

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 CRIMINAL WRIT PETITION NO.211 OF 2020

KACHARU SAKHARAM GIRGE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. A.S. Sawant, Advocate for petitioners
Mr. R.B. Bagul, APP for the respondent No.1
Mr. A.B. Salve, Advocate for the respondent No.2

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 14th JUNE, 2022

ORDER :

1 In the present petition the petitioners by invoking the constitutional powers of this Court under Article 226 and 227 of the Constitution of India and inherent powers under Section 482 of the Code of Criminal Procedure seeks quashment of complaint bearing Summary Criminal Case No.318/2018 filed before learned Judicial Magistrate First Class, Paithan, Dist. Aurangabad, for the offence punishable under Section 323, 504, 506 read with Section 34 of the Indian Penal Code and also challenges the order of issuance of process by order dated 23.02.2018 by

learned Magistrate against them.

2 Heard learned Advocate Mr. A.S. Sawant for the petitioners, learned APP Mr. R.B. Bagul for the respondent No.1 and learned Advocate Mr. A.B. Salve for the respondent No.2.

3 It has been vehemently submitted on behalf of the petitioners that the learned Magistrate has not considered while issuing process that there is considerable delay in lodging the complaint. The alleged incident is stated to have taken place on 23.04.2017 and the complaint has been lodged on 04.11.2017. Further, a cross complaint has been filed on the basis of the report lodged by petitioner No.3 in respect of the same incident on the same date. Further, the complaint appears to be vindictive in nature just to give a counterblast and further no injury certificate has been filed. After considering all these aspects the learned Magistrate ought not to have issued process against the accused. On the basis of the report filed by petitioner No.3 offence vide Crime No.150/2017 was registered with Paithan Police Station for the offence punishable under Section 326, 325, 324, 323, 504, 506 read with Section 34 of the Indian Penal Code against the complainant – respondent No.2 and other three persons. As a result of the assaults given the family members of the petitioners had received severe injuries and the

medical certificates of the petitioners would indicate the seriousness in the offence. When order has been passed without application of mind, it deserves to be set aside.

4 Per contra, the learned Advocate appearing for the respondent No.2 submitted that proper procedure has been followed while issuing process against the petitioners by the learned Magistrate. The complainant in his complaint has specifically stated that the incident had taken place at about 7.30 p.m. on 23.04.2017. He had gone to Police Station to lodge the report and the police had taken down a non cognizable report vide N.C. No.136/2017. Police had thereafter told that the complainant should go to the Court for further proceedings. According to the complainant, in fact, cognizable offence was made out from the facts which were narrated; yet, a non cognizable report was taken and, therefore, the complainant had no option but to lodge the complaint with the Magistrate. The constitutional as well as inherent powers cannot be used in respect of the facts of the case.

5 At the outset, it is to be noted that though in the complaint the complainant had contended that the offence under Section 324 of the Indian Penal Code has also been made out; yet, after perusing the complaint verification of the complainant and the documents process has been issued by

the learned Magistrate only under Section 323, 504, 506 read with Section 34 of the Indian Penal Code. The original complainant appears to have not challenged the said order of issuance of process. In view of the fact that process was not issued for the offence under Section 324 of the Indian Penal Code, therefore, we will have to consider the order passed by the learned Judicial Magistrate First Class on 23.02.2018 as it is. For offence under Section 323, 504, 506 of the Indian Penal Code medical evidence is not required. It is the only simple hurt i.e. involved in that event. Merely because there is delay in lodging the complaint and also there is cross complaint, Magistrate cannot refuse to take cognizance of an offence if prima facie case is made out. That may be the additional point for the accused persons to get acquittal. Further, this Court in its writ jurisdiction and/or under inherent powers cannot go into the disputed facts, as to whether the complaint filed by the respondent No.2 is vindictive in nature or as a counterblast. Delay also cannot be so appreciated and, therefore, the petition deserves to be rejected. Accordingly, it is rejected.

(Smt. Vibha Kankanwadi, J.)