

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

CRIMINAL REVISION APPLICATION NO. 359 OF 2004

Vitthal S/o Dhondiram Sonawane	]	
Age : 55 Years, Occu.: Agri.,	]	
R/o : Jirewadi, Tq. Parali,	]	
Dist. Beed.	]	... Applicant

Versus

1.	The State of Maharashtra	]	
2.	Limbaji S/o Sonba Sonawane	]	
	Age : 50 Years, Occu. : Agril.,	]	
	R/o Bhabhalgaon, Tq. Ambajogai,	]	
	Dist. Beed.	]	... Respondents.

...

Mr. Satej S. Jadhav, Advocate for Applicant.

Mr. S. P. Tiwari, APP for Respondent – State.

*Mr. Kunal Kale, Advocate h/f. Mr. R. S. Deshmukh, Senior Counsel for
Respondent No.2.*

...

CORAM : BHARAT P. DESHPANDE, J.

RESERVED ON : 12th AUGUST 2022

PRONOUNCED ON : 18th AUGUST 2022

JUDGMENT :

Vide order dated 31st January 2005 rule was issued.

2. By way of present Revision filed under section 397, 401 and 482 of the Code of Criminal Procedure, the applicant is challenging the order passed below Exhibit-23 in Summary Criminal Case No. 907 of 1998, whereby his application for recalling of the process issued by the learned Magistrate for

the offences punishable under sections 194 and 199 of Indian Penal Code came to be rejected.

3. Heard learned advocate Mr. Satej Jadhav for applicant, learned APP Mr. S. P. Tiwari for State and learned advocate Mr. Kunal Kale h/f. Mr. R. S. Deshmukh for respondent no.2.

4. With the assistance of learned counsel appearing for respective parties, I have perused entire record and more specifically a complaint lodged by respondent no.2, order passed by the learned Magistrate for issuance of process and thereafter the impugned order wherein application for recalling of the process was rejected.

5. Learned counsel for applicant strongly contended that complaint filed by respondent no.2 before the Magistrate for the offences punishable under sections 199, 193, 196 and 209 of Indian Penal Code is not at all tenable. In this respect, he placed reliance on the provisions of section 195(1) (b)(ii) of the Code of Criminal Procedure and claimed that there is clear bar of taking cognizance of any complaint filed by a private party with regard to the offences punishable under sections 194 and 199 of Indian Penal Code. He forcefully submitted that it is between the concerned court and the accused and a private party is not entitled to file complaint. In this respect learned counsel for applicant placed reliance on the decision of the Apex Court in the

case of *Iqbal Singh Marwah and Anr. Vs. Meenakshi Marwah and Another* reported in *(2005) 4 SCC 370*.

6. Learned counsel for applicant then invited attention of this Court to the impugned order and the reasoning of the learned Magistrate in it. He submitted that the learned Magistrate was convinced that no private complaint is tenable and that order of issuance of process passed by his predecessor in the office is incorrect, however, he refrained from recalling such order only on the ground of maintaining judicial propriety.

7. Learned APP appearing for respondent no.1 – State submitted that the findings in the impugned order are clearly in favour of the applicant, but such application was rejected only on the ground for maintaining judicial propriety.

8. Learned counsel appearing for respondent no.2 submitted that the order passed by the learned Magistrate rejecting recalling of process is justified and therefore no interference is necessary.

9. Respondent no.2/complainant filed private complaint against applicant/accused for the offences punishable under section 199, 193, 196 and 209 of Indian Penal Code. Complainant entered into the witness box for verification of complaint and submitted before the learned Magistrate that accused gave false evidence before the court and therefore, he should be

prosecuted. After considering such verification of the complaint, learned Magistrate issued process against accused only for the offences punishable under section 194 and 199 of Indian Penal Code.

10. The accused appeared before the learned Magistrate on receipt of summons from the court, and thereafter, immediately filed an application vide Exhibit-23 for recalling of the process on the ground that complaint filed by the complainant is not tenable and there is bar to take cognizance of such complaint under section 195 of the Code of Criminal Procedure.

11. On perusal of the impugned order passed by the learned Magistrate below Exhibit-23, dated 4th August 2004, it is clear that the learned Magistrate was fully convinced that process issued against accused for the offence punishable under sections 194 and 199 of Indian Penal Code on the basis of private complaint was incorrect as there is clear bar of taking cognizance of any such private complaint in connection with the offences punishable under section 194 and 199 of Indian Penal Code. However, the learned Magistrate observed that he has no jurisdiction to interfere in the impugned order in the same proceedings only on the ground for maintaining judicial propriety. Thus, on that ground itself, application for recalling of the process was rejected.

12. The learned counsel for the applicant submitted that, in the case

of *K. M. Mathew Vs. State of Kerala and Anr.*, reported in *AIR 1992 SC 2206*, the Apex Court has clearly observed that it is always open to the Magistrate to recall the order of issuance of process under section 204 of the Code of Criminal Procedure and no specific provision is required. Such order can be varied or recall as it is an interlocutory order.

13. Surprisingly, this judgment was also referred in the impugned order passed by the learned Magistrate in para no.4, however, he rejected such application for recall of process, though he was convinced that such order of issuance of process was bad in law.

14. It needs to be noted here that the matter is of the year 1998 and rejection of such application for recalling of the process resulted in filing of the present Revision.

15. It is well settled proposition of law that a complaint has to be lodged by the court before whom false evidence is adduced by a party. There is clear bar for any private person to lodge complaint against such offence. Therefore, in this matter when the learned Magistrate was fully convinced that process was issued even though there is specific bar, he ought to have exercised his jurisdiction as held in the case of *K. M. Mathew* (Supra) by recalling that order. By not doing this, the learned Magistrate failed to exercise jurisdiction existing with it.

16. Having said so, Revision Petition needs to be allowed as impugned order clearly goes to show that the process which was issued inappropriately and having specific bar under section 195 of the Code of Criminal Procedure, was not recalled. Hence the order :-

ORDER

- (i) The Revision Application stands allowed as per prayer clause (B).
- (ii) The application at Exhibit-23 for recalling of the process in Summary Criminal Case No. 907 of 1998 is therefore allowed.
- (iii) Rule is made absolute in above terms.
- (iv) Parties shall bear their own costs.

(BHARAT P. DESHPANDE, J.)