judicial Magistrate First Class at Pune could not have brushed aside the same without there being concrete reasons for so doing. However, a cursory glance at the impugned order brings out that the Sessions Court has totally ignored this aspect of the matter.

6. Learned counsel appearing for the petitioner further submits that, the learned Sessions Court at Pune failed to appreciate that the Respondent No. 2 has instituted the criminal complaint with an oblique motive of harassing the petitioner and other accused persons in order to extort from them a permissions to start in nursery school in the residential society of the applicants and the other accused persons.

7. It is submitted that Respondent No. 2 has not explained in any manner as to why independent witnesses and electronic records are in contradiction with her version of the incident and as such the learned Sessions Court at Pune is at error in accepting her verification at face value. It is submitted that, the concern police officer filed 'B' Summary Report and the learned Magistrate ought to have accepted the request of the concern police officer to accept the 'B' Summary. It is submitted that the Magistrate has passed the impugned order without referring to the police officer. No opportunity was given to the petitioner to put forth his contentions. It is submitted that the learned Magistrate did not refer to the report submitted by the police. Therefore, relying

upon grounds mentioned in the petition and annexures thereto the learned counsel appearing for the Petitioner prays that petition may be allowed.

8. Learned counsel appearing for Respondent No. 2 submitted that, the petition filed by the Petitioner which seek to invoke the inherent jurisdiction of this Hon'ble Court is nothing but gross misuse and abuse of the process of Court and therefore the same deserved to be dismissed. It is submitted that the peculiar facts and circumstance of the instant case would show the manner in which the accused have conducted themselves and have committed offenses under the I.P.C. against the complainant, in the most cruel and inhuman manner. The learned counsel appearing for the Respondent No. 2 in support of his aforesaid contentions invited attention of this Court to the averments made in the affidavit in reply and submits that the bye laws of the society do permit conducting business in the premises. It is submitted that every member of the Society are also conducting business. The Respondent No. 2 decided to start a noble work of imparting education to children by starting Schools / Nursery Play Groups knows as "Young Legends" in her residential unit for which she sought permission from the Chairman of the said Society. The Society by giving flimsy grounds, wrongly refused to grant No Objection Certificate by informing the complainant that the requisite permission cannot be granted to her, despite the bye laws of the Society, having explicit provisions for all commercial business. The learned counsel submits that while issuing the process the trial Court has made reference to the

averments in the complaint and also verification of the petitioner and thereafter by reasoned order issued the process against accused. It is submitted that the Sessions Court after appreciating the rival contentions has rejected the Revision filed by the Petitioner. Therefore, relying upon the submissions in the affidavit in reply and annexures thereto and the reasons assigned by the both the Courts below the learned counsel for the Respondent No. 2 prays that Writ Petition may be rejected.

9. This Court has given due consideration to the submissions of learned counsel appearing for the Petitioner and learned counsel appearing for the Respondent No. 2. With their able assistance perused the pleadings and grounds taken in the petition, annexures thereto and also the impugned judgment and order passed by the Courts below and copies of the documents placed on record. It would be apt to reproduce herein below the reasons assigned by the Magistrate while issuing process :

“2. The complainant deposed that, on 03/10/2013 accused No. 1 to 15 illegal assembled in front of her house and they called accused No. 16. Thereafter she deposed about all illegal activities committed by all accused. She also deposed that, accused persons wrongfully confined to her. Accused persons also caused damage to green cloth over compound wall and committed damage of Rs. 5000/-. Thereafter, she called police and escaped herself from the accused persons. According to her, she is running play group for children in the house and all accused persons are member of the society and in order to obstruct her from running the said play group, they committed and also continue to commit

the aforesaid illegal activities with her. Perused the complaint and the statement of the complainant on oath. This court is of opinion that there are sufficient grounds for proceedings against accused persons.”

It appears that, Magistrate relying upon the averments in the complaint and other material placed on record reached to the conclusion that the complainant has made out *prima facie* case against accused persons and accordingly process was issued.

10. The present Petitioner filed Criminal Revision No. 232 of 2016 challenging the aforesaid order passed by the Magistrate. Sessions Court after appreciating the rival contentions and documents placed on record has passed the reasoned order. The Sessions Court has also made reference to the 'B' Summary Report in para No. 12 of the impugned order and after adverting to said report in Para No. 14 reached to the conclusion that so far as accused No. 5 i.e. petitioner herein is concern there is specific role assigned to him in the complaint. Therefore, Sessions Court observed that the trial Court has rightly issued process. However, the Sessions Court found that no role has been assigned to original Accused Nos. 4 and 6 and therefore, the Sessions Court allowed the Revision of original Accused No. 4 and 6 and dismissed the Revision *qua* petitioner herein.

11. Upon independent scrutiny of the material placed on record and role assigned to the petitioner in the complaint, it cannot be said that the order of

issuance of process by the Magistrate by recording *prima facie* conclusion against the petitioner is perverse or view taken by the Sessions Court is not plausible. It appears that the view taken by the Sessions Court is plausible, reasonable and in consonance with the material placed on record and there is not perversity as such. Therefore, no case is made out to entertain this Petition.

12. For the aforesaid reasons, Writ Petition stands rejected.

An observations made herein before are *prima facie* in nature and confined to the adjudication of the present petition only.

13. At this stage, learned Counsel appearing for the Petitioners prays for continuation of ad-interim relief, which was in force during the pendency of these Petition, for further four weeks from today. However, the said prayer is vehemently opposed by the learned Counsel appearing for Respondent No. 2. Nevertheless, in the interest of justice, ad-interim relief granted earlier to continue for a period of four weeks from the date of uploading of this order.

[S.S. SHINDE, J.]