

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

CRIMINAL WRIT PETITION NO. 193/2021

Sau. Vaishali w/o Gajanan Khadse,
aged about 27 years, Occ. Household,
R/o. Durbha (New), Tah. Zari (Jamini),
Dist. Yavatmal.

... PETITIONER
(Orig. Complainant)

VERSUS

1. Mr. Gajanan s/o Narayan Khadse
aged about 32 years, Occ.
Service,
2. Mr. Narayan S/o Madhav
Khadse, aged about 63 years,
Occ. Retired,
3. Sau. Jeejabai w/o Narayan
Khadse, aged about 58 years,
Occ. Household,
4. Mr. Ganesh s/o Narayan Khadse,
aged about 29 years, Occ.
Agriculturist,
5. Mr. Madhav S/o Bapurao
Uddhar, aged about 50 years,
Occ. Service,

All 1 to 5 R/o. Mukutban, Ta.
Zari (Jamini), Dist. Yavatmal.

6. The State of Maharashtra,
through P.S.O. Mukutban Police
Station, Mukutban, Ta. Zari
(Jamini), Dist. Yavatmal.

... **RESPONDENTS**
(Orig. Accused)

Mr. Naim Memon, Advocate h/f Mr. S. Raisuddin, Advocate for
petitioner.

Mr. N. B. Bargat, Advocate for respondent Nos. 1 to 5.

<u>CORAM</u>	: <u>VINAY JOSHI, J.</u>
<u>RESERVED ON</u>	: <u>30.06.2022</u>
<u>DATE OF JUDGMENT</u>	: <u>02.08.2022.</u>

JUDGMENT :

RULE. Rule is made returnable forthwith. Heard finally by
consent of respective parties.

2. The petitioner who is informant of regular criminal case
No. 59/2012 has challenged the order of the Revisional Court, by
which the Revisional Court has quashed and set aside the order of
issuance of process dated 15.12.2012 passed by the learned Judicial
Magistrate.

3. The facts in brief are that the petitioner's marriage was
performed with respondent No.1 Gajanan s/o. Narayan Khadse
(accused No.1) on 28.05.2010 as per Hindu Customary Rites. After
marriage, the petitioner lady resumed cohabitation at her matrimonial

house. Since she was subjected to harassment, she has filed several reports to the Police. Finally, the Police registered crime vide crime No. 30/2011 for the offence punishable under Sections 498-A, 506 read with Section 34 of the Indian Penal Code and carried out investigation. During course of investigation, statements of relevant witnesses were recorded. The police filed B-summary report, however the learned Magistrate by rejecting B-summary, has issued the process vide order dated 15.12.2012. In the meantime, petitioner wife has also filed a private complaint for the matrimonial harassment. The learned Magistrate has clubbed both the proceedings in terms of Section 210(2) of the Code of Criminal Procedure, since the Police case was already registered. The Revisional Court has reversed the order of issuance of process and therefore, this writ petition.

4. The learned counsel appearing for the petitioner would submit that despite prima facie material, the Revisional Court failed in serious error in setting aside the order of issuance of process. It is argued that the Revisional Court has literally scanned the material like a trial and ultimately held that there is no substance in proceeding with the case. On the other hand, the learned counsel appearing for the respondents/accused would submit that the petitioner lady hardly lived for two days at her matrimonial house and thus, there was no “cruelty”

within the meaning of Section 498-A of the Indian Penal Code. It is argued that the story narrated in the Police Report is totally in variance with the private complaint and thus, it cannot be relied. Moreover, it is argued that the entire allegations are vague and therefore, the learned Magistrate went wrong in issuing process.

5. Principally, the order of issuance of process is subject matter of scrutiny. At the time of issuing the process, what the learned Magistrate is required to find out is whether there is prima facie case. In coming to a decision as to whether a process should be issued, the learned Magistrate can take into consideration the complaint/report as a whole. Certainly, the Magistrate cannot embark upon the inquiry whether on merits a case is made out. The Magistrate is expected to apply his judicial mind to find out whether an offence indicated has been spelt out prima facie or not. It is settled position of law that the Magistrate is not to weigh the evidence meticulously as if it is a trial. The standard to be adopted by the Magistrate in scrutinizing the material is not the same, as the one which is to be kept in view at the stage of framing charges. At this stage, the Magistrate has only to see whether allegations made are prima facie sufficient to proceed against the accused. Of-course, sufficiency of grounds to proceed further is a question of facts.

6. The petitioner lady has also lodged a report against the respondents/accused. It is her contention that prior to the marriage, her father gave Rs. 5 lakhs to the respondents. After marriage, the respondents started to harass by insisting her to sell her land for paying donation for the service of her husband. She stated that all the accused used to harass and beat her. They were insisting her to bring Rs. 15 lakhs from her maternal house for arranging service to her husband. Within 15 days from the marriage, she was sent back to her maternal house. The petitioner also stated that the meetings were arranged, however it does not yield. She stated that thereafter also, there was insistence for demand. The Police have also recorded statements of petitioner's parents, brother, servant etc. who have supported on the core issue. The decisions in cases of *Nupur Talwar Vs. Central Bureau of Investigation and ors, (2012) 4 SCC 217* and *Jagdish Ram Vs. State of Rajasthan and another, AIR 2004 SC 1734* are referred to on the point as to what should be the consideration at the time of issuance of process.

7. The Revisional Court has virtually scanned the entire material. It has noted inconsistency between the Police Report and private complaint. Emphasis was led on the ground that the allegations are vague without specifying the day, date and time. Certain

discrepancies have been noted. In-fact, the Revisional Court has undertaken an unwarranted exercise of scanning evidence at the stage of issuance of process. At this stage, the Magistrate is expected to apply his mind to the limited extent to find out whether prima facie offence has been spelt out. The detailed inquiry which was undertaken by the Revisional Court is unapprovable. In reported case of ***Fiona Shrikhande Vs. State of Maharashtra and another, AIR 2014 SC 957***, it has been held that at the stage of issuance of process, the Magistrate has only to see whether allegations made in the complaint are prima facie sufficient to proceed against the accused and it is not the province of the Magistrate to enter into a detailed discussion on the merits or demerits of the case. In view of said settled position of law, the Revisional Court has seriously erred in scanning the entire material like a trial. The Police paper makes out a prima facie case to proceed against the accused for offence alleged.

8. In view of the matter, impugned order and judgment dated 17.06.2017 passed in Criminal Revision Application No. 15/2015 is not sustainable in the eyes of law, hence it stands set aside. The order of issuance of process dated 15.12.2012 passed in Regular Criminal Case No. 59/2012 by the learned Magistrate is hereby restored.

9. Petition stands disposed of and rule is made absolute in above terms.

(VINAY JOSHI, J.)

Gohane

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signed by
JITENDRA
BHARAT
GOHANE
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