

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

CRIMINAL WRIT PETITION NO.1219 OF 2021

Rajni Kumari w/o Rohit Ruhella	...Petitioner
Versus	
State of Maharashtra and Anr.	...Respondents

***WITH
CRIMINAL APPLICATION NO.762 OF 2021***

Sunny Kumar S/o Satyaveer Singh	...Applicant
Versus	
The State of Maharashtra and Anr.	...Respondents

Mr. N. D. Yadav, for the Petitioner in WP/1219/2021 and for the Applicant in APL/762/2021.

Mr. A. R. Patil, A.P.P for the Respondent No.1– State.

Mr. Atul Damle, Senior Advocate i/b Mr. Deepak Churi and Mr. Madhukar Yelutla, for the Respondent No.2.

CORAM : REVATI MOHITE DERE, J.

DATE : 6th APRIL 2022

P.C. :

1. Heard learned counsel for the parties in both, the petition as well as the application.

2. Since the issue involved in both, the petition as well the application is identical, the same is being disposed of by a common order.

3. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Learned APP waives notice on behalf of the respondent No.1 – State. Learned Senior Counsel, Mr. Damle, waives notice on behalf of respondent No.2.

4. The short question involved in both, the petition as well the application is, whether the learned Magistrate has followed the procedure as contemplated under Sections 202 and 200 of the Code of Criminal Procedure.

5. Perused the papers. The respondent No.2 i.e. the original complainant filed a private complaint, as against the petitioner - Rajni Kumari and applicant - Sunny Kumar, alleging offences punishable under Sections 324, 341, 354, 479, 380 and 506(II) of the Indian Penal Code. In the said private complaint, the respondent No.2 had sought a direction to the concerned Police Station for an investigation under Section 156(3) of

the Code of Criminal Procedure ('Cr.P.C'). The learned Magistrate vide order dated 21st July 2018, rejected the said prayer seeking a direction to the concerned Police Station for an investigation under Section 156(3) Cr.P.C, however, proceeded with prayer clause (b), which sought a direction that the accused be dealt in accordance with law and that they be punished as per law. Thereafter, on the same date, the learned Magistrate perused the complaint and heard the counsel for the respondent No.2 (original complainant). After noticing that the accused (petitioner and applicant) were residents of New Delhi, the learned Magistrate called for a report under Section 202 Cr.P.C. It appears that the police filed two reports in the said case. It is not necessary to go into the merits of either of the said reports, inasmuch as, one favoured the respondent No.2 (complainant) and the other did not. Suffice to state, that the learned Magistrate relying on one of the police report, issued process as against the petitioner - Rajni Kumari and applicant - Sunny Kumar vide order dated 20th January 2020. Admittedly, there is no compliance of Section 200 Cr.P.C. Learned senior counsel for the respondent No.2 also does not dispute the same.

6. Having regard to the mandate of law and the judicial pronouncements in this regard, the impugned order issuing process cannot be sustained only on the ground of non-compliance of Section 200 Cr.P.C.

7. Accordingly, the impugned order dated 20th January 2020, passed by the learned Judicial Magistrate First Class, Khalapur, below Exhibit – 1 in R.C.C. No.75 of 2018, is quashed and set aside and the matters are remitted back to the trial Court, for deciding the said complaint, in accordance with law, from the stage of report. The learned Magistrate to proceed with the complaint from the stage of report and ensure compliance of Section 200 Cr.P.C and thereafter, pass appropriate orders in the said complaint.

8. Rule is made absolute on the aforesaid terms. Both, the petition as well as the application are accordingly disposed of.

9. It is made clear, that this Court has not gone into the merits of the case/complaint and as such all contentions of all parties are kept open.

10. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.