

S.S.Kilaje

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1885 OF 2022

Rahul Amrutlal Nandu

.. Petitioner

Versus

State of Maharashtra and Anr.

.. Respondents

-
- Mr. Jamshed Ansari for the Petitioner
 - Ms. S.D.Shinde, APP for the State
-

**CORAM : S.S.SHINDE &
MILIND N. JADHAV, JJ.**

DATE : JUNE 09, 2022.

P.C.:

- 1.** Heard learned counsel for the Petitioner and learned APP.
- 2.** By the present petition the Petitioner has prayed for the following relief:

“b. that this Hon’ble court be pleased to quash and set aside the (i) Chapter case No. 23 of 2022 (ii) Court case No. 96 of 2022 (iii) Show cause Notice dated 5th March 2022 issued under section 107 of the Code of Criminal Procedure, 1973 and (iv) summon dated 5th March 2022, issued under section 113 of Code of Criminal Procedure 1973 issued by Special Executive Magistrate and Assistant Commissioner of Police, Colaba Division, District Mumbai”

- 3.** The Petitioner is the original accused in N.C.R. No. 189 of 2021 and N.C.R. No. 05 of 2022 registered with Marine Drive Police Station under Section 504 and 506 Indian Penal Code, 1860 (for short "**IPC**"). The complainant is the wife of the Petitioner's brother. The

Petitioner has also filed a cross complaint being N.C.R. No. 06 of 2022 dated 06.01.2022 under Section 504 and 506 IPC against the complainant. The complainant has also filed a Domestic Violence Act Complaint / Case No. 13 of 2021 against 7 members of the Petitioner's family. In the said Domestic Violence case husband of the complainant is directed to pay interim compensation of Rs.50,000/- to the complainant and Rs.25,000/- to each of the children.

4. The Respondents have initiated proceedings under Chapter VIII of the Code of Criminal Procedure, 1973 (for short “**Cr.P.C.**”) against the Petitioner; on 05.03.2022 a Show Cause Notice was issued under Section 107 alongwith summons of even date under Section 113 of the Cr.P.C. to the Petitioner.

5. Learned counsel for the Petitioner submits that Petitioner is not a habitual offender and Chapter case can be filed only against habitual offenders. He submits that there are two false N.C.R. pending against the Petitioner and the Petitioner is not convicted in any criminal case. He therefore submits that the Chapter case proceedings alongwith show cause notice and summons issued against the Petitioner are bad in law and deserve to be set aside.

6. *PER CONTRA* Ms. Shinde, learned APP submits that the impugned notice dated 05.03.2022 calls upon the Petitioner to show cause in respect of the two N.C.R.s registered against the Petitioner. The Petitioner is required to show cause and shall file his reply to the said notice and furnish his explanation as called for either through himself or through his lawyer as is stated in the said notice. If the Petitioner satisfactorily convinces the authority about his innocence and involvement, appropriate decision will be taken by the authority while passing a speaking order on the said show cause notice. Once the law is set into motion the procedure prescribed under Chapter VIII is required to be completed in accordance with law. At the *prima-facie* stage of show cause notice and summons to appear, the Application/Petition filed by the Petitioner without completing adjudication by the competent authority is premature and therefore not sustainable.

7. In view of the above, there is no substance in the plea of the Petitioner seeking to set aside initiation of Chapter VIII proceedings without they being decided in accordance with law. There is a Chapter Case No. 23 of 2022 filed against the Petitioner; Court Case No. 96 of 2022 filed against the Petitioner and therefore the show cause notice dated 05.03.2022 under Section 107 of the Cr.P.C. and

summon dated 05.03.2022 under Section 113 of the Cr.P.C. is a logical consequence of the Chapter case proceedings. We do not find any exceptional or colourable circumstance pleaded by the Petitioner, save and except, to state that the proceedings are false so as to exercise our power in writ jurisdiction to set aside the statutory proceedings. Learned APP has clearly stated that at this stage there can be no apprehension of arrest as by virtue of the show cause notice and the summons issued to the Petitioner an opportunity is given to the Petitioner to file his defence and appear before the authority.

8. We do not find any merit in the Petition.

9. In view of the above discussion and findings, the Writ Petition stands dismissed and disposed of accordingly.

[MILIND N. JADHAV, J.]

[S.S.SHINDE, J.]

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