

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

947 CRIMINAL WRIT PETITION NO.298 OF 2020

SANTOSH CHHABU KEDARE AND OTHERS
VERSUS
SUNNY RAJU SURYAWANSHI AND ANR

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Advocate for Petitioners : Mr. R K Temkar
APP for Respondent No.2 : Mr. S W Munde
Advocate for Respondent 1 : Mr. Kasar R. S.

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CORAM : KISHORE C. SANT, J.

Dated: December 15, 2022

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PER COURT :-

1. Heard learned Advocate for the parties.
2. At the outset, learned Advocate for the petitioners submits that, he is not pressing this petition for petitioner nos.2 and 6. He is arguing for remaining petitioners except petitioner nos. 2 and 6. The petitioners are shown as accused persons in the private complaint lodged by respondent no.1 for the offence punishable under sections 323, 324, 325, 504, 506, r/w section 34 of the IPC on 7.1.2019. The learned Judicial Magistrate First Class, Court No.6, Ahmednagar was pleased to issue process against accused persons for the

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offence punishable under sections 325, 504, 506, read with section 34 of the IPC by order dated 30.7.2019. This order of issuance of process came to be set aside by filing a criminal revision application 154 of 2019 by order dated 6.1.2020.

3. It is the submissions of the learned Advocate for the petitioners that, this complaint is filed by respondent no.1 on 7.1.2019 making allegations against all 7 persons. On 4.1.2019, respondent no.1 had filed a complaint in Bhingarcamp Police Station, Ahmednagar bearing NC No.9 of 2019. This was lodged at 21.52 hours wherein, allegations are only against petitioner nos.2 and 6 in respect of the same incident. He further invited attention of the Court to the complaint lodged by petitioner no.7 Nikita on the same day i.e. on 4.1.2019 which was lodged against respondent no.1 for the offence punishable under sections 341, 354-A of the IPC at 06.44 pm. It is specifically alleged that respondent no.1 always follows her on motorcycle and this is going on since long. There was one more complaint filed by

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petitioner no.1 i.e. father of petitioner no.7 against respondent on 3.3.2018 which was registered as NC no.195 of 2018, wherein there are allegations against respondent no.1 for the offence punishable under sections 323, 504, 506 of the IPC. It is submitted that only to counterblast the complaint filed by petitioner no.7 against respondent no.1, he has filed a private complaint. Even, the complaint now lodged is only afterthought as is clear from the fact that on 4.1.2019 when the complaint was filed by respondent no.1, he had mentioned only two names i.e. petitioner nos.2 and 6. This itself falsifies the contents of the private complaint. He submits that the learned JMFC has issued the process mechanically. He further submits that, even the learned Sessions Judge has failed to appreciate the case of the petitioners. He thus prays for quashing and setting aside the complaint to the extent of these petitioners by quashing and setting aside the order passed by the learned Sessions Judge, Ahmednagar in criminal revision application 154 of 2019 thereby confirming the order dated 30.7.2019 passed by

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the learned Judicial Magistrate First Class, Ahmednagar, in RCC No.47 of 2019.

4. Learned APP opposes the petition. He submits that ingredients are attracted of the offences for which process is issued. Learned JMFC has rightly applied his mind while issuing the process and, therefore, petition deserves to be dismissed.

5. Learned Advocate for the respondents vehemently opposed the petition. He submits that, the learned Judicial Magistrate First Class, Ahmednagar has issued the process after properly recording verification statement and ascertaining genuineness of the complaint and no interference is required. He submits that there is previous enmity between the parties which is clear from the record. Considering this, it would not be proper to quash the proceedings of the criminal complaint.

6. Considering the above submissions and considering that the complaint was filed in respect of

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the incident dated 4.1.2019 when respondent himself had been to the police station to lodge the FIR and the same was registered as NC, in which only names of petitioner nos.2 and 6 appears to have been mentioned. There is no role attributed to other petitioners. Looking to the complaint lodged by petitioner no.7 on the same day in the afternoon shows that, on that day, it is, in fact, the complainant/respondent no.1, who had followed petitioner no.7 and, therefore, she was required to file the complaint. Considering this, at least to the extent of other petitioners except petitioner nos. 2 and 6, no case is made out to proceed against them. Continuation of the proceedings to their extent would be clearly an abuse of process of law and, therefore, the same needs to be quashed and set aside to that extent. Hence, following order.

O R D E R

- i. Petition is partly allowed.
- ii. The order of issuance of process dated 30.7.2019 passed by the learned Judicial Magistrate First Class, Court No.6,

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Ahmednagar is quashed and set aside so also by setting aside the judgment and order passed by the learned Sessions Judge, Ahmednagar dated 6.1.2020 in criminal revision application no.154 of 2019 to the extent of petitioner nos.1,3,4,5, and 7 only.

- iii. Criminal writ petition accordingly disposed off.

(KISHORE C. SANT, J.)

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