

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

CRIMINAL WRIT PETITION NO. 5616 OF 2018

Harmeet Singh	]	
Age : 41 years, Occupation : Service,	]	
Residing AT : C-09, Sidhant	]	
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	:	3 rd JULY 2019

ORAL ORDER

1. This Petition takes an exception to the order dated 04th September 2015 passed by the learned Judicial Magistrate First Class at Pune in Criminal Misc. Application No. 2585 of 2015, whereby process was issued against the Petitioner.

2. Respondent No. 2 herein instituted / filed a complaint against the petitioner and six other persons under Section 344, 441, 427, 120-B, 107 r/w Section 34 of the Indian Penal Code (for short 'IPC'). The learned Judicial Magistrate First Class at Pune was pleased to direct investigation under Section 156(3) of the Code of Criminal Procedure, 1973 (for short "Cr.P.C") against the petitioner and six other persons. On 13.01.2014 police filed "B" Summary Report (Closer report on the ground that the Respondent No. 2 filed a false complaint) after conducting investigation. On 23.03.2015 the learned Judicial Magistrate First Class at Pune, allowed the Respondent No. 2 to record the verification statement and accordingly verification of Respondent No. 2 was recorded. On 04th September 2015 the learned Judicial Magistrate First Class at Pune vide order below Exhibit – 2 in Criminal Misc. Application No. 2585 of 2013 issued process against petitioner and other persons under Sections 344, 441, 427, 120-B, 107 r/w Section 34 of the Indian Penal Code.

3. Being aggrieved by the said order of issuance of process original Accused Nos. 4, 5 and 6 moved before the learned Sessions Court challenging the order of learned Judicial Magistrate First Class, Pune, of issuance of process. It appears that Revision filed by the original accused No. 5 came to be rejected and being aggrieved by the order passed by the Sessions Court the Accused No. 5 Mr. Prashanto Chatterjee has filed the Criminal Writ Petition No. 2888 of 2018. However, the present Petitioner Hermeet Singh who is Accused No. 1 in the

Complaint filed before the learned JMFC, Pune has filed the present Writ Petition challenging the order of issuance of process by the learned Judicial Magistrate First Class, Pune. It is admitted position that the petitioner herein did not preferred Revision before the Sessions Court and has directly challenged the order passed by the learned Judicial Magistrate First Class, Pune in Criminal Misc. Application No. 2585 of 2015, whereby the process was issued against the Petitioner.

4. At the outset learned counsel appearing for the Respondent No. 2 raised preliminary objection that, the petitioner has an alternate and efficacious remedy of filing the Revision, however, the petitioner has directly approached this Court by filing the present Writ Petition. Therefore, the Writ Petition may not be entertained. In reply to submissions of learned Counsel appearing for the Respondent No. 2, the learned counsel appearing for the Petitioner submits that, though the remedy of Revision is available, petitioner can file the Writ Petition directly by invoking the extra-ordinary Writ jurisdiction or an application under Section 482 of the Cr.P.C., since there was not case on merits for issuance of process against the Petitioner.

5. Learned counsel appearing for the Petitioner and also learned Counsel appearing for the Respondents advanced the arguments on merits for sometime. However, this Court is of the opinion that since Accused Nos. 4, 5 and

6 filed the Revision Application and there is no impediment for the petitioner to avail a remedy of Revision before the Sessions Court at Pune. It is true that though the Revisions is maintainable, there is no bar to entertain Writ Petition or to exercise an inherent powers under Section 482 of the Cr.P.C. However, it is only in appropriate cases said course needs to be adopted. An entertaining Writ Petition or an application under Section 482 directly against the order of an issuance of process at the instance of the Petitioners who did not approached the Sessions Court by filing Revision in spite of the fact that some of the accused against whom process has been issued by same order of the Magistrate, would not be appropriate course to adopt. In that view of the matter this Court is not inclined to entertain this petition on merits. If the petitioner is advised he can file the Revisions before the Sessions Court at Pune. In case, the petitioner decides to file Revision, the concern Court would decide such Revision on its own merits. In case petitioner filed Revision and if there is delay, while considering the prayer for condonation of delay, if any, in filing the Revision, the concern Court shall keep in view the time spend by the Petitioner in prosecuting the present Writ Petition and then take the decision on such application for condonation of delay. All the contentions on merits are left open for being agitated before the Sessions Court at Pune.

6. With the above observations, Writ Petition stands rejected.

7. 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 this order.

[S.S. SHINDE, J.]