

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO. 854 OF 2022

RAMRAO S/O EKNATHRAO PAWAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. Shikrashna B. Solanke, Advocate for Petitioner.
Mr. G. O. Wattamwar, A.P.P. for Respondent/State.
Mr. Mayur V. Salunke, Advocate for Respondent No.2.

...

AND

CRIMINAL WRIT PETITION NO. 921 OF 2022

SHAHAJI S/O VENKATRAO BAVANE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. Bhaginath Trimbak Bodkhe, Advocate for Petitioners.
Mr. G. O. Wattamwar, A.P.P. for Respondent/State.
Mr. Mayur V. Salunke, Advocate for Respondent No.2.

...

CORAM : **SHRIKANT D. KULKARNI, J.**

RESERVED ON : 23rd September, 2022.

PRONOUNCED ON : 26th September, 2022.

ORDER :

. Heard finally with consent of both the sides at admission stage.

2 The petitioners by their respective petition, have challenged the legality and validity of the order of issue process passed by the learned Chief Judicial Magistrate, Latur in R.C.C. No.22 of 2017 against the petitioners and confirmed by the learned Sessions Judge, Latur in Criminal Revision Application Nos.17 and 19 of 2020.

SUBMISSIONS OF MR. S. B. SOLANKE, COUNSEL FOR THE PETITIONER IN CRIMINAL WRIT PETITION NO.854 OF 2022 AND MR. B. T. BODKHE, LEARNED COUNSEL FOR THE PETITIONERS IN CRIMINAL WRIT PETITION NO.921 OF 2022 :

3 It is submitted by the learned counsels for the respective petitioner that the order of issue process passed by the learned Chief Judicial Magistrate, Latur against the respective petitioner is bad in law. There was no sufficient material to take cognizance against the respective petitioner. There was a civil transaction between the husband of respondent No.2 / original complainant and the respective petitioner. Respondent No.2 / original complainant has given colour of a criminal case and filed private complaint against the respective petitioner by suppressing certain material facts and obtained the order of issue process. The flat / property in dispute is situated at Pune. As

such, the learned Chief Judicial Magistrate, Latur has no jurisdiction to entertain the private complaint filed by respondent No.2.

4 The husband of respondent No.2 during his lifetime had resigned from the membership of the housing society and he was no more member of the said housing society. The learned Chief Judicial Magistrate, Latur has overlooked the fact that the flat in question is in occupation and possession of petitioner Ramrao Pawar and he is paying the municipal taxes. The order passed by the learned Deputy Registrar, Co-operative Societies, Pune to consider original complainant / respondent No.2 as a deemed member of the society, has been set aside by the learned Divisional Joint Registrar, Co-operative Societies, Pune Division, Pune vide order dated 3rd September, 2016. The learned Chief Judicial Magistrate, Latur has not considered all these aspects and dispute between the parties in the nature of civil proceedings and erroneously passed the order of issue process. The order of issue process was challenged before the Sessions Judge, Latur, but the learned Sessions Judge, Latur was also pleased to dismiss the revision and upheld the order of issue process passed by the learned Chief Judicial Magistrate, Latur. The learned Sessions Judge, Latur has also not considered various issues raised by the respective petitioner in the revision. The order passed

by the learned Sessions Judge in the criminal revision application is also bad in law and liable to be quashed and set aside. The learned counsels for the respective petitioner took me through the copy of entire complaint filed by respondent No.2 against the petitioners and submitted that no *prima-facie* case was made out by respondent No.2 for issuing process against the respective petitioner. They submitted that the learned Chief Judicial Magistrate, Latur has placed reliance on the inquiry report submitted by the police under Section 202 of the Code of Criminal Procedure, which is submitted in hurried way. As such, that report under Section 202 of the Code of Criminal Procedure submitted by the police officer, cannot be relied upon. Both of them submitted that the order of issue process passed by the learned Chief Judicial Magistrate, Latur and the judgment and order passed by the learned Sessions Judge, Latur in criminal revision application, are liable to be quashed and set aside.

SUBMISSIONS OF MR. G. O. WATTAMWAR, LEARNED A.P.P. FOR RESPONDENT NO.1 / STATE IN BOTH THE PETITIONS :

5 The learned APP for respondent No.1 / State supported the order of issue process passed by the learned Chief Judicial Magistrate, Latur. He submitted that there was sufficient material

against the respective petitioner. The learned Chief Judicial Magistrate has rightly passed the order of issue process. The learned Sessions Judge, Latur has also considered all these aspects and upheld the order of issue process. He submitted that in view of concurrent findings recorded by both the Courts below, no interference is required.

SUBMISSIONS OF MR. MAYUR SALUNKE, LEARNED COUNSEL FOR RESPONDENT NO.2 / ORIGINAL COMPLAINANT IN BOTH THE PETITIONS :

6 The learned counsel for respondent No.2 / original complainant supported the order of issue process passed by the learned Chief Judicial Magistrate, Latur as well as the judgment and order passed by the learned Sessions Judge, Latur in respective criminal revision application. He submitted that the learned Chief Judicial Magistrate after considering the allegations levelled in the complaint and considering the report submitted by the police under Section 202 of the Code of Criminal Procedure, has rightly taken cognizance against the respective petitioner. There was sufficient material against the petitioners. The learned Chief Judicial Magistrate has also recorded his *prima-facie* satisfaction and thereafter, passed the order of issue process. He submitted that the points raised by the

learned counsels for the respective petitioner cannot be taken into consideration while deciding the question of legality and validity of the order of issue process. He submitted that the defence material cannot be considered at this stage. It is not permissible in the eye of law. He invited my attention to the judgment and order passed by the learned Sessions Judge, Latur in the criminal revision application. He submitted that the learned Sessions Judge has dealt with all the aspects and rightly dismissed the criminal revision application filed by the respective petitioner. He submitted that the alleged offence of forgery has taken place at Latur. As such, the learned Chief Judicial Magistrate, Latur has jurisdiction to entertain the complaint. There is no defect of territorial jurisdiction. He submitted that it would be too early to consider the documentary evidence produced by the respective petitioner by way of defence. He submitted that there is no merit in both the petitions and both the petitions are liable to be dismissed.

7 I have considered the submissions of the learned counsels for the respective petitioner, learned APP for the respondent / State and the learned counsel for respondent No.2 / original complainant. I have gone through the order of issue process passed by the learned Chief Judicial Magistrate, Latur in R.C.C.

No.22 of 2017 dated 7th August, 2019 as well as the judgment and order passed in Criminal Revision Application Nos.17 of 2020 and 19 of 2020 dated 19th March, 2012 and 26th March, 2022 respectively. Perused the documents and papers produced by the respective petitioner in their respective petition.

8 Let us have a glance on the order of issue process passed by the learned Chief Judicial Magistrate, Latur in R.C.C. No.22 of 2017, which reads thus :

“Perused the record. Gone through verification and report u/sec.202 of Cr.P.C., it is at Exh.7. The allegation is to the effect that, accused in furtherance of their common intention prepared false affidavit and dishonestly used it in order to grab the flat. It appears that, there is *prima facie* case to proceed against the accused for an offence punishable u/sec. 420, 465, 468, 471 r.w. 34 of the Indian Penal Code. Hence issue process against accused for an offence punishable u/sec. 420, 465, 468, 471 r.w. 34 of IPC.”

9 On going through the record, it is revealed that the private complaint was presented before the Court on 25th September, 2017 when the learned Trial Court was pleased to issue directions to the concerned police station to submit report under Section 202 of the

Code of Criminal Procedure. After receipt of report under Section 202 of the Code of Criminal Procedure from the concerned police station, the learned Chief Judicial Magistrate, Latur has gone through the same as well as verification statement of the original complainant.

10 It is vehemently submitted by the learned counsels for the respective petitioner that the report submitted by the police under Section 202 of the Code of Criminal Procedure is seriously under cloud and the higher police officer has given information that the said report has been submitted by the concerned police officer in a hurried manner. Be that as it may, the learned Chief Judicial Magistrate, Latur has not only considered the report submitted by the police under Section 202 of the Code of Criminal Procedure but also considered the verification statement of the original complainant, documents on record and after applying the judicial mind, arrived at conclusion that that there is *prima-facie* case against the petitioners. The petitioners are involved in preparation of false affidavit with dishonest intention to grab the property in dispute / flat. Accordingly, the learned Chief Judicial Magistrate, Latur was pleased to issue process against the petitioners under Sections 420, 465, 468 and 471 read with 34 of the Indian Penal Code against the petitioners and two others.

11 It is well settled principle of law that at the time of taking cognizance of the complaint presented before a Magistrate, the Magistrate has to deal with the said complaint in view of the allegations made in the complaint itself and he has to find out whether, *prima-facie* offence has been spelled out. At the stage of taking cognizance, it is not necessary for the learned Magistrate to make a in detail enquiry by touching niceties. The application of judicial mind is important before taking cognizance of the complaint. Indisputably, judicial process should not be an instrument in the hands of complainant to harass persons needlessly. The Magistrate should be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process.

12 The Magistrates who have been conferred with the power of taking cognizance and issuing summons are required to carefully scrutinize whether the allegations made in the complaint proceeding meet the basic ingredients of the offence; whether they have territorial jurisdiction. This has to be done as a primary judicial responsibility of the Court issuing process.

13 As pointed out earlier, the Magistrate, before ordering

issue of process, should apply his mind to facts of the case and then, if he is of the opinion that there are sufficient grounds to proceed with the case should order issue of process.

14 Having regard to the above legal position, if the order of issue process passed by the learned Chief Judicial Magistrate, Latur dated 7th August, 2019 is studied, it would be very clear that the learned Chief Judicial Magistrate has clearly recorded his *prima-facie* satisfaction before taking the cognizance. No irregularity or procedural defect is committed by the learned Chief Judicial Magistrate, Latur. The alleged offence of forgery, preparation of false document with dishonest intention coupled with other offences, had taken place at Latur. The document in the nature of affidavit and resolution passed by the co-operative housing society are *prima-facie* found to be fraudulent documents as observed by the learned Chief Judicial Magistrate, Latur. Even though the flat in dispute is situated at Pune, the alleged offence had taken place at Latur and certainly the Court of the Chief Judicial Magistrate, Latur has territorial jurisdiction to entertain and decide the complaint according to the provisions of law. There is no legal defect of territorial jurisdiction raised on behalf of the respective petitioner.

15 During the course of argument, the learned counsels for the respective petitioner argued about the dispute between the parties before the authorities; one before the Deputy Registrar, Co-operative Societies, Pune and second, before the Divisional Joint Registrar, Co-operative Societies, Pune Division, Pune and orders passed therein. It is also stated across the bar that the order passed by the learned Divisional Joint Registrar, Co-operative Societies, Pune Division, Pune in Revision Application No.38 of 2016 is challenged before the High Court and now the matter is seized before the High Court. Thus, proceedings is in respect of civil rights regarding membership of the co-operative housing society coupled with other aspects. Now, the center of controversy about preparation of forged affidavit and other documents, is before the learned Chief Judicial Magistrate, Latur. The learned Chief Judicial Magistrate has observed that *prima-facie* case is made out to proceed against the respective petitioner regarding preparation of false affidavit with dishonest intention to grab the flat and accordingly issued the process under Sections 420, 465, 468 and 471 read with 34 of the Indian Penal Code. The points raised by the learned counsels for the respective petitioner and documents produced by way of their defence, cannot be considered at this stage. It would be too early. They may get an opportunity to defend their case by way of trial.

16 The learned Sessions Judge, Latur has also considered all these aspects in detail and rightly dismissed both the criminal revisions applications filed by the respective petitioner. I do not find any legal defect in the order of issue process passed by the learned Chief Judicial Magistrate, Latur in the proceedings of R.C.C. No.22 of 2017 against the respective petitioner so also in the judgment and order delivered by the learned Sessions Judge, Latur in respective criminal revision application. No case is made out by the respective petitioner to interfere in the impugned order of issue process passed by the learned Chief Judicial Magistrate, Latur, which is confirmed by the learned Sessions Judge, Latur. As such, no interference is required. Needless to say that both the petitions are liable to be dismissed. Hence, the following order is passed:

ORDER

- I. Both the petitions stand dismissed.
- II. No order as to costs.
- III. The petitions are accordingly disposed of.

[SHRIKANT D. KULKARNI, J.]