

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

928 CRIMINAL WRIT PETITION NO.396 OF 2021

SHILAS W/O CHAIRMAN BHOSLE
VERSUS
VISHAL BABAN KHOSE AND OTHERS

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Mr. K.N. Farooqui, Advocate for the petitioner
Mr. Rohit P. Patwardhan, Advocate h/f Mr. Satej S. Jadhav, Advocate for
respondent Nos.1 and 2
Mr. S.P. Deshmukh, APP for the respondent No.3

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CORAM : SMT. VIBHA KANKANWADI, J.
DATE : 16th JUNE, 2022

PER COURT :

1 Present writ petition by invoking the constitutional powers of this Court under Article 227 of the Constitution of India and the inherent powers under Section 482 of the Code of Criminal Procedure, 1973 challenges the order dated 26.09.2017 passed by the learned Judicial Magistrate First Class, Ahmednagar in Regular Criminal Case No.54/2017 thereby dismissing the complaint against the present respondent Nos.1 and 2 and the Judgment and order dated 03.02.2021 passed by the learned

Sessions Judge, Ahmednagar in Criminal Revision No.246/2017 thereby confirming the order passed by the learned Judicial Magistrate First Class, Ahmednagar.

2 Heard learned Advocate Mr. K.N. Farooqui for the petitioner, learned Advocate Mr. Rohit P. Patwardhan holding for learned Advocate Mr. Satej S. Jadhav for respondent Nos.1 and 2 and learned APP Mr. S.P. Deshmukh for the respondent No.3.

3 The learned Advocate for the petitioner vehemently submitted that in spite of having the specific allegations against the present respondent Nos.1 and 2, who were posed as accused Nos.3 and 4, the learned Magistrate failed to issue process against them. No reason has been assigned for dismissal of the complaint against the accused Nos.3 and 4. The learned Sessions Judge also failed to consider the said aspect and wrongly upheld the order passed by the learned Judicial Magistrate First Class. At the stage of issuing process, the learned Magistrate was supposed to consider only the prima facie case and in order to show that prima facie case, material was produced, which was in the form of complaints filed by the informant to the Police Station, Collector and the other authorities. It will not be out of place to mention here that when it was asked to the learned Advocate for the

petitioner/complaint as to why she has not produced the medical certificate, he sought time to produce it now.

4 The learned Advocate Mr. Rohit P. Patwardhan holding for learned Advocate Mr. Satej S. Jadhav for respondent Nos.1 and 2 supports the decision given by both the Courts below.

5 Present petitioner is the original complainant who has filed the said case against in all four persons contending that they have committed offence punishable under Section 354, 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860 in respect of incident dated 01.01.2017 at about 7.00 p.m. at her house in Pimpalgaon Kauda, Tq. Nagar, Dist. Ahmednagar. It appears that there was some transaction in respect of sale of immovable property between the complainant and the original accused persons. The complainant appears to have been insisting upon the execution of the sale deed, however, according to her, the accused Nos.1 and 2 intended to dupe her and had given threats to her on the earlier occasions. She then states that on 01.01.2017 at about 7.00 p.m. all the accused persons went to her house, assaulted the informant and her husband, damaged and ransacked her utensils and other domestic articles. Still the complainant told them that they should complete the transaction and execute the sale deed otherwise

return her amount. Accused No.1 told accused No.2 that she should caught hold of the hands of the complainant and then by uttering obscene word asked that since she is asking for the money she should be made naked. According to her, the accused No.2 had then done the said act and accused No.1 had outraged the modesty of the complainant. She was shouting at that time and then she says that accused Nos.3 and 4 had again assaulted informant and her husband. Thereafter the accused No.1 gave her threat that she should vacate the premises within 8 days, otherwise she would be killed. She says that she had gone to Police Station to lodge the report, but her report was taken and then she had taken the treatment at Civil Hospital at Ahmednagar. But then, she says that the police did not give her justice and, therefore, even she had raised agitation in front of Collector Office, Ahmednagar on 09.01.2017. Police flatly told her that they will not take cognizance of the offence and, therefore, she filed the private complaint.

6 After recording the verification and taking into consideration the statements of witnesses and the documents filed along with list Exh.3, it has been observed by learned Judicial Magistrate First Class, Ahmednagar (Court No.6) by passing the order dated 26.09.2017 that prima facie case is made against the accused No.1 and 2 for the offence punishable under Section 354, 506 read with Section 34 of the Indian Penal Code and the complainant has

not made out prima facie case against accused Nos.3 and 4 and, therefore, went on to dismiss the complaint under Section 203 of the Code of Criminal Procedure.

7 The said order was challenged before the learned Sessions Judge in Criminal Revision No.246/2017 which came to be dismissed.

8 As aforesaid, perusal of the contents of the complaint would show that there is only omnibus statement as regards the accused Nos.3 and 4 are concerned. At the beginning it is stated that they had come along with accused Nos.1 and 2 and assaulted the complainant and her husband and then it is later on stated that they had again assaulted them. Though the complainant says that she had taken treatment at Civil Hospital, Ahmednagar, however, it appears that no supporting document was produced before the learned Magistrate. Only when the question is asked, then, the learned Advocate for the petitioner is saying that he would produce it. If the complainant had not taken the course to produce those documents before learned Magistrate, then, nobody can help. Another opportunity was available to produce those documents before the Revisional Court, however, that has also not been taken. Therefore, this Court under its writ jurisdiction grant permit the complainant to do so. Only on the basis of some omnibus

statement process cannot be issued. The observations in the Judgment of Three Judge Bench in **Sunil Bharti Mittal vs. Central Bureau of Investigation, AIR 2015 SC 923** would be applicable here, wherein it has been observed -

“A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into Court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction. However, the words "sufficient grounds for proceeding" appearing in the Section are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself.”

Here, in this case the learned Magistrate has clearly opined that complainant has not made out prima facie case against accused Nos.3 and 4. It has to be read along with the earlier words about perusal of the complaint, verification of complainant as well as witnesses and documents filed along with Exh.3 and, therefore, there was sufficient application of mind by the learned Magistrate which has been further duly considered by the Revisional Court. Therefore, there is no question of invoking either the constitutional powers under Article 227 of the Constitution of India or inherent powers

under Section 482 of the Code of Criminal Procedure in this case. Petition stands dismissed.

(Smt. Vibha Kankanwadi, J.)

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