

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

**CRIMINAL WRIT PETITION NO.329 OF 2020
WITH
CRIMINAL APPLICATION NO.1839 OF 2022**

- 1) Govindrao S/o Rajaram Gujarwad,
Age-56 years, Occu:Agri.,
R/o-Badur, Tq-Biloli, Dist-Nanded,
- 2) Raj Ganesh S/o Govindrao Gujarwad,
Age-36 years, Occu:Agri.,
R/o-Badur, Tq-Biloli, Dist-Nanded,
- 3) Chandrakant S/o Govindrao Gujarwad,
Age-33 years, Occu:Agri.,
R/o-Badur, Tq-Biloli, Dist-Nanded,
- 4) Manohar S/o Rajaram Gujarwad,
Age-46 years, Occu:Agri.,
R/o-Badur, Tq-Biloli, Dist-Nanded,
- 5) Somesh S/o Manohar Gujarwad,
Age-23 years, Occu:Agri.,
R/o-Badur, Tq-Biloli, Dist-Nanded,

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through Police Station Biloli,
Tq-Biloli, Dist-Nanded,
- 2) Maroti S/o Gangaram Gonshetwad,
Age-46 years, Occu:Agril.,
R/o-Badur, Tq-Biloli,
Dist-Nanded.

...RESPONDENTS

...
Mr.Nitin S. Chaudhary Advocate for Petitioners.
Mr.S.P. Deshmukh, A.P.P. for Respondent No.1 – State.
Mr.Amol G. Vasmatkar Advocate for Respondent No.2.
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CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 15th JUNE, 2022

ORDER :

1. Criminal Application No.1839 of 2022 has been filed for producing document on record. Since the said document, rather information, has been provided by Police Station, there is no hurdle in allowing the production of that document. Criminal Application No.1839 of 2022 stands allowed and disposed of accordingly.

2. Present Writ Petition has been filed invoking constitutional powers of this Court under 227 of the Constitution of India as well as inherent powers of this Court under Section 482 of the Code of Criminal Procedure, to challenge the order passed by learned Additional Sessions Judge, Biloli on 4th February 2020 in Criminal Revision No.17 of 2019 thereby dismissing the Revision and confirming order passed by learned Judicial Magistrate First Class, Biloli in R.C.C. No.29 of 2019 on 6th May 2019 thereby issuing process against the petitioners for the offence punishable

under Sections 324, 323 read with Section 34 of the Indian Penal Code.

3. Heard Mr. Chaudhary, learned Advocate for the petitioners, Mr. Deshmukh, learned A.P.P. for respondent No.1 – State and Mr. Vasmatkar, learned Advocate for respondent No.2.

4. Learned Advocate for the petitioners has submitted that on the basis of the First Information Report lodged by one Maroti Gangaram Tare against respondent No.2 and others, offence was registered vide Crime No.106 of 2019 with Biloli Police Station, District-Nanded for the offence punishable under Sections 452, 324, 323, 504, 506 read with Section 34 of the Indian Penal Code on 25th April 2019 in respect of the incident that had allegedly taken place on 24th April 2019. On the same day, respondent No.2 had filed non-cognizable report with the same Police Station contending that the petitioners have committed offence under Sections 323, 504, 506 read with Section 34 of the Indian Penal Code, vide N.C.R. No.44 of 2019. But, thereafter respondent No.2 has filed R.C.C. No.29 of 2019 alleging that the petitioners – original accused have committed offence under Sections 324, 323, 504, 506 read with Section 34

of the Indian Penal Code. After considering the contents of the complaint, verification and documents, the learned Judicial Magistrate First Class, Biloli has issued process against the accused persons – petitioners under Section 324, 323 read with Section 34 of the Indian Penal Code. The complaint came to be dismissed in respect of offence under Section 504, 506 read with Section 34 of the Indian Penal Code. The private complaint was in fact not maintainable at all in view of the fact that already N.C. complaint was filed. Even if we consider that such complaint could have been filed, then as per his own story the complainant had received simple injuries and process could not have been issued by the learned Magistrate under Section 324 of the Indian Penal Code. The learned Magistrate ought to have considered that the said complaint is nothing but the counter-blast to the First Information Report lodged against the complainant. Learned revisional Court has also not considered those points and hurriedly dismissed the revision and therefore, the present Writ Petition has been filed. By way of document produced on record, it could be demonstrated that against the complainant there are four offences, against his brother there are two offences and against his nephew there is one offence registered with the same Police Station. The complainant himself is having

criminal background and therefore, his complaint ought not to have been entertained by the learned Magistrate.

5. Learned Advocate for respondent No.2 supported the reasons given by the revisional Court and also supported the reasons given by the learned Magistrate while issuing process against the petitioners. It has been submitted that the process has been issued after following all the procedures that are required to be followed while dealing with a warrant triable case. When learned Magistrate found that prima facie case has been made out for issuing process, he has issued the process. The satisfaction of the learned Magistrate is important. Constitutional powers cannot be invoked in such cases.

6. At the outset, it is to be noted that either in the inherent powers of this Court under Section 482 of the Code of Criminal Procedure or under the constitutional powers under Article 227 of the Constitution of India, this Court is not expected to deal with the disputed facts. Therefore, whether the complaint filed by respondent No.2 against the petitioners is the counter-blast, cannot be considered. However, at the most it can be said that it might be cross complaint. In the said First Information Report

vide Crime No.106 of 2019, informant Maroti Tare making respondent No.2 and others as accused, states that the incident had taken place at about 8.00 p.m. on 24th April 2019 by criminally trespassing into the house of one Manohar Rajaram Gujarwad. The complaint that has been filed by respondent No.2 gives the timing of the offence as 7.00 to 7.30 p.m. on 24th April 2019 and the spot is in front of house of one Ramswami Sayanna Gujarwad. It would be for the concerned Court to consider whether those are cross cases or otherwise, with these circumstances.

7. It appears that the non-cognizable report came to be registered on the basis of information given by respondent No.2 to the Police. However, that non-cognizable complaint is filed on 24th April 2019 and the police had invoked offences under Sections 323, 504, 506 read with Section 34 of the Indian Penal Code. It will have to be stated that a proper typed copy has not been provided by the petitioners in respect of non-cognizable complaint. But, suffice it to say that Police recorded it in that way and treated it as non-cognizable case. The option was available to the Police to get permission from the Magistrate under Section 155(2) of the Code of Criminal Procedure and

investigating the matter. However, it appears that the Police have not taken any action and therefore, respondent No.2 – complainant filed the complaint. He has given details as to how he was assaulted. According to him, he was assaulted by the accused persons with stick and stones.

8. After the complaint was filed, the learned Magistrate has recorded the verification, wherein also complainant has stated that accused Govindrao had assaulted him and accused Rajganesh, Chandrakant, Somesh and Manohar had assaulted his son Laxman by stick and stones. Thereafter, by taking into consideration the contents of the complaint, verification and documents on record, the learned Magistrate also took into consideration the fact that non-cognizable case was registered by the Police but no action was taken and therefore, when the compliance was made, the learned Magistrate has taken cognizance of the offence under Section 324 and 323 read with Section 34 of the Indian Penal Code.

9. The alleged criminal background of the complainant cannot be taken into consideration at this stage on the basis of some document showing number of offences registered against

complainant - respondent No.2, his brother and nephew. The order of issuing process has been passed by the learned Magistrate after due application of mind and the learned revisional Court has rightly rejected the revision. Merely because the Police had treated the oral information given by respondent No.2 as non-cognizable case, respondent No.2 is not estopped from lodging a proper complaint with appropriate authority. The learned Magistrate had considered that all the parameters have been observed before proceeding to take cognizance of the offence. Under such circumstance, no case is made out to exercise either the inherent powers of this Court or the constitutional powers in favour of the petitioners and the Writ Petition deserves to be rejected.

10. Accordingly, the Writ Petition stands rejected.

[SMT. VIBHA KANKANWADI , J.]