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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.468 OF 2020

Ravindra Rajaram Bhairi = PETITIONER

VERSUS

1) Ramchandra Narayan Bhat
and Anr. = RESPONDENT/S

Mr.GB Kingre, Advocate for Petitioner;
Mr.AM Phule, APP for Respondent No.2-State.

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 29th October, 2020.

PER COURT:-

1. Present petitioner is original complainant, who had filed STC No.123/2014 against present Respondent No.1, alleging that Respondent No.1 has committed offence punishable under Sections 323, 504, 506 of IPC. In the said Complaint, the writ petitioner had prayed for sending the matter for investigation under Section 156(3) of Cr.P.C. By order dated 24th February, 2016, learned JMFC, Court No.1, Ahmednagar, after taking into consideration Verification of the accused; report of Police under Section 202 of Cr.P.C. and hearing learned Advocate for the complainant, dismissed the complaint under Section

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203 of Cr.P.C. The said order of dismissal of the complaint was challenged by the present petitioner in Criminal Revision No.70/2016 before learned Additional Sessions Judge, Ahmedangar. The said Revision came to be dismissed on 17.1.2020 and, therefore, the present petition has been filed, invoking constitutional powers under Article 227 of Constitution of India and inherent powers of this Court under Section 482 of Cr.P.C. for setting those orders aside and remanding the matter for hearing it on merits.

2. Heard learned Advocate and learned APP appearing for respective parties.

3. It has been vehemently submitted by learned Advocate for petitioner that both the Courts have not given proper opportunity to the complainant to put-forth the evidence. It was submitted that the complainant had contended about the incident which had taken place in the company premises. CCTV footage, which was relied on by both the Courts below, is in respect of parking shed. If an opportunity would have been given to

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the complainant, it could have been better pointed out. The report filed by the police has been accepted as it is and, therefore, both the Courts below erred in passing the impugned orders.

4. Taking into consideration the contents of the Writ Petition; the Complaint; Revision Petition and orders passed by both the courts below, it is absolutely not necessary even to issue notice to Respondent No.1.

5. At the outset, it can be seen that though the offences, which were complained of by the complainant, were under Section 323, 504, 506 of IPC, the complainant had prayed for investigation under Section 156(3) of Cr.P.C. The complainant had contended that threat to kill was given to him. Merely on the said statement, the offence cannot be under Section 506 Part-II of IPC. The complainant does not allege that the accused was holding anything in his hand which would have given immediate threat to kill. Therefore, none of the sections, which were quoted by the complainant, were cognizable and, therefore, the complaint could

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not have been sent for investigation under Section 156(3) of Cr.P.C.

6. The learned Magistrate had recorded the verification of the complainant and had then sent the matter for inquiry under Section 202 of Cr.P.C. After the inquiry was conducted, report was submitted by the Police and thereafter the learned Magistrate had gone through the Verification; written arguments submitted by the complainant and the report of the Police under Section 202 of Cr.P.C. The learned Magistrate has relied on the said report and found that the alleged offences have not been made out and, therefore, the complaint came to be dismissed under Section 203 of Cr.P.C.

7. The Revisional Court also found that there is absolutely no procedural lacuna that has been left by the learned Magistrate for correction under Section 397 of Cr.P.C.

8. Now, the petitioner has taken a ground that the incident had taken place in the parking

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shed and there was no CCTV camera. The complainant says that the CCTV footage ought not to have been relied on by the courts below. If we peruse the complaint then the spot appears to be on road outside the gate of the company. It is coming in the writ petition, for the first time, that the incident had taken place in the parking place/shed. Even the Revision Petition does not contain such ground. When the report under Section 202 of Cr.P.C. is produced to a Court then, the options available to the Magistrate are, i) to believe said report and if it is favouring the complainant, then may take cognizance; ii) if the report is against the complainant, then believe it and dismiss the complaint and iii) if the learned Magistrate decides not to believe the report, then to issue further directions to make an inquiry in a particular way or to conduct an inquiry upon himself/herself under Section 202 of Cr.P.C. Now, here there is nothing on record, which would show that acceptance of the report filed by the Police to the learned Magistrate was false or unbelievable; rather it is pointed out, for the first time, in the writ petition that the place of

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offence itself is changed by the petitioner. There is absolutely no legal flaw that has been left out by both the courts below.

9. No case is made out to invoke either the constitutional powers under Article 227 of the Constitution of India or inherent powers of this Court under Section 482 of Cr.P.C. There is absolutely no merit in the writ petition. It deserves to be dismissed and it is accordingly dismissed.

(SMT. VIBHA KANKANWADI,J.)

BDV