

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

33 CRIMINAL WRIT PETITION NO.8 OF 2022

**YOGESH GOPAL SALI AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr.Sunil P. Koli, Advocate for the petitioners.
Mr.P.M. Kulkarni, APP for the respondent/State.
Mr.D.D. Choudhari, Advocate for respondent No.2.

**CORAM : KISHORE C. SANT, J.
DATED : 28.03.2023**

PC :-

01. Heard learned Advocates for the parties. The petition is taken up for final hearing at the stage of admission by consent of the parties.

02. At the outset, learned Advocate for the petitioner reported that petitioner No.4 is no more. Therefore, the proceeding is abated against him.

03. By way of this petition, the petitioners are challenging an order of issuance of process dated 09.11.2021 passed by the learned JMFC, Court No.3, Jalgaon, in SCC No.327 of 2018 on the following facts.

04. Respondent No.2 lodged an FIR bearing No.141 of 2015 in respect of an incident dated 21.10.2015 making allegation only against Yogesh s/o. GopalSali i.e. present petitioner No.1 stating that his tea stall is set on fire by present petitioner No.1. On the basis of said information, an offence was registered. Investigation was conducted. Police on investigation found that petitioner No.1 was not present when alleged incident took place. Fire was caught by accident. On the basis of investigation, the police filed “B” summary report. The learned JMFC by order dated 29.01.2016 accepted the “B” summary report. Against that no protest petition seems to have been filed by the respondent.

05. The respondent No.2 thereafter again filed Cr. Misc. Application No. 971 of 2015 in respect of same incident with only difference that he added earlier incident dated 15.10.2015 stating that on that day he was beaten by the petitioners. Since there was NC registered by the police on the basis of information given by the respondent No.2, this time he prayed for directions under section 156(3) of the Cr.P.C. The respondent No.2, however, did not prosecute said Cri. Misc. Application. The learned JMFC, therefore, was pleased to dispose off the application for want of prosecution by order

dated 05.08.2017. The matter rests there, as no steps were taken by the respondent No.2.

06. Respondent No.2, thereafter, again filed one more complaint bearing RCC No.327 of 2018. The learned Magistrate by order dated 05.05.2018 directed to put complaint for verification. After recording verification, the learned Magistrate again called for report under section 202 (1) of the Cr.PC by order dated 15.10.2019. The police on the basis of directions conducted inquiry and submitted its report on 05.12.2019. The learned JMFC, Court No.3 thereafter passed an order dated 09.11.2021 and issued process against the petitioners for the offences punishable under sections 379, 323, 435, 504, 506 read with section 34 of the Indian Penal Code. Said order is under challenge in this petition.

07. The learned Advocate for the petitioners submits that from the conduct of respondent No.2 it is clear that he is filing complaint after complaint only with a view to harass the petitioners. Twice the complaint of the respondent was terminated without any action against the petitioners. In all the complaints the main allegation is about the incident dated 21.10.2015.

Though subsequently respondent No.2 also added incident of 15.10.2015, however, same was available even while he filed first complaint, on the basis of which investigation was carried and “B” summary was filed. He submits that thus now allowing to continue the proceedings would be an abuse of process of law and prayed for quashing and setting aside the impugned order and the proceedings.

08. The learned Advocate for respondent No.2 raised preliminary objection as to maintainability of the present petition stating that alternative remedy of filing revision is available and still same is not availed. He relied upon judgment in the case of **Rajendra Kumar Sitaram Pande & Ors. Vs. Uttam & Anr., reported in 1999 SC 1028**, wherein it is held that the order of issuance of process is not purely interlocutory order and bar under section 397(2) is not applicable. However, there is nothing to indicate that thereby there is bar to entertain the writ petition by the High Court. He further relied upon judgment in the case of **Smt. Smt. Nagawwa Vs. Veeranna Shivalingappa Kanjalgi & Ors., reported in AIR 1976 SC 1947**, wherein principles are laid down as to quashing the order of issuance of process issued under section 204 of the IPC, by the Revisional Court by exercising revisional powers vested in

the High Court. He submits on merit that the learned Trial Court has rightly passed the order by considering report under section 202 of the Cr.P.C. and no fault can be found.

09. This Court finds that in none of these cases it is held by the Hon'ble Apex Court that the petition cannot be entertained directly by the High Court. Now it is well settled that party can always approach this Court directly, in view of the judgment in the case of Adalat Prasad Vs. Rooplal Jindal reported in (2004) 7 SCC 338.

10. The learned APP opposed the petition by adopting the arguments of learned Advocate for respondent No.2. In addition, he submits that clearly a case is made out for issuance of process and try the offences.

11. This Court after looking to the submissions and considering the material on record finds that respondent filed complaint in which already "B" summary report was filed. In-fact, there was no reason to file another application for directions under section 156(3) of the Cr.P.C. in respect of same incident. His conduct shows that though he filed application for

directions under section 156(3) of the Cr.P.C., he did not prosecute it further. Therefore, the Court was required to dismiss the said application for want of prosecution. He did not take the order further. Thereafter, in 2018, he filed similar complaint and on the basis of which order under section 202 of the Cr.P.C. was directed. This Court finds that it is sufficiently demonstrated before this Court that respondent No.2 is unnecessarily filing complaint one after other in respect of same incident. Now permitting to allow the proceedings to proceed further would clearly be an abuse of process of law. In this view of the matter, this Court finds that case is made out to allow the petition.

12. The petition is, therefore, allowed in terms of prayer clause (C).

[KISHORE C. SANT, J.]