

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

CRIMINAL WRIT PETITION NO.14 OF 2022

1. Shahubai W/o Balaji Birajdar
2. Balaji S/o Sopan Birajdar ... Petitioners

Versus

1. The State of Maharashtra
2. Shushilkumar S/o Gangaram Wagmare ... Respondents.

....
Mr. V.M. Maney, Advocate for the Petitioners
Mr. G.O. Wattamwar, APP for Respondent No.1/State
Mr. G.D. Kale, Advocate for Respondent No.2
....

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 22 AUGUST, 2022

PER COURT:-

1. The petitioners are seeking quashing of the entire proceedings vide criminal M.A. No.668 of 2017 (S.C.C. No.537 of 2021) pending on the file of the Judicial Magistrate, First Class, Udgir.

2. Heard Mr. Maney, learned counsel for the petitioners, Mr. G.D. Kale, learned counsel for respondent No.2 and Mr. Wattamwar, learned counsel for respondent No.1/State.

3. Mr. Maney, learned counsel for the petitioners invited my attention to the copy of the complaint filed by respondent No.2 in the Court of the Judicial Magistrate, First Class, Udgir (page 63) against the petitioners. He took me through para 9 of the complaint. He submitted that there are no allegations against the petitioners to make out offences under Sections 323, 504 and 506 of the Indian Penal Code. The learned Magistrate has committed an error in issuing process against the petitioners under Sections 323, 504 and 506 of the Indian Penal Code. He submitted that it is nothing but an abuse of process of the court. The dispute between the parties is of purely civil nature. The suit between the parties has been dismissed. It is nothing but to give the colour of criminal story in the guise of civil dispute. He, therefore, urged to quash the proceedings vide S.C.C. No.537 of 2021 pending on the file of the Judicial Magistrate, First Class, Udgir by invoking section 482 of the Code of Criminal Procedure and Article 227 of the Constitution of India.

4. Mr. Kale, learned counsel for respondent No.2 also took me through the relevant paragraphs of the private complaint and the order passed by the learned Judicial Magistrate, First Class, Udgir. He submitted that in para 9 of

the private complaint, there are specific allegations against both the petitioners and role is also attributed to them. *Prima facie*, the offences are made out against both the petitioners. The learned Judicial Magistrate, First Class by passing a reasoned order dated 05.02.2021, has rightly issued process against both the petitioners under Sections 323, 504 and 506 of the Indian Penal Code. No interference is called for.

5. Mr. Wattamwar, learned APP for respondent No.1/State supported the impugned order.

6. Mr. Maney, learned counsel for the petitioners has placed his reliance in case of *G.Sagar Suri and another Vs. State of U.P. and others* reported in *(2000) 2 SCC 636* on the point of quashing of the criminal proceedings, when there are omnibus statement on misrepresentation and absence of details regarding alleged offence committed by the petitioners.

7. I have considered the submissions of both the sides. I have also gone through the copy of private complaint filed by respondent No.2 in the court Judicial Magistrate, First Class

(Page 63), and the impugned order passed by the learned Judicial Magistrate, First Class dated 05.02.2021.

8. On going through the impugned order, it is revealed that the learned Magistrate after having gone through the facts of the case, and looking to the allegations levelled in the complaint, was pleased to dismiss the complaint against the petitioners to the extent of Sections 420, 423, 447 of the Indian Penal Code and Section 5 of the Money Lending Act. The learned Magistrate was pleased to issue process against both the petitioners to the extent of Sections 323, 504 and 506 of the Indian Penal Code. The learned Magistrate has also observed that the civil litigation between the parties is going on. Therefore, ingredients of Section 420 do not attract. Even provisions of money lending act also do not attract.

7. In the above context, I have gone through the copy of private complaint vide SCC No. 537 of 2021. Para 9 is important, which throws light about allegations in order to make out offences. On going through para 9 very carefully, it is evident that, the specific role is attributed to petitioner No.2. Petitioner No.2 alleged to have beaten to the

complainant and also abused him with reference to his caste. No specific role is attributed to petitioner No.1. Mere omnibus allegations are there, which are not sufficient against petitioner No.1, who happens to be the wife of petitioner No.2.

8. So far as the remaining part of the complaint is concerned (para Nos. 1 to 8), the learned Magistrate has passed a reasoned order, and accordingly dismissed the complaint in respect of those allegations. As pointed out earlier, there is no specific role attributed to petitioner No.1 regarding assault by fist blows and kicks. How Section 323 of the Indian Penal Code attracts against her. Similar is the case of Section 504 and 506 of the Indian Penal Code. When the allegations are levelled against petitioner No.2, order of issue process passed against petitioner No.1 is bad in law.

9. Having regard to the above scenario, the order of issue process passed against petitioner No.1 appears to be nothing but an abuse of process of the court, when there is no specific role attributed to petitioner No.1. No purpose would be served in continuing the prosecution to the extent of petitioner No.1.

10. In case of *State OF Haryana Vs. Ch. Bhajan Lal and others* reported in *AIR 1992 SC 604* , the Hon'ble Supreme Court has given guidelines in para 108 in what circumstances the F.I.R. or charge-sheet can be quashed. The important parameters are reproduced herein below.

“(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused;

(b) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(c) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.”

11. Having regard to the guidelines laid down by the Hon'ble Supreme Court in case of ***State Of Haryana Vs. Ch. Bhajan Lal and others*** (supra), even if the allegations leveled in the private complaint lodged by respondent No.2 are taken at their face value and accepted in their entirety, no offences are *prima facie* made out against petitioner No.1 under Sections 323, 504 and 506 of the Indian Penal Code. Simply omnibus statement is made without describing the specific role of petitioner No.1 in the incident of assault coupled with other allegations.

12. Having regard to the facts and circumstances of the case in hand and in view of the guidelines laid down by the Hon'ble Supreme Court in case of ***State Of Haryana Vs. Ch. Bhajan Lal and others*** (supra), it is clear that the order of issue process passed by the learned Magistrate against petitioner No.1 is nothing but an abuse of the process of the court. As such, proceedings is liable to be quashed to the extent of petitioner No.1. The proceedings shall continue in respect of petitioner No.2 when there is a specific role alleged in para 9 of the private complaint.

13. In view of the above, interference is called for, and the proceedings is liable to be quashed to the extent of petitioner No.1.

ORDER

(i) The petition is partly allowed

(ii) The proceedings of S.C.C. No. 537 of 2021 pending on the file of the Judicial Magistrate, First Class, Udgir is hereby quashed to the extent of petitioner No.1 **Shahubai Balaji Birajdar**.

(ii) Needless to state that the above said proceedings shall continue against petitioner No.2 **Balaji Sopan Birajdar**, according to law.

(iii) The criminal writ petition is disposed of accordingly.

(iv) No order as to costs.

[SHRIKANT D. KULKARNI]
JUDGE

S.P. Rane