

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

19 CRIMINAL WRIT PETITION NO.80 OF 2019

DR. ABDUL GAFFAR QUADRI
S/O. ABDUL RAZZAK QUADRI

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA & ANR

..RESPONDENTS

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Advocate for Petitioner : Mr. S. S. Kazi

APP for Respondent No.1 : Ms. R. P. Gour

Advocate for Respondent No.2 : Mr. Z. H. Farooqui
h/f Mr. N. V. Gaware

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CORAM : N.R. BORKAR, J.

DATE : 22.11.2021

PER COURT :-

This petition challenges the order dated 10.10.2018 passed by the learned Additional Sessions Judge, Aurangabad in Criminal Revision No. 190 of 2015.

2. The respondent No.2 herein filed a complaint case against the petitioner and other three accused. The learned Magistrate after considering the allegations in the complaint had issued process against the present petitioner and other three accused for the offences punishable under Sections 467, 468, 420, 409 read with Section 34 of the Indian Penal Code. The revision petition was filed only by the petitioner against the

order of issuance of process passed by the the learned Magistrate. The revisional Court, by the order impugned, has allowed the revision petition. The revisional Court has found the offences for which the process was issued by the learned Magistrate are not made out. The revisional Court has however, found that the case is made out for the issuance of process against the present petitioner for the offence punishable under Section 416 of the Indian Penal Code and has directed issuance of the process against petitioner for the said offence.

3. I have heard the learned counsel for the petitioner, learned A.P.P for respondent No.1 and learned counsel for the respondent No.2.

4. The learned counsel for the petitioner submits that the learned revisional Court after setting aside the order of the learned Magistrate was not justified in issuing the process for altogether new offence. It is submitted that issuance of process for altogether new offence in revisional jurisdiction is not permissible. It is submitted that considering the facts and circumstances, the impugned order of revisional Court to the extent of issuance of process for the offence punishable under Section 416 of the Indian Penal Code be set aside.

5. On the other hand, learned counsel for the respondent No.2 has supported the order passed by the revisional Court.

6. Admittedly, the process which was issued by the learned Magistrate against the petitioner was for the offence punishable under Sections 467, 468, 420, 409 read with Section 34 of the Indian Penal Code. If the revisional Court was of the view that allegations in the complaint, do not constitute the said offence and on the basis of allegations process needs to be issued for some other offence then the learned revisional Court ought to have remanded the matter to learned Magistrate and ought not to have issued the process for altogether new offence in revisional jurisdiction. The order of the revisional Court, therefore, to the extent of issuing process against the petitioner, cannot be sustained. The learned Magistrate shall consider the matter afresh against the petitioner without being influenced by the observation made by the revisional Court.

7. In the result the following order is passed :

O R D E R

1. Petition is partly allowed.
2. The impugned order to the extent of issuance of process against the present petitioner by the revisional Court for the offence punishable under Section 416 of the I.P.C.

is quashed and set aside.

3. The learned Magistrate shall consider the matter afresh in accordance with law without being influenced by the observations made by the learned revisional Court.
4. The petition is disposed of in above terms.

(N. R. BORKAR)
JUDGE

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