

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

18 CRIMINAL WRIT PETITION NO.1382 OF 2016

**DIGAMBAR S/O HARIBHAU KOTE
VERSUS
RAHUL S/O GANGADHAR KOTADE AND ANR**

Mr. Ganesh P. Shinde, Advocate for the petitioner
Mr. S. P. Sonpawale, APP for the respondent/State
Mr. D. G. Nagode, Advocate for the respondent No.1

CORAM : N. R. BORKAR, J.

DATE : 25-10-2021

P. C.

. This petition takes an exception to the order dated 16-06-2016 passed by the learned Additional Sessions Judge, Kopergaon in Criminal Revision No. 16 of 2015.

2. The petitioner herein has filed the complaint case against the respondent No.1 and other two more accused before the learned Magistrate, Rahata. The learned Magistrate, Rahata by order dated 16-01-2015 had issued the process against the present respondent No.1/original accused No.3 for the offences punishable under Sections 217 and 221

of the IPC and against the other two accused for the offences punishable under Sections 507 of the IPC. The respondent No. 1 had filed the revision against the order of issuance of process against him. The learned Additional Sessions Judge allowed the revision by the order impugned.

3. I have heard learned counsel for the petitioner, the learned counsel for the respondent No.1 and the learned APP for the respondent/State.

4. The learned counsel for the petitioner submits that the finding of the learned Additional Sessions Judge is contrary to the material on record. It is submitted that the learned Magistrate had issued the process against the respondent No.1 after examining the material on record and therefore, learned Additional Sessions Judge ought not to have interfered with in its revisional jurisdiction. It is submitted that the order impugned thus needs to be set aside.

5. On the other hand the learned counsel for the respondent No.1 supported the order passed by the revisional court. It is submitted that

allegations against the respondent No.1 are not sufficient to constitute the offences punishable under Sections 217 and 221 of the IPC for which the process was issued. It is submitted that the learned revisional court was, therefore, justified in allowing the revision.

6. I have perused the allegations in the complaint and verification. The respondent No.1 is working as Naib-Tahasildar. The allegations against the respondent NO.1 are that request was made by the petitioner to the respondent No.1 to provide certain information under Right to Information Act in relation to fair price shop of other to co-accused as according to the petitioner they were indulging in black marketing of rockel. According to the petitioner the respondent No. 3 instead of providing information and taking action against them, he told to the petitioner that accused Nos. 1 and 2 are dangerous persons and he should not ask record of their fair price shop or else they would implicate him for the offence punishable under Section SC and ST (Prevention of Atrocities) Act. According to the petitioner there is recorded phone conversation to that effect between him and the

respondent No.1. The allegations are not at all sufficient to constitute either offence punishable under Section 217 or 221 of the IPC as to constitute the offence under Section 217 there must be intentional disobedience of law by the public servant and said ingredient is missing in the present case. It is also not understood as to how Section 221 is attracted in the present case, which deals with omission to apprehend the offenders. No interference is thus called for in the impugned judgment and order of the revisional court. The petition is dismissed.

7. Needless to state that the trial court shall decide the case against the other accused on its own merits without being influenced by the observations made by the revisional court or this court.

[N. R. BORKAR, J.]