

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

CRIMINAL APPLICATION NO. 2086 OF 2019

1. Pankaj s/o. Manohar Ghotkar .. Applicants
Age.42 years, Occ. Labour,
R/o. N-42, J-B-2/12/2, Near Radhakrushna Mandir,
Akshay Chowk, Pawan Nagar, CIDCO-4,
Nashik, Tq. & Dist. Nashik.
2. Manohar s/o. Vasantrao Ghotkar
Age.68 years, Occ. Labour,
R/o. N-8/E-2/14/2A, Hanuman Chowk,
New CIDCO, Nashik, Tq. & Dist. Nashik.
3. Shakuntala w/o. Manohar Ghotkar
Age. 65 years, Occ. Household,
R/o. N-8/E-2/14/2A, Hanuman Chowk,
New CIDCO, Nashik, Tq. & Dist. Nashik.
4. Dhiraj s/o. Manohar Ghotkar
Age.44 years, Occ. Labour,
R/o. Flat No.1, Shiva Pragati Apartment,
Near Nilan Garden, Soubhagaya Nagar,
Lam Road, Vihitgaon, Nashik Road,
Nashik, Tq. & Dist. Nashik.
5. Suraj s/o. Manohar Ghotkar
Age. 43 years, Occ. Labour,
R/o. N-8/E-2/14/2A, Hanuman Chowk,
New CIDCO, Nashik, Tq. & Dist. Nashik.

Versus

1. The State of Maharashtra .. Respondent
Through Investigation Officer,

Udgir (City), Police Station, Udagir,
Tq. Udagir, Dist. Latur.

2. Madhuri w/o. Pankaj Ghotkar
Age. 31 years, Occ. Teacher,
R/o. At Post Chaubara,
Tq. Udgir, Dist. Latur.

Mr.R.V. Gore, Advocate for the applicants.
Mr.S.W. Munde, APP for the respondent/State.
Mr.V.D. Gunale, Advocate for respondent No.2.

CORAM : **KISHORE C. SANT, J.**
DATED : **12.12.2022**

PC. :-

01. Heard with consent of the parties. Taken up for final disposal at the admission stage.

02. The challenge in this application was originally to the order of issuance of process dated 23.02.2018 passed by the learned Judicial Magistrate, First Class, Udgir against the applicants for the offence punishable under sections 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code. Subsequently, by amendment the applicants have also challenged the order of framing of charge dated 29.11.2018, by which the learned JMFC, Udgir has framed charges against all these applicants/accused persons.

03. The learned Advocate for the applicants submits that applicant No.1 is husband, applicant No.2 is father-in-law, applicant No.3 is mother-in-law and applicant Nos.4 and 5 are brothers-in-law of respondent No.2. He submits that against applicant Nos.2,4 and 5 there are no allegations made in the complaint. There are no specific allegations made against rest of the applicants. He challenged the order of issuance of process firstly on the ground that from the complaint it does not appear that the complainant approached the authorities under section 154 of the Cr.P.C. She has approached the Superintendent of Police and thereafter has lodged the complaint. Secondly, the learned Trial Judge has not applied his mind while issuing of process. So far as order of framing of charge is concerned, he submits that the learned Magistrate has not followed the mandate of section 244 and 245 of the Cr.P.C. before framing the charge.

05. Learned Advocate for the applicants has relied upon following judgments of the Hon'ble Supreme Court :-

- i) Sakiri Vasu Vs. State of UP & Ors., 2008 AIR (SCW) 309.
- ii) M. Subramaniam & Anr. Vs. S.Janaki & Anr., (2020) 16 SCC 728.
- iii) Babu Venkatesh & Ors. Vs. State of Karnataka & Anr. Cri. Appeal No.252 of 2022.
- iv) Kahkashan Kausar @ Sonam & Ors.Vs. State of Bihar & Ors., (2022) 6 SCC 599.

. He also produced on record the information supplied to him by the office of Sub-Divisional Police Officer, Udgir stating that there was no complaint by respondent No.2 in the police station.

06. Learned Advocate for respondent No.2 Mr.Gunale submits that this application is not maintainable in view of the availability of alternative remedy. The applicants could have challenged the order of issuance of process by filing revision before the appropriate Court. He further submits that the application also suffers from delay and laches, as the order of issuance of process dated 23.02.2018 was challenged by the applicants by presenting this application on 24.06.2019, i.e. after one year and four months. Further he submits that on the date of framing of charges, the applicants were very much present in the Court, as can be seen from the Roznama. They could have filed application for discharge. However, same is not done and now they cannot approach this Court directly seeking quashment of the proceeding.

07. By looking at the order of issuance of process, it is seen that the Court has resorted to the process of verification of the complainant. In the order the Court has also stated that prima facie case against the accused is

made out and thereafter the process is issued. It is well settled that the order of issuance of process need not be in detail. What is to be seen is that the Court has applied its mind and has taken care to see that case is really made out to issue process against the accused.

08. After hearing the parties, this Court has seen contents of the complaint. In the complaint it is clearly mentioned that the complainant had lodged complaint on 16.06.2016 with the police. However, no cognizance was taken. So far as the allegations are concerned, it is seen in para 8 of the complaint that the respondent No.2 was seriously beaten by all the accused persons by shutting doors and windows of the house. She was shouting for help, but no one could come to help her. It is ultimately a neighbour of respondent No.2, who called mother of respondent No.2 from her mobile telling her that respondent No.2 is shouting in the house and there is some quarrel going on in the house. However, she was not in a position to offer any help. This neighbour also informed that these applicants always torture and harass respondent No.2. Thus, on going through the complaint, it appears that prima facie allegations are clearly made out against the applicants.

09. Coming to the framing of charge, the charge is framed on 29.11.2018 on which date the applicants were very much shown to be present in the Court. On that day, their statements were also recorded.

10. Considering the question of delay and latches, there appears to be considerable delay, after the order of framing of charge, which is framed on 21.11.2018. This application is presented 7 months thereafter. If prayer is seen challenging framing of charge, that is made for the first time on 25.11.2022. Thus, considering the delay and latches also, this Court finds that no case is made out on this count. I find substance in the submissions of learned Advocate for respondent No.2. This Court is satisfied that the learned Trial Judge has taken sufficient care before passing order of issuance of process.

11. Hence, the application is dismissed.

[KISHORE C. SANT, J.]