

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 91/2022

Syamkant S/o Ramrao Patil,
aged about 55 years, Occ. Service,
C/o. Police Commissioner Office Mill
Corner, Aurangabad, Tq. & Dist.
Aurangabad.

... **PETITIONER**

VERSUS

1. Bhikanrao S/o Shamrao Bibne,
aged about 67 years, Occ.
Pensioner, R/o. Wankhede
Layout, Buldana, Tah. & Dist.
Buldana & anr.
2. State of Maharashtra, through
Police Station Officer, P. S.
Buldana City, Tq. & Dist.
Buldana.

... **RESPONDENTS.**

Mr. A. J. Thakkar, Advocate for petitioner.
Mrs. M. Deshmukh, APP for respondent No.2/State.

CORAM : **VINAY JOSHI, J.**
DATE OF JUDGMENT : **28.09.2022.**

ORAL JUDGMENT :

RULE. Rule is made returnable forthwith.

2. Heard finally by consent of respective parties at the stage of admission.

3. The respondent No. 1 though filed written submission, however remained absent at the time of hearing.

4. The petitioner is accused No. 2 in Criminal Complaint Case No. 37/2011. The order of issuance of process was passed against him, which he challenged in revision, however the Revisional Court dismissed the revision vide impugned order dated 06.01.2022 by holding that revision is not maintainable which is the subject matter of challenge.

5. The facts are such that the respondent No. 1 complainant has filed an application to the Magistrate numbered as criminal case No. 37/2011 seeking direction under Section 156(3) of the Code of Criminal Procedure ('Code') for registration of crime for the offence punishable under Sections 420, 221, 222, 438, 471 read with Section 34 of the Indian Penal Code. Considering the allegations levelled against the accused Nos 1 and 2 i.e. accused No. 1 is D. B. Tadvil and accused No. 2 – Shyamkant Ramrao Patil – petitioner, the Magistrate at

pre-cognizance stage, directed the Police to initiate action in terms of Section 156(3) of the Code and submit the report. In turn, the Police have registered crime No. M.Case 3/2011 dated 07.05.2011 and conducted investigation. After completion of investigation, the Police have filed B-summary report to the Magistrate on 05.12.2012. It reveals that the original complainant has objected to the report and therefore, the learned Magistrate has directed complainant to lead evidence by treating the original application as a complaint. In pursuance of that, the complainant led evidence on the basis of which the learned Magistrate has declined to issue process against accused No. 1 Tadv, however, issued process against accused No. 2 i.e. petitioner vide order dated 21.02.2017. Being aggrieved by said decision, the petitioner filed criminal revision No. 62/2017 challenging the order of issuance of process whilst original complainant filed Criminal Revision No. 51/2017 challenging the dismissal of complaint against accused No. 1 Tadv. The Sessions Court held that the petitioner is challenging virtually registration of First Information Report ('FIR') No. 03/2011 and thus, the revision is not maintainable.

6. It is strenuously argued that the Revisional Court utterly failed to consider position of law that the petitioner never challenged registration of FIR No. 03/2011 since already the Police have filed

B-summary report. It is contended that after B-summary report, the FIR No. 03/2011 nowhere survives. It reveals that the Police have registered Crime No. 03/2011, however, it was closed by filing B-summary i.e. by holding that the allegation levelled in the complaint are false. On receipt of said report and objection, the Magistrate chooses to treat the original application as private complaint and accordingly, proceeded in terms of Chapter XV of the Code. The Magistrate has examined the complainant, witnesses and thus, having been found sufficient ground for proceeding against the petitioner, has issued process in terms of Section 204 of the Code. The Revisional Court has misconceived that the petitioner is challenging the FIR, which it was not in existence. The challenge raised before the Revisional Court was purely to an order of issuance of process dated 21.02.2017. It is settled law that the order of issuance of process is amenable to the revisional jurisdiction in terms of Section 397 of the Code.

7. In above circumstances, the Revisional Court is required to deal the challenge on its own merits. In view of that petition is allowed. The impugned order dated 06.01.2022 passed in Criminal Revision Application No. 62/2017 is hereby quashed and set aside. The revision is restored at its original stage with direction to decide the

same in accordance with law. Petition is disposed of accordingly.

(VINAY JOSHI, J.)

Gohane

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signed by
JITENDRA
BHARAT
GOHANE
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