

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.452/2019

Vijay S/o. Devkishanji Jaju
..VS..
Sau Alka Parmeshwar Pund & Oth

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri T. G. Bansod, Advocate for the petitioner

CORAM : ROHIT B. DEO, J.
DATED : 24th June 2019

I have heard Shri T. G. Bansod, learned counsel for the petitioner.

2] In exercise of writ jurisdiction, I am called upon to consider the legality of the revisional order by and under which the order of issuance of process for offence punishable under Sections 166 and 427 of the Indian Penal Code (IPC) is set aside.

3] The petitioner is the original complainant who filed complaint being Regular Criminal Case 215/ 2013 seeking prosecution of the respondents for offences punishable under Sections 395 and 427 of the IPC.

4] The substratum of the complaint is that the respondent committed dacoity by breaking open the shutter of shop block 12, which the complainant was in possession as lessee of the Lohi Gram Panchayat and taking away the grocery articles.

5] The learned Magistrate was satisfied that an inquiry under Section 202 of the Code of Criminal Procedure, 1973 (the Code) would be necessary, and accordingly directed the Police to conduct an inquiry. The police conducted the inquiry and gave a clean cheat to the respondents. Inexplicably, while issuing process the learned Magistrate did not apply mind to the report under Section 202 of the Code.

6] The learned Magistrate did note that the report exonerates respondents. However, the learned Magistrate proceeds to hold that the complainant has made out prima facie case and issued process. The material on the basis of which the learned Magistrate issued the process, was available when the learned Magistrate directed that inquiry under Section 202 of the Code be conducted. It is therefore surprising that without there being any additional material in support of the allegations and without even referring to the contents of the report under Section 202 of the Code, the learned Magistrate issued the process.

7] Be that as it may, the revisional Court set aside the order of issuance of process on the ground that no case is made out for proceeding against the respondent-accused. Perusal of the revisional order would reveal that it was not disputed even by the learned counsel for the complainant that articles were seized and then auctioned to recover the arrears of rent and the accused purported to effect the seizure and to conduct

the auction in exercise of power under the Maharashtra Village Panchayats Act (the Act). The submission made on behalf of the complainant was that the procedure prescribed, *inter alia* by section 129 of the Act was not followed. The learned Sessions Judge has considered the said submission and has recorded a finding that the ingredients of Sections 166 and 427 of the IPC are not satisfied. I see no reason to take a different view. Section 427 of the IPC reads thus:

“427. Mischief causing damage to the amount of fifty rupees- Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

It would further be necessary to consider the definition of 'Mischief' under Section 425 of the IPC which reads thus:

“425. Mischief – Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits “mischief”.

The *sine qua non* ingredient to bring Section 427 of the Code into play is that the intention must be to cause wrongful loss or damage. The element of *mens rea* must necessarily be established. If the submissions which

were canvassed on behalf of the complainant before the revisional Court are considered, the thrust is the alleged infraction of the provisions of law. The infraction may, if at all, furnish a cause of action for damages. However, it is difficult to hold that the complainant has made out a case for prosecuting the accused for the offences punishable either under Section 166 or Section 427 of the IPC.

8] I am not satisfied that no case is made out for this Court to exercise writ jurisdiction.

The petition is **dismissed**, with no order as to costs.

JUDGE

Namrata