

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.406 OF 2015

1. Rambhau Krushnarao Raut,
Aged about 58 years,
Occupation: Retired,
Resident of C/o Office of the
Assistant Charity Commissioner,
Madhuban Plaza Complex,
Shivaji Nagar, Tukum, Chandrapur,
Tahsil and District Chandrapur.
2. Damodar Shriramji Mathane,
Aged about 50 years,
Occupation: Service,
Resident of Jalnagar Ward,
Chandrapur, Tahsil and District Chandrapur.
3. Shri Umesh Shankarrao Lunge,
Aged about 35 years,
Occupation: Service,
Resident of C/o Office of the
Assistant Charity Commissioner,
Madhuban Plaza Complex,
Shivaji Nagar, Tukum, Chandrapur,
Tahsil and District Chandrapur.
4. Rajendra Mahadeo Deshmukh,
Aged about 35 years,
Occupation: Service,
Resident of C/o Office of the
Assistant Charity Commissioner,
Madhuban Plaza Complex,
Shivaji Nagar, Tukum, Chandrapur,
Tahsil and District Chandrapur.
5. Padma Kishor Ramgirwar,
Aged about 37 years,
Occupation: Service,
Resident of C/o Office of the

Assistant Charity Commissioner,
Madhuban Plaza Complex,
Shivaji Nagar, Tukum, Chandrapur,
Tahsil and District Chandrapur.

..... **PETITIONERS**

...VERSUS...

Balwant Pundlik Tikle,
Aged about 59 years,
Occupation: Legal Practitioner,
Resident of Shende Plots,
Ramnagar, Chandrapur,
Tahsil and District Chandrapur.

..... **RESPONDENT**

Ms. Malika Yaduka, Advocate h/f Mr. S.P. Bhandarkar,
Advocate for Petitioners.
Ms. Parita Lakhani, Advocate h/f Mr. M.P. Kariya, Advocate
Respondent.

CORAM: **ROHIT B. DEO, J.**
DATE: **10th MARCH, 2021.**

ORAL JUDGMENT:

The petitioners are assailing the order dated 12.11.2013 rendered by the learned 4th Judicial Magistrate First Class, Chandrapur in Summary Criminal Case 773/2013 issuing process for offence punishable under Section 500 of the Indian Penal Code, and the judgment dated 07.05.2015 rendered by the Additional Sessions Judge-1, Chandrapur in Criminal Revision Application 24/2015, whereby the revision preferred by the petitioners assailing the order of issuance of process, is dismissed.

2. The petitioners, who shall be hereinafter referred to as the accused, were working with the office of the Assistant Charity Commissioner, Chandrapur, in various capacities, at the relevant time.

3. The respondent is a legal practitioner who *inter alia* represents his clients the causes which are dealt with by the Office of the Assistant Charity Commissioner. He shall be hereinafter referred to as the complainant.

4. The accused contend that an unfortunate and unsavory incident occurred on 25.09.2012. The complainant behaved in a most arrogant manner and heaped filthy abuses and insults on the accused. The efforts of the accused to persuade the complainant to see reason were futile and accused 1 therefore, lodged report with Police Station Ramnagar, Chandrapur on the basis of which offences punishable under Sections 294, 506 and 186 of the Indian Penal Code were registered against the complainant.

5. The accused contend that in retaliation the complainant instituted Summary Criminal Case 773/2013 alleging

commission of offence punishable under Section 500 of IPC. The accused further contend that the learned Magistrate recorded verification on 17.05.2013 and instead of issuing process, deemed it necessary to direct an inquiry under Section 202 of the Criminal Procedure Code, 1973 (Code). The Police Station Ramnagar, Chandrapur inquired into the complaint and submitted report dated 19.07.2013. The accused contend that the investigation report finds fault with the complainant and there is no material emerging from the investigation report as would make out a case to proceed against the accused. The accused then contend that in a casual and routine manner, the learned Magistrate issued the process, which is confirmed in revision.

6. I have heard Ms. Malika Yaduka for the accused and Ms. Parita Lakhani for the complainant extensively.

7. Ms. Malika Yaduka would assail the order of issuance of process on several grounds, *inter alia* that the complaint is motivated, that it would be an abuse of the process of law for the trial to continue, that the material on record was not sufficient to presume that the accused have committed offence punishable under Section 500 of IPC and that, in any event, the learned

Magistrate committed a grave error in issuing the process mechanically, in the absence of any additional material on record.

8. The submissions are stoutly refuted by the learned counsel for the complainant Ms. Lakhani. Both the learned counsel have invited my attention to several decisions of the Supreme Court. However, since I am inclined to set aside the order of issuance of process on a limited ground, it would not be necessary to deal with the other submissions canvassed nor would it be necessary to refer to the plethora of authorities which explain the nature and scope of the statutory scheme.

9. It is discernible from record that after recording the verification statement of the complainant, the learned Magistrate considered it appropriate to postpone issuance of process and to direct an inquiry under Section 202 (1) of the Code. Pursuant to the order dated 17.05.2013 that an inquiry be conducted by the concerned police station, the Police Station Officer, Police Station Ramnagar, Chandrapur submitted report dated 19.07.2013 which virtually exonerates the accused and rather records a finding that it is the complainant who has *prima facie* committed offences punishable under Sections 294, 506 and 186 of IPC.

The investigation report refers to the statements of several witnesses.

10. Notwithstanding the investigation report, the learned Magistrate issued process under Section 500 of IPC. Vide order dated 12.11.2013, which reads thus:

Read report vide Exh.6, perused record. Heard counsel for complainant. It reveals that there is prima-facie case made out against accused persons for proceeding with the matter. Hence issue summons to accused persons for the offence punishable U/s 500 of I.P.C.

11. The law is too well settled to warrant reference to the catena of decisions holding the field. It is beyond doubt, that the Magistrate is not bound by the report submitted under Section 202 of the Code. However, while the Magistrate is not bound by the opinion recorded by the Investigating Agency, the Magistrate is indeed obligated to consider the material collected during the investigation and on consideration of the material, it is indeed open to the Magistrate to proceed against the accused irrespective of the contrarian opinion expressed by the Investigating Agency. In the factual matrix, there is nothing in the order of issuance of process which would suggest that the Magistrate considered the

material collected in the inquiry under Section 202 of the Code. Be it noted, that the Magistrate was not satisfied on the basis of the material on record pre-inquiry and chose to postpone issuance of process considering an inquiry under Section 202 of the Code necessary. In this view of the matter, it was necessary for the Magistrate to consider the material emerging in the investigation report and then to take an appropriate call. It is from this perspective, that the Supreme Court has emphasized that in the absence of additional material, an order of issuance of process would be illegal.

12. It would be apposite to note the observations of the Supreme Court in *Mohammad Ataullah v. Ram Saran Mahto* (1981) 2 SCC 266, which read thus:

Having directed an investigation under Section 202, what was there in the report of investigation to justify the issue of process to the accused, it was asked. The report of investigation merely set out the conclusion of the Executive Officer, Samastipur Municipality, without mentioning or referring to any material which would justify the issue of a process. It was, therefore, said that the Chief Judicial Magistrate was wrong in issuing process, on the basis of the report of investigation made by the Executive Officer, Samastipur Municipality. We are afraid the submission has to be accepted. There is no answer to it. As already pointed out by us the Executive Officer,

Samastipur Municipality, in his report, merely expressed his opinion but mentioned no detail of the investigation made by him and referred to no witness examined by him or any document perused by him. Therefore, when the Chief Judicial Magistrate took cognizance of the case and ordered issue of process against the accused there was no additional material before him except what was already there when he ordered an investigation under Section 202 of the Criminal Procedure Code. Obviously the learned Chief Judicial Magistrate, without any reference to any further material, took cognizance of the case and ordered the issue of process to the accused merely on the basis of the opinion expressed by the Executive Officer, Samastipur Municipality. That he was not right in doing The order of the learned Chief Judicial Magistrate dated July 25, 1974, taking cognizance of the case and issuing process to the accused is therefore quashed.

13. If the order of issuance of process is tested on the anvil of the articulation *supra*, it is evident that the learned Magistrate committed a serious error in issuing process under Section 500 of IPC.

14. The order dated 12.11.2013 in Summary Criminal Case 773/2013 of issuing process under Section 500 of IPC is quashed and the matter is remitted to the learned Magistrate to consider the additional material on record and then to decide the issue afresh.

15. Rule is made absolute in the aforestated terms.

JUDGE

NSN