

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

Criminal Application (APL) No. 915 of 2018

APPLICANTS:

1. Akil Ahmad Mohammad Ayyub Sabir,
Aged : 80 years, Occupation : Nil,
2. Abrar Mohammad Sabir Akil Ahmad,
Aged : 30 years, Occupation: Business,
3. Ahrar Ahmad Sabir Akil Ahmad,
Aged : 28 years, Occupation : Business
4. Nazema Thasin w/o Nadim Ashfaque
Aged : 38 years, Occupation : Service
5. Shaiba Farheen w/o Abdul Haque
Aged : 42 years, Occupation : Service

Applicant Nos. 1 to 5 are all residing
behind Salt Factory, Aseer Colony,
Walgaon Road, Amravati

Vs.

RESPONDENTS :

1. The State of Maharashtra,
Through High Court Government
Pleader, Nagpur
2. Yasmeen Anjum w/o Nadim Ashfaque
Aged : 27 years,
Occupation : Household,
residing at Chaparasipura, Camp,
Amravati, Taluka and District: Amravati

Mr. Rahul Dhande, Advocate for the applicants

Mr. S.D. Sirpurkar, APP for the respondent No.1

Mr. Amit Choube, Appointed Advocate for the respondent
No.2

CORAM : MANISH PITALE, J.

DATE : AUGUST 13 , 2021

ORAL JUDGMENT

Rule. Rule is made returnable forthwith. Heard finally with the consent of learned counsel appearing for rival parties.

2. By this application, the applicant has challenged order dated 21/07/2018, passed by the Court of Additional Sessions Judge-1, Amravati, whereby a Revision Petition filed by the applicants, stood dismissed. As a consequence, order dated 05/02/2018, passed by the Judicial Magistrate First Class, Court No.8, Amravati, issuing process against the applicants for offences under Sections 395, 324 and 506 of the Indian Penal Code (IPC), stood confirmed.

3. Mr. Rahul Dhande, learned counsel appearing for the applicants submitted that in the present case, the Magistrate did not show application of mind as required under law and as per the mandate of Section 204 of the Code of Criminal Procedure (Cr.PC.), while passing the order dated 05/02/2018, issuing process against the applicants. It was submitted that the background facts leading up to the filing

of the Complaint by the respondent No.2 ought to have been appreciated by the Magistrate before issuing process. It was submitted that the respondent No.2 in the present case is the second wife of the husband of the applicant No.4. The applicant No.1 is the father while applicants No.2 and 3 are brothers of applicant No.4 and applicant No.5 is her sister, who also happens to be the wife of the elder brother of her husband. It is submitted that the respondent No.2 had filed a Criminal Complaint in the backdrop of quarrel between her and the applicant No.4, which could be appreciated from the angle that both of them happen to be wives of the same person.

4. Apart from this, it is submitted that even according to the respondent No.2, the incident took place on 10/08/2013, while the Complaint was submitted before the Magistrate on 30/07/2015, which was about 27 months after the date of incident. It is further submitted that the procedure as contemplated under Section 200 of the Cr.P.C. was not followed by the Magistrate while issuing process and that, therefore, the order issuing process ought to have been interfered with by the Sessions Court in revisional jurisdiction. It is submitted that the entire story put up by

the respondent No.2 was exaggerated and wholly absurd, thereby indicating that the impugned order deserved to be set aside. The learned counsel relied upon judgments of the Hon'ble Supreme Court in the cases of **Chandru Deo Singh Vs. Prokash Chandra Bose Alias Chabi Bose 1963 AIR (SC) 1430** and **Nagawwa Vs. Veeranna Shivalingappa Konjalgi 1976 AIR SC 1147**.

5. Mr. Amit Choubey, learned counsel appointed for respondent No.2 appeared on her behalf and made submissions. This is in the backdrop of order dated 12/08/2021, passed by this Court, whereby Mr. Choubey was appointed to appear on behalf of respondent No.2 in view of the fact that the Advocate engaged by the respondent No.2 i.e. Mr. S. Raisuddin, had repeatedly failed to appear before this Court and such failure was recorded in the order dated 12/08/2021.

6. Mr. Choubey, learned counsel appointed for respondent No.2 submitted that in the present case there was no question of delay on the part of respondent No.2 in setting the criminal law in motion. Attention of this Court was invited to documents indicating that the respondent

No.2 had approached the police on the date of the incident itself i.e. 10/08/2013, pursuant to which the concerned Police Inspector had sent a letter to the Medical Officer of General Hospital at Amravati, requesting that the respondent No.2 be medically examined for the injuries suffered in the alleged incident. A medico legal injury report, issued by the District General Hospital, Amravati, is also on record recording the injuries suffered by the respondent No.2. It was then submitted that when the respondent No.2 came to know that the police was not taking any steps in the matter for registration of offences, despite her approaching the police and inspite of medical injury report on record, she was constrained to submit a Complaint before the Magistrate on 30/07/2015. By inviting attention of this Court to Section 468 of the Cr.PC., in the context of the alleged offences under Sections 395, 324 and 506 of the IPC, it was submitted that the Complaint could not be said to be hit by limitation.

7. On the aspect of the procedure followed by the Magistrate before issuance of process, it was submitted that the verification statement on oath of the respondent No.2 was indeed recorded by the Magistrate and thereafter, upon

being satisfied with the contents of the Complaint and the verification statement, the Magistrate issued process after due application of mind.

8. On the aspect of the ingredients of the alleged offences, the learned counsel appearing for the respondent No.2 referred to the relevant provisions and by reading contents of the Complaint and other material on record, he submitted that *prima facie* ingredients of the offences were made out and that, therefore, the Sessions Court was justified in not interfering with the order of the Magistrate, while exercising revisional jurisdiction. It was submitted that the background facts on which the applicants were relying, to allege that the Complaint was frivolous and malafide, was an irrelevant factor, while issuing process. The learned counsel relied upon judgments of the Hon'ble Supreme Court in the cases of **Japani Sahoo Vs. Chandra Sekhar Mohanty (2007) 7 SCC 394**, **Madhao and Another Vs. State of Maharashtra and Another (2013) 5 SCC 615**, **State of A.P Vs. Golconda Linga Swamy and another (2004) 6 SCC 522** and **Mehmood Ul Rehman Vs. Khazir Mohammad Tunda and Others (2015) 12 SCC 420**.

9. Mr. S.D. Sirpurkar, learned APP had appeared on behalf of respondent No.1 – State.

10. Heard learned counsel for the rival parties and perused the material on record. In the present case, the specific contention of the learned counsel appearing for the applicants is that the Complaint in the question has been submitted in the backdrop of family quarrel between the respondent No.2 and the applicant No.4, both of whom happen to be wives of the same person. It is submitted that the Complaint is the result of the bitterness that has arisen between the two and that the father and siblings of applicant No.4 were deliberately roped in by the respondent No.2. Much emphasis was placed on the alleged delay in lodging of the Complaint.

11. Insofar as delay in lodging of the Complaint is concerned, the incident is alleged to have taken place on 10/08/2013, while the Complaint was admittedly submitted before the Magistrate on 30/07/2015, which was about 27 months after the date of incident. At first blush, the said fact appears to be a factor that could be taken into consideration in favour of the applicants, but, the material on record shows

that the respondent No.2 had approached the police on the very date of the incident i.e. 10/08/2013. There is a medico legal injury report on record of the very same day, stating that the respondent No.2 had indeed suffered three injuries. This is a contemporaneous document supporting the contentions raised on behalf of the respondent No.2 that she on her behalf had immediately sought to set the criminal law in motion. Therefore, the contentions raised on behalf of the applicants in respect of delay in approaching the authorities or the Magistrate, cannot be accepted. Record also shows that according to the respondent No.2, she did have an explanation for eventually filing the Complaint before the Magistrate on 30/07/2015.

12. In this context, a perusal of Section 468 of the Cr.P.C. would show that limitation periods are specified for offences wherein the punishment is upto a period of three years. In the present case, the allegation levelled by the respondent No.2 was that the applicants were liable to be proceeded against for offences under Sections 395, 324 and 506 of the IPC. Even if Section 395 of the IPC was to be ignored for a moment, the period of limitation in the present case would still be three years and the Complaint was admittedly

submitted much before expiry of the said period. Therefore, this Court finds that on the question of delay or limitation, it cannot be said that the Magistrate erred in issuing process against the applicants.

13. Insofar as the procedure to be followed under Section 200 of the Cr.P.C. onwards for issuance of process, a perusal of the documents placed on record would show that the Magistrate did record a verification statement on oath on 06/03/2017 of the respondent No.2 and upon perusal of the Complaint, as also the aforesaid statement, found substance in the Complaint and the verification statement on record, in order to issue process against the applicants. Therefore, on the procedural aspect of the matter, it cannot be said that the Magistrate committed any error in issuing process. In the context of the question of delay and limitation, as also the manner in which the procedure was followed by the Magistrate, the learned counsel for the respondent No.2 is justified in relying upon judgments of the Hon'ble Supreme Court in the cases of **Japani Sahoo Vs. Chandra Sekhar Mohanty, Madhao and Another Vs. State of Maharashtra** and **Mehmood Ul Rehman Vs. Khazir Mohammad Tunda and Others** (supra).

14. The other aspect argued on behalf of the applicants was that the order issuing process in the present case did not demonstrate application of mind on behalf of the Magistrate. It is submitted that merely in an order of five lines, the Magistrate had issued process, thereby showing that a grave error was committed.

15. This Court has perused the order passed by the Magistrate issuing process. The Magistrate is required to peruse the Complaint, verification statement and other such material on record to appreciate the facts that emerged from such material and then to come to a *prima facie* conclusion as to whether process needs to be issued. At the stage of issuance of process, the Magistrate is not expected to go into great detail of the matter and instead he is required to come to a *prima facie* conclusion on the question as to whether the accused need to be proceeded against. Even in the judgment in the case of **Chandru Deo Singh Vs. Prokash Chandra Bose Alia Chabi Bose** (supra), on which the learned counsel for the applicants has placed reliance, all that is required of the Magistrate is that he should carefully scrutinize the allegations in the Complaint and the supporting material,

before passing the order of issuance of process. On the basis of material available on record, this Court is of the opinion that the Magistrate cannot be said to have committed any error in passing the order of issuance of process.

16. The only aspect that now remains to be considered is, as to whether the ingredients of the three offences in respect of which process has been issued can be said to be *prima facie* present in the facts and circumstances of the present case. Insofar as Section 395 of the IPC is concerned, the requirements of the said provision are that there should be at least five persons involved in the incident and the allegation has to be that they have conjointly committed or attempted to commit robbery, with robbery being defined as theft or extortion. In the present case, the material allegation in the Complaint against the applicants is in paragraph 4 thereof, which reads as follows :

“4] That thereafter on 10/08/2013 at about 2.30 P.M. accused persons no. 1 to 4 came at the house of accused no 5 and awaited there and when the husband of the complainant went down stairs to buy milk then at about 3.00 P.M. the all accused persons came at the house of complainant and insulted her by saying incorrect language and threaten to kill the complainant and assaulted by sharp object due to which the complainant sustained bleeding injury on her left forearm and also on her back and the accused

persons also beaten by first and thereby she sustained injury on her cheek and due to assault there is problem in the hearing of the complainant and during the assault also the all accused had robbed Rs.5,000/- from the house of complainant and at the time also threaten her to kill her and her husband.”

17. The said allegations have to be read in the backdrop of paragraphs No.1 to 3 of the Complaint. The said paragraphs read as follows :

“1] That the complainant is the permanent resident of above said address. That the complainant is second wife of Nadeem Ashfque. That the first wife of Nadeem Ashfaq is accused no 4 and accused no 1 is father of 2 to 5 and accused no 2 & 3 are brother of accused no 4 and 5 and son of accused no 1 and accused no 4 & 5 are daughter of accused no 1. That one daughter of accused no 1 namely Nazema Tahesin who is accused no 4 is the wife of husband of complainant and other daughter of accused no 1 who is accused no 5 is the wife of elder brother of husband of complainant namely Abdul Haq and the complainant used to reside with her husband at Chaprasipura Camp Amravati in same building at second floor of the same house and the accused used to reside first floor of same house with her husband and children. That the complainant have to go to her house from stair in front of door of the elder brother of her husband namely Mohd Shahid Rafique and Abdul Haq.

2] That the first wife of complainant's husband namely Nazema Tahesin is government teacher i.e. accused no. 4 and the wife of elder brother of complainant's husband i.e. accused no 5 is also government teacher and their marriage was solemnized on 23/12/2002 and June 1997 respectively.

3] That the marriage of complainant was performed on 20/12/11 with Nadeem Ashfaq with the consent of accused no 4 but when the construction work was completed in month of June 2013 then the husband of complainant brought the complainant in his house then the first wife of husband of complainant i.e. accused no 4 quarreled and went to her parental house on 10/06/2013 but the accused no 5 was residing at Chaprasipura Camp in the same house on the first floor.”

18. A bare reading of the Complaint at paragraphs 1 to 3 shows that as per the respondent No.2 there had been a quarrel between the applicant No.4 and the respondent No.2, with the crucial background fact that both of them happen to be wives of the same person. The genesis of the incident, even as per the Complaint appears to be a domestic dispute between the two wives of the same person. The father and siblings of applicant No.4 have been named in the Complaint as being responsible for the said incident, described in paragraph No.4. Considering the background of the allegations, it needs to be analyzed whether the allegations so made can be said to be so patently absurd and improbable that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the applicant, as held by the Hon’ble Supreme Court in the case of **Nagawwa Vs. Veeranna Shivalingappa Konjalgi**

(supra), on which the learned counsel for the applicants has placed reliance.

19. Before analyzing as to whether ingredients of Section 395 of the IPC are made out, if Sections 324 and 506 of IPC are perused, in the context of paragraph 4 of the Complaint quoted above, this Court finds that the material available on record, particularly, the medico legal injury report dated 10/08/2013, issued by the District General Hospital, Amravati, indicates that *prima facie* the ingredients of the offences under Sections 324 and 506 of IPC, can be said to be made out. This is for the reason that there is indeed an abrasion with an incised wound and also an injury on the cheek of the respondent No.2, recorded in the medico legal injury report, which *prima facie* corresponds with the allegations made in paragraph 4 of the Complaint, quoted above. Therefore, it is difficult for this Court to reach a conclusion that in the face of such material, it is patently absurd and inherently improbable to conclude that not even a *prima facie* case is made out for proceeding against the applicants with regard to offences under Sections 324 and 506 of the IPC.

20. But, insofar as Section 395 of the IPC is concerned, it appears that there is an exaggeration on the part of the respondent No.2, obviously in the backdrop of the domestic dispute between the respondent No.2 and applicant No.4. Paragraphs No.1 to 3 of the Complaint quoted above reveal the background in which the incident dated 10/08/2013, is described at paragraph No.4 of the Complaint by the respondent No.2. This Court is of the opinion that insofar as ingredients of Section 395 of IPC are concerned, it can be said that even *prima facie* it appears to be patently absurd that the applicant No.4, her father and her siblings would commit or attempt to commit a robbery in the house where the respondent No.2 was residing, merely because there was a domestic dispute between the applicant No.4 and respondent No.2. To that extent, the contentions raised on behalf of the applicants deserve to be accepted.

21. The Magistrate has erred in appreciating the material on record while issuing process under Section 395 of the IPC against the applicants before this Court. The Sessions Court in the revision application ought to have appreciated this aspect of the matter while passing the

impugned order. Therefore, to that extent the Sessions Court committed an error.

22. In view of the above, the application is partly allowed. The order dated 05/02/2018, passed by the Magistrate issuing process against the applicant is set aside, only to the extent of issuance of process under Section 395 of the IPC. The remaining portion of the order of the Magistrate is confirmed. Order passed by the Sessions Court is also interfered with to that extent.

23. As a result, the Magistrate will now proceed in the matter, in accordance with law against the applicants only in the context of alleged offences under Sections 324 and 506 of the IPC.

24. Needless to say, the applicants will be at liberty to avail such remedies as are available in law upon the Magistrate proceeding further in the matter.

25. This Court places on record the able assistance rendered by the appointed counsel for respondent No.2. His fees for appearance and conducting final hearing is fixed at

Rs.10,000/- and the Legal Services Sub-Committee at Nagpur is directed to disburse the same within six weeks.

26. Rule is made absolute in above terms. No orders as to costs.

JUDGE

MP Deshpande