

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

CRIMINAL WRIT PETITION NO.1020 OF 2022

1. Krushna S/o Soma Talpade
Age : 79 years, Occu.: Retired,
R/o. : Flat No.13, Kalika Niwas,
J.B. Nagar, Andheri (East),
Mumbai - 400059
 2. Santosh Krishna Talpade
Age : 52 years, Occu.: Service,
R/o. : As above
- ... Petitioners

Versus

1. The State of Maharashtra
Through In-charge Police Inspector,
Akole Police Station, Tq. Akole
Dist. Ahmednagar.
 2. Kisan S/o Budha Gabale
Age : 40 years, Occu.: Agril.,
R/o. Dagadwadi (Sanghvi),
Tq. Akole, Dist. Ahmednagar.
- ... Respondents

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Mr. P.R. Katneshwarkar, Advocate i/by Mr. Mr. Anuj A.
Fulpagare, Advocate for the Petitioners
Mr. P.G. Borade, APP for Respondent No.1/State
Mr. A.N. Nagargoje, Advocate for Respondent No.2

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CORAM : SHRIKANT D. KULKARNI, J.

RESERVED ON : 27 SEPTEMBER 2022

PRONOUNCED ON : 04 OCTOBER 2022

JUDGMENT :-

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

2. The petitioners by invoking Article 227 of the Constitution of India, and Section 482 of the Code of Criminal Procedure, are seeking quashment of the proceedings vide Misc. Criminal Application No.232 of 2015, pending on the file of learned Judicial Magistrate First Class, Akole, District Ahmednagar.

3. It is necessary to have a brief survey on the facts of the case.

Respondent No.2 has filed private complaint before the learned Judicial Magistrate, First Class at Akole, District Ahmednagar vide Misc. Criminal Application No. 232 of 2015. The learned Judicial Magistrate, First Class, Akole was pleased to issue process against the present petitioners and others under Section 323, 447, 504 and 506 of read with Section 34 of the Indian Penal Code vide order dated 23.09.2019. The summons came to be served on the present petitioners, and both of them were directed to remain present on 16.08.2022 before the Judicial Magistrate, First Class, Court No.2 at Akole.

4. Heard Mr. P.R. Katneshwarkar, learned counsel instructed by Mr. Anuj A. Fulpagare for the petitioners, Mr. P.G. Borade, learned APP for Respondent No.1/State and Mr. A.N. Nagargoje, learned counsel for respondent No.2/original complainant.

5. Mr. Katneshwarkar, learned counsel for the petitioner answered to the plea raised by Mr. Nagargoje, learned counsel for respondent No.2/original complainant about the maintainability of this petition. Mr. Katneshwarkar, learned counsel for the petitioners submitted that the petitioners are not only challenging the order of issue process passed by the learned Judicial Magistrate, First Class, Akole, but also seeking quashment of the entire proceedings pending on the file of learned Judicial Magistrate, First Class, Akole in view of allegations levelled in the complaint against the petitioners. He submitted that quashing petition is maintainable before this Court under Article 227 and Section 482 of the Code of Criminal Procedure, by placing his reliance in case of *GHCL Employees Stock Option Trust Vs. India Infoline Limited Vs. Kranti Sinha* reported in **2013 (4) SCC 505** and in case of *Pepsi Foods Lt. And another Vs.*

Special Judicial Magistrate and others reported in ***(1998) 5 SCC 749***.

6. Mr. Katneshwarkar, learned counsel for the petitioners submitted that the High Court has not only administrative superintendence over the subordinate courts and tribunals, but it has also the power of judicial superintendence. It is settled that High Court can exercise its power of judicial review in criminal matters in view of decision in case of ***State of Haryana and others vs. Bhajan Lal and others*** reported in ***AIR 1992 SC 604***.

7. Mr. Katneshwarkar, learned counsel for the petitioners invited my attention to the copy of the complaint and submitted that the allegations levelled against both the petitioners are vague in nature and absurd. No specific role is attributed to them. They have been roped in along with co-accused. He submitted that the main allegations are against the Government officials who had been to the field of respondent No.2 for measurement as well as police officials who were present at the time of measurement of the land in dispute. Both the petitioners are permanent resident of

Mumbai. Even if the allegations levelled in the F.I.R. are taken at their face value, no offence is made out against the present petitioners. As such, it would be an abuse of process of law, if the prosecution is allowed to continue. Mr. Katnewarkar urged to quash the entire proceedings to the extent of present petitioners.

8. Per contra, Mr. A.N. Nagargoje, learned counsel for respondent No.2/original complainant submitted that the petitioners have directly approached to this Court by challenging the order of issue process, which is not permissible. He has placed his reliance in case of ***V.K. Jain and others Vs. Pratap V. Padode and another*** reported in ***2005 (3) Mh.L.J. 778***. He submitted that the efficacious remedy is available to the petitioners. They could have approached the Sessions Court by filing Criminal Revision Application against the order of issue process passed by the learned Judicial Magistrate, First Class, Akole. As such, present petition is not at all maintainable and liable to be dismissed in limine.

9. Mr. Nagargoje, learned counsel for respondent No.2 has placed his reliance in case of ***Ajay Rameshwar Agrawal Vs. State of Maharashtra and another*** reported in ***2006 (2) Mh.L.J. (Cri.) 1106*** and submitted that the inherent powers vested with this Court under Section 482 of the Code of Criminal Procedure can be invoked to prevent abuse of process of Court. In the present case, the complainant/respondent No.2 has made specific allegations against the petitioners. *Prima facie* case was made out and that's why the learned Magistrate was pleased to issue process against the petitioners and others. It is not a fit case to quash the proceedings.

10. Mr. Borade, learned APP for respondent No.1/State supported the order of issue process passed by the learned Judicial Magistrate, First Class, Akole. He submitted that there is *prima facie* case against the petitioners. As such, it is not a fit case to quash the proceedings against them.

11. I have considered the submissions of both the sides. I have also gone through the copy of the private complaint vide Misc. Criminal Application No.232 of 2015 (Page 46),

pending on the file of learned Judicial Magistrate, First Class, Akole, District Ahmednagar, and order of issue process passed therein, copy of the witnesses summons, copy of the N.C. report and the copy of decisions in civil suit and appeal.

12. I shall first deal with the point of maintainability of this petition. It is important to note that the petitioners have not only challenged the order of issue process passed by the learned Judicial Magistrate, First Class, Akole, but also made substantial prayer in the petition that the criminal prosecution launched against them is nothing but abuse of process of the Court and liable to be quashed by invoking jurisdiction of this Court under Section 482 of the Code of Criminal Procedure and Article 227 of the Constitution of India.

13. Learned counsel for both the sides have referred various citations in support of their submissions.

14. In case of *V.K. Jain and others Vs. Pratap V. Padode and another* (supra), this Court at Principal Seat has held that power of High Court under Section 482 of the Code of

Criminal Procedure should not be exercised when the efficacious remedy of preferring revision before Sessions Court against the order of issue process is available to the applicants.

15. In case of *Ajay Rameshwar Agrawal Vs. State of Maharashtra and another* (supra), this Court (bench at Aurangabad) has held that when serious questions of fact are involved, which can aptly decided at trial giving an opportunity to parties to lead their evidence, Section 482 of the Code of Criminal Procedure cannot be invoked to quash the order of issue process.

16. In case of *Pepsi Foods Lt. And another Vs. Special Judicial Magistrate and others* (supra), the Hon'ble Supreme Court has held in para 22 as under:

“It is settled that High Court can exercise its power of judicial review in criminal matters. In State of *Haryana and others vs. Bhajan Lal* and others 1992 Supp (1) SCC 335, this court examined the extraordinary power under article 226 of the Constitution and also the inherent powers under Section 482 of the Code which it

said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guideline is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure, The power conferred on the High Court under Articles 226 and 227 of the constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised invoking these powers. When the exercise of powers could be under Article 227 or Section 482 of the Code it

may not always be necessary to invoke the provisions of Article 226. Some of the decisions of this Court laying down principles for the exercise of powers by the High Court under Articles 226 and 227 may be referred to.”

17. Having regard to the legal position made clear by the Hon’ble Supreme Court in case of *Pepsi Foods Lt. And another Vs. Special Judicial Magistrate and others* (supra), the quashing petition filed by the petitioner by taking aid of Section 482 of the Code of Criminal Procedure and Article 227 of the Constitution of India, is maintainable before this Court.

18. Now coming to the merits of the petition. On going through the copy of the complaint (Page 46), it would clear that respondent No.2 has filed a private complaint against in all ten accused persons, including the present petitioners. The present petitioners are shown as accused Nos. 1 and 2 in the said proceedings. The alleged incident had taken place on 06.05.2015 about 12.00 to 1.00 noon in the field of respondent No.2 bearing Gat No.201 on account of measurement. The private complaint came to be filed after

two months of the alleged incident. There is a delay of two months in lodging the private complaint. No explanation is offered in the private complaint about such inordinate delay of two months. Apart from that, if the allegations made in the private complaint are taken into consideration and taken at their face value, it would reveal that the complainant/respondent No.2 has not made specific allegations against both the petitioners. In para 4 of the complaint, it is alleged that all the accused persons along with the police entered into the field owned by respondent No.2 bearing Gat No.201 and abused the complainant and his family members and scuffled, and rushed towards his person and threatened with dire consequences. The allegations made in the complaint is mainly against the police officers and the officials from the DLR/TLR, who had been to the field for measurement.

19. The allegations levelled against the petitioners are vague in nature and bald, and it is difficult to attract any offence *prima facie*. In ***GHCL Employees Stock Option Trust Vs. India Infoline Limited Vs. Kranti Sinha*** (supra), it is held by the Hon'ble Supreme Court that "summoning of accused in

a criminal case is a serious matter. Hence, criminal law cannot be set into motion as a matter of course. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The Magistrate has to record his satisfaction with regard to the existence of a *prima facie* case on the basis of specific allegations made in the complaint supported by satisfactory evidence and other material on record.” Even though, while passing the order of issue process, the learned Magistrate has observed that the complainant has made out *prima facie* case against the accused for issue process, it is found to be a mechanical order. The order of issue process does not indicate the proper application of judicious mind with the facts of the case even though the complaint came to be lodged by causing delay of two months, and no explanation is offered in the complaint. This point seems to have been not considered by the learned Magistrate. Moreover, as observed earlier there are no specific allegations against both the petitioners in commission of alleged offences. The main grievance of the complainant/respondent No.2 is against the official of TLR/DLR, who had been to his field for measurement and the

police officers accompanied. It is difficult to accept the allegations of respondent No.2 that in presence of police party, the present petitioners scuffled with respondent No.2 and his family members and abused in the same tone with co-accused.

20. In case of ***Madhavrao Jiwajirao Schindia Vs. Sambhajirao Chandrojirao Angre*** reported in ***(1988) 1 SCC 692***, the Hon'ble Supreme Court has held as under:

“7. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

21 In view of the landmark decision of the Hon'ble Supreme Court in case of *State of Haryana and others vs. Bhajan Lal and others* (supra), this Court is clothed with extraordinary power under Article 227 of the Constitution of India and also inherent powers under Sections 482 of the Code of Criminal Procedure, which can be exercised either to prevent the abuse of process of any Court or otherwise to secure the ends of justice.

22. On careful examination of the allegations levelled in the private complaint against the petitioners, even if taken at their face value, it would be very much difficult to make out any of the offences alleged against them. If prosecution is allowed to continue against the petitioners, it would be an abuse of process of the Court. Both the petitioners are permanent resident of Mumbai. They are unnecessarily harassed. It is a fit case to quash the proceedings pending on the file of learned Judicial Magistrate, First Class, Akole to the extent of the present petitioners. In the result, following order is passed.

ORDER

- (i) The criminal writ petition is hereby allowed in terms of prayer clause (A) to the extent of petitioner Nos.1 and 2.
- (ii) No order as to Costs.
- (iii) The criminal writ petition is accordingly disposed of.

23. The observations made hereinabove are *prima face* in nature and confined to the adjudication of present writ petition, and the trial Court shall not get influenced by the observations made by this Court while deciding this writ petition.

[SHRIKANT D. KULKARNI]
JUDGE

S.P Rane