

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

CRIMINAL WRIT PETITION Nos. 371/2020 & 414/2022.

.....

CRIMINAL WRIT PETITION NO.371/2020.

Sangeeta w/o Swaroop Kapoor,
Aged about 53 years, Occupation-
Household, resident of Balveer Ward,
Chandrapur, Tahsil and District
Chandrapur.

...

PETITIONER.

VERSUS

1.The State of Maharashtra,
through Police Station Officer,
Police Station Ramnagar,
Chandrapur.

2.Jitendra s/o Surendra Kapoor,
Aged about 52 years, Occupation-
Business, resident of Industrial Estate Area,
Mul Road, Chandrapur, Tahsil and District
Chandrapur.

3.Kuldeep s/o Amarnathji Kalda,
Aged about 53 years, Occupation-
Business, resident of Shastri Nagar,
Mul Road, Chandrapur, Tahsil and District
Chandrapur.

4.Narendrasingh s/o Amarnathji Kalda,
Aged about 57 years, Occupation-
Business, resident of Shastri Nagar,
Mul Road, Chandrapur, Tahsil and District
Chandrapur.

5.Bharat s/o Dhondbaji Waghide,
Aged about 61 years, Occupation-
Business, resident of J.B. Tower, Tukum
Gurudwar, SBI Colony, Chandrapur,
Tahsil and District Chandrapur.

6.Vivek s/o Vasantao Tulankar,
Aged about 58 years, Occupation-
Service in Tata Finance, resident of
164, Shankar Nagar, Nagpur.

...

RESPONDENTS.

Mr. R. Joshi, Advocate for the Petitioner.
Mr. H.D. Dubey, A.P.P. for Respondent No.1.
Mr.S.S. Sarda, Advocate for Respondent Nos.2,3 and 4.
Mr.V.A. Patait, Advocate for Respondent Nos. 5 and 6.

WITH

CRIMINAL WRIT PETITION NO.414/2022.

1.Jitendra s/o Surendra Kapoor,
Aged about 55 years, Occupation-
Business, resident of Industrial Estate Area,
Mul Road, Chandrapur, Tahsil and District
Chandrapur.

2.Kuldeep s/o Amarnathji Kalra,
Aged about 56 years, Occupation-

Rgd.

3

Business, resident of Shastri Nagar,
Mul Road, Chandrapur, Tahsil and District
Chandrapur.

3.Narendrasingh s/o Amarnathji Kalra,
Aged about 53 years, Occupation-
Business, resident of Shastri Nagar,
Mul Road, Chandrapur, Tahsil and District
Chandrapur.

...

PETITIONERS.

VERSUS

1.The State of Maharashtra,
through Police Station Officer,
Police Station Ramnagar,
Chandrapur.

2.Sangeeta w/o Swaroop Kapoor,
Aged about 55 years, Occupation-
Household, resident of Balveer Ward,
Chandrapur, Tahsil and District
Chandrapur.
(original complainant)

~~3.Bharat s/o Dhondbaji Waghde,
Aged about 61 years, Occupation-
Srvice, resident of J.B. Tower, Tukum
Gurudwar, SBI Colony, Chandrapur,
Tahsil and District Chandrapur.
(original accused no.4)~~

~~4.Vivek s/o Vasantrao Tulankar,
Aged about 61 years, Occupation-
Service in Tata Finance, resident of
164, Shankar Nagar, Nagpur.
(original accused no.5)~~

...

RESPONDENTS.

(Deleted as per order
dated 04.07.2022.)

Mr.S.S. Sarda, Advocate for Petitioners.
Mr. H.D. Dubey, A.P.P. for Respondent No.1.
Mr. R. Joshi, Advocate for Respondent No.2.
Respondent Nos. 3 and 4 Deleted.

CORAM : VINAY JOSHI, J.

DATE : AUGUST 29, 2022.

ORAL JUDGMENT :

Heard learned counsel for the parties. By their consent, Writ Petitions are taken up for final disposal by issuing Rule, making the same returnable forthwith.

2. These petitions originate from a private complaint bearing no.2/2003, in which the Revisional Court has directed the concerned Magistrate to hold an enquiry in terms of Section 202 of the Code of Criminal Procedure. The petitioner in Writ Petition No.371/2020 namely Sangeeta, is the original complainant, whilst petitioners in

5

Writ Petition No.414/2022 are accused nos. 1 to 3 of the private complaint. This is a second round of litigation. Initially the learned Magistrate took cognizance of the complaint and issued process against all accused [nos. 1 to 5] for the offence punishable under Sections 420, 465, 468 read with Section 34 of the Indian Penal Code. The matter reached to this Court, upon which it was remitted back to the Magistrate with a direction to consider the same afresh and pass appropriate orders.

3. In turn, this time the learned Magistrate issued process against accused nos. 1 to 3 [petitioners of Writ Petition No. 414 of 2022], whilst complaint was dismissed against accused nos. 4 and 5. Being aggrieved, both sides filed separate revision petitions in which vide impugned order dated 12.07.2019, the Revisional Court has set aside the order of Magistrate and directed to hold enquiry in terms of Section 202 of the Criminal Procedure Code.

4. The petitioner – Sangeeta is aggrieved by the part of the order of the Magistrate, by which the complaint was dismissed

6

against original accused nos. 4 and 5. Likewise, petitioners of Writ Petition No.414/2022, who are original accused nos. 1 to 3, were aggrieved by the order of issuance of process against them by the learned Magistrate. Pertinent to note that the Revisional Court has directed to conduct an enquiry, however, the said order has not been challenged by accused nos. 4 and 5, against whom initially the Magistrate had dismissed the complaint. This time Sangita is aggrieved by the revisional Courts decision of setting aside the order of issuance of process against accused nos. 1 to 3, whilst accused nos. 1 to 3 were equally aggrieved as enquiry under Section 202 of the Code has been initiated.

5. The facts can be set out in nutshell that the petitioner of Writ Petition No.371/2020 [complainant], had purchased a truck bearing registration No.MH-34/A-4755, by raising finance from Tata Finance Company. Accused no.1 her close relative had partnership with accused nos. 2 and 3, who were doing transport business. At the insistence of accused nos. 1 to 3, the complainant has assigned her truck to the transport company on condition that the firm would

7

pay the loan installments and additional amount towards compensation. Everything was going smooth till the month of May, 2000 when Tata Finance Company had seized the truck of the complainant bearing registration No. MH-34/A-4755, for non-payment of installments. The truck was kept in the control of accused no.4, whilst accused no.5 was officer of the Tata Finance Company.

6. After realizing the said fact, the complainant deputed her relative Dilip Kapoor to verify the things. He realized that though the seized truck bears number plate showing registration No.MH-34/A-4755, however, the truck was in worst condition. In order to verify the things, the complainant had applied to the R.T.O., who inspected the truck and found that the chasis and engine number of the seized truck was of another truck bearing registration No. MH-34/A-4955, which was in the name of accused no.1. It was the grievance of the complainant that the accused nos.1 to 3 in connivance with rest of the accused have fraudulently exchanged the number plates so as to deceive the complainant. The truck which was owned by the accused no.1 bearing registration No. MH-34/A-

Rgd.

8

4955 was in worst condition, therefore, its number plate was replaced by the number plate of the truck belonging to the complainant while effecting seizure. The physical possession of the truck owned by the accused no.1 was handed over with the number plate of the truck of the complainant. It is the grievance of the complainant that the accused in connivance have changed the number plate, forged documents regarding registration to cause wrongful loss to the complainant and thus, cheated and therefore, the complaint.

7. In pursuance of directions of this Court in earlier round of litigation, the trial Court has recorded verification and examined several documents which were produced by the complainant. I have gone through the list of documents which includes exchange of letters, correspondence with R.T.O., inspection report etc. Prima facie, it reveals that the complainant's truck was entrusted to accused nos. 1 to 3 for plying on the road. Rival complaints have been filed by the parties, out of which some are pending, whilst some have been concluded. The basic allegations are about changing number

plates with dishonest intention to cause wrongful loss. Moreover, there is material allegation about preparation of false and fabricated documents. It is not a case where it can be said that the Finance Company and the Dealer of the Motor vehicle had no role to play. Close examination of several documents is necessary. Likewise enquiry is required to find out whether a case to proceed further is made out. For determining the question - whether any process is to be issued or not, the Magistrate has to be satisfied about sufficiency of grounds. If the Magistrate finds that there is some substances, however, having regard to the factual aspect feels that the matter needs initial enquiry, then he can postpone the process and direct the police to enquire into the matter

8. The learned Counsel appearing for the petitioners in Writ Petition No. 414/2022, would submit that the Sessions Court went wrong in directing enquiry under Section 202 of the Code. He would submit that no prima facie case is made out against accused nos. 1 to 3, and thus, the complaint was liable to be dismissed. He has submitted that already the complainant has filed a civil suit, and

10

therefore, the criminal complaint is premature. In support of said contention, he has placed reliance on several decisions. Though several judgments are cited, however, it is a factual aspect which have to be decided on the basis of the facts emerging in the case at hand. As a matter of fact, for taking cognizance of the complainant, the allegations supported by various documents and nature of transaction itself is self sufficient to show implication. The enquiry would certainly assist the Magistrate to find out existence of prima facie case and to decide further course of action. Obviously, the order which would be passed by the Magistrate on receipt of report would be amenable to the aggrieved party to invoke the revisional jurisdiction.

9. The object of enquiry in terms of Section 202 of the Code, is to ascertain truth or falsehood of the complaint. The Sessions Court thought it fit that before issuance of process, preliminary step of finding out worth of proceeding is necessary. Having regard to the allegations, long standing history, documents, RTO reports, it is necessary to have a detailed enquiry to find out the truth, so as to

11

decide whether a case for issuance of process has been made out or not. The learned Sessions Judge has rightly considered the said aspect, and found the necessity of a preliminary enquiry which cannot be faulted with. In that view of the matter, no merit lies in both Writ Petitions, and they deserve to be dismissed.

10. It is brought to the notice of this Court that though the enquiry was directed by the Revisional Court on 12.07.2019, the same is still pending. The concerned police are directed to complete the enquiry and submit report to the Magistrate within a period of three months from the date of communication of this order. In view of above discussion, both Writ Petitions are dismissed. Rule discharged.

JUDGE