

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

920 CRIMINAL WRIT PETITION NO.1172 OF 2019

**NILESH S/O. ASHOK DESHMUKH AND OTHERS
VERSUS
MILAN W/O. NILESH DESHMUKH**

Mr. K. N. Shermale, Advocate for the petitioner
Mr. C.V. Bodkhe, Advocate h/f Mr. R. V. Gore,
Advocate for the respondent

CORAM : N. R. BORKAR, J.

DATE : 16-11-2021

P. C.

. This petition takes an exception to the order dated 10-08-2018, passed by the learned JMFC, Chalisgaon in Criminal Misc. Application No. 936 of 2017 (R.C.C. No. 184/2018).

2. The respondent herein filed complaint case against the present petitioners for the offences punishable under Sections 498-A, 323, 504 and 506 of the IPC. By the order impugned the learned Magistrate issued process against the present petitioners for the offences punishable under Sections 498-A, 323, 504 and 506 of the IPC.

3. I have heard learned counsel for the petitioners and learned counsel for the respondent.

4. Learned counsel for the petitioners submits that the learned Magistrate has issued the process mechanically. It is submitted that the learned Magistrate has issued the process in all against nine persons and against the persons who are not even the family member of the petitioners No.1 with whom the respondent has alleged to have married. It is submitted that the order passed by the learned Magistrate thus needs to be quashed and set aside.

5. On the other hand learned counsel for the respondent submits that remedy of revision under Section 397 read with Section 399 of the Code of Criminal Procedure is available to the petitioners against the order impugned.

6. It is further submitted that before issuance of process report under Section 202 of the Cr.P.C. was called. It is submitted that after considering the allegations against the petitioners and report under Section 202 of the Code of Criminal

Procedure the learned Magistrate has issued the process and therefore, no interference is called for in the order Impugned.

7. I have perused the order impugned, which reads thus:

Perused complaint, verification & report under Section 202 of Cr.PC. prima facie sufficient material exists for proceeding the matter against accused Hence issue process against accused for the offence U/Sec 498-A, 323, 504, 506 of IPC on PF.

8. It is well settled that process cannot be issued mechanically. The order should reflect that the learned Magistrate has applied mind to the facts and material placed on record. The order impugned does not reflect application of mind by the learned Magistrate as the learned Magistrate has issued the process for the offence punishable under Section 498-A of the Indian Penal Code against the accused, who are not the relatives of petitioner No.1. Considering the facts and circumstances, the order impugned cannot be sustained.

(4)

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9. The Hon'ble Supreme Court in the case of Prabhu Chawala Vs. State of Rajasthan, 2016 A.I.R (S.C.) 4245 has held that the application under Section 482 or Writ Petition cannot be dismissed just because remedy of revision is available against order of issuance of process. Thus, following order is passed:

ORDER

- i. The petition is partly allowed.
- ii. The order impugned is set aside.
- iii. The learned Magistrate, shall pass the fresh order in accordance with law.

[N. R. BORKAR, J.]

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