

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1996 OF 2019.

- 1) Sayyad Shoukat Jamadar,
Age 54 Years, Occupation Service,
- 2) Pathan Amer Chand Khan,
Age 27 Years, Occupation Service,
- 3) Sayyad Noor Jamadar,
Age 42 Years, Occupation Service,
- 4) Pathan Chand Khan,
Age 60 Years, Occupation Retired,

All R/o Balepeer, Beed Tq. Dist.
Beed.

**...Petitioners.
(Original Accused)**

VERSUS

- 1) The State of Maharashtra,
Through : Police Station Shivaji
Nagar, Beed Tq. Dist. Beed.
- 2) Vakhas Khan s/o Bismillakhan,
Age 29 Years, Occupation Medical
Practitioner, R/o Balepeer, Beed.
Tq. Dist. Beed.

**...Respondents.
(R.No.2 Original Complainant)**

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Advocate for Petitioners : Mr. N. L. Jadhav.
APP for Respondent No.1- State : Mr. P. K. Lakhotiya.
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**CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 02-01-2020.**

JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent heard both sides finally at the stage of admission.

2. Present petition has been filed by the original accused persons challenging the order of issuing process against them by learned Judicial Magistrate, First Class, Beed, in Miscellaneous Criminal Application 202 of 2017, on 13-06-2019, which was then confirmed in Criminal Revision No.60 of 2019 by learned Additional Sessions Judge, Beed, dated 19-11-2019.

3. The facts giving rise to the petition are that the daughter of petitioner No.1 Sayyad Shoukat Jamadar got married to respondent No.2 on 09-11-2012. She as well as respondent No.2 are medical practitioners by profession. They have one daughter. The petitioners contend that, the respondent No.2 was ill-treating his wife and, therefore, quarrels started. Respondent No.2 had assaulted his wife on 23-01-2017 for which she was admitted to Civil Hospital, Beed and then shifted to Deep Hospital, Beed. She lodged complaint against the respondent No.2 and others with Shivaji Nagar, Police Station, for which non-cognizable offence under

Section 323, 504, 506 read with 34 of Indian Penal Code vide NC No.51 of 2017 was lodged on 23-01-2017. It is the contention of the petitioners that, after respondent No.2 got knowledge about the lodging of the said complaint, he made false complaint to give counterblast against the petitioners. Initially First Information Report was not registered, and therefore, the respondent No.2 filed Miscellaneous Criminal Application No.202 of 2017. It was alleged in the complaint that, daughter of petitioner No.1 was not ready to cohabit with him and was insisting that he should become 'Gharjavai' (Son-in-law who stays at wife's home). He had tried to cohabit with her but she was not co-operating, and therefore, he had filed proceeding for divorce which was then withdrawn because of the pressure from the petitioners. It was alleged in the complaint against them that, the respondent No.2 (complainant) was in his hospital at about 8.45 p.m. on 23-01-2017. All the petitioners went to his hospital and abused him. It was alleged that, petitioner No.1 was insisting that, he should give divorce to the wife and pay Rs.10 Lakh. When he denied, the petitioners had beaten him by fists blows.

4. After the verification of the complaint, the learned Judicial

Magistrate, First, Class, Beed has passed an order of sending the matter for inquiry under Section 202 of Code of Criminal Procedure, and after the report was received, the learned Judicial Magistrate, First class, Beed has issued process against the petitioners under Section 323, 441, 452, 504, 506 read with 34 of the Indian Penal Code by the impugned order dated 13-06-2019.

5. The said order was challenged by the present petitioners by filing Criminal Revision Application No.60 of 2019, however it has been dismissed on 19-11-2019. Hence, present petition.

6. Heard learned advocate Mr. N. L. Jadhav for petitioners and learned Additional Public Prosecutor for respondent No.1 – State. After hearing both of them it was felt that it is absolutely not necessary to issue notice to respondent No.2.

7. It has been vehemently submitted on behalf of the petitioners that, initially the wife of the present respondent No.2 had filed the non-cognizable case and as a counterblast, after much delay, the private complaint has been filed by the respondent No.2. The incident alleged to have taken place on 23-01-2017 but the complaint has been filed on 10-02-2017. There is absolutely no

explanation for the delay. It can be seen from the contents of the non-cognizable offence registered against respondent No.2 on the complaint by his wife that her father had gone there to fetch her, and at that time the respondent No.2 had assaulted her by fists and blows, abused and gave threat to kill. Learned Judicial Magistrate, First Class, Beed, failed to consider that it was a counterblast to the said complaint and it ought to have been considered that it was dispute between the husband and wife that has taken an unfortunate turn, and then not only her father but other relatives have been unnecessarily dragged. The learned Revisional Court also failed to consider all these aspects, hence interference by this Court is necessary.

8. The learned Additional Public Prosecutor supported the reasons given by the learned Magistrate while issuing process and also supported the reasons given by the learned Revisional Court. It was submitted that, the procedure has been properly adopted by the learned Judicial Magistrate, First Class, Beed.

9. At the out set it is to be noted that, as per the complaint filed by the respondent No.2, he had filed complaint with police which came to be registered as non-cognizable vide No.50 of 2017 on the

same date of incident i.e. 23-01-2017, under Section 323, 504, 506 read with 34 of the Indian Penal Code. Note of the said non-cognizable report has been taken by the learned Magistrate in his order. The non-cognizable complaint which the petitioners are relying is numbered as 51 of 2017. That means, it was subsequent to the non-cognizable case filed by the present respondent No.2, therefore it cannot be said to be a counterblast. In the complaint itself it is stated that, since the police did not take any action, he has filed the private complaint. If there is any delay in lodging the First information Report then this is not the stage where the complaint itself can be quashed. The said delay may be explained by the complainant at a later stage of the proceedings.

10. Another fact to be noted is that, the place and time of incident in both the non-cognizable reports is same. Therefore, at this stage there is room to believe that some incident had taken place on that day. If that is the fact then order of issuing process against the present petitioners cannot be quashed at the threshold. As regards the other accused i.e. present petitioners No.3 and 4 are concerned, the complainant has given particular acts those which were allegedly committed by them. When all these facts thus have been

considered by the learned Magistrate and the impugned order passed by the learned Magistrate reflects proper application of mind the same was then considered by the learned Revisional Court in detailed, hence no case is made out for this Court to invoke its Constitutional powers under Article 226 and 227 of the Constitution of India. Hence, there is no merit in the petition, writ petition stands dismissed. Rule is discharged.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.