

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

14 CRIMINAL WRIT PETITION NO.32 OF 2021

KRISHNA KUMAR SADANI S/O. LATE HANUMANDAS SADANI
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Petitioner : Mr. Vijay B. Patil
APP for Respondent – State : Mr. S.P. Sonpawale
Advocate for Respondent No.2 : Mr. Punit S. Mehta

...

CORAM : R. M. JOSHI, J.
DATE : AUGUST 7, 2023

PER COURT :

. This petition takes exception to the order dated 25.11.2015 passed by learned Judicial Magistrate First Class, Paithan in R.C.C. No.116 of 2016 and order dated 05.11.2019 passed by the Additional Sessions Judge, Aurangabad in Criminal Revision Application No.10 of 2017 dismissing the petition taking exception to the said order.

2. It is the case of the petitioner that in respect of the First Information Report lodged by Anil Somani vide Cr. No.139 of 2014 registered with Bidkin Police Station, Aurangabad for the offences punishable under Sections 420, 409, 467, 468, 471 of the Indian Penal Code, the concerned police has filed 'B' summary report.

The report submitted by the police to the concerned Magistrate indicates that it was the false compliant. The learned Magistrate however after recording of the verification of complainant passed order dated 25.11.2015 issuing process against the present petitioner.

3. Learned counsel for the petitioner states that 'B' summary report abundantly indicates that it was the false report and that on the basis of the documents available on record, it would be seen that the person in whose favour the cheque was issued had extended services though no audit was conducted by them. It is therefore his contention that the order passed by the learned Magistrate without recording any reason cannot sustain.

4. Learned counsel for respondent no.2 opposed the said contention by relying upon the report submitted by the police, wherein according to him it was evidence to show that the present petitioner had received an amount of Rs.Nine Lakh in the said transaction. By referring to the judgment of the Hon'ble Apex Court in the case of **U.P. Pollution Control Board vs. Mohan Meakins Limited, 2000 AIR (SC) 1456**, it is contended that for the purpose of

issuance of process in a complaint case a detailed order is not necessary. Thus, according to him, it was not obligatory for the learned Magistrate to pass reasoned/ detailed order for issuance of process.

5. The Hon'ble Apex Court in case of **U.P. Pollution Control Board** (*supra*) has held that for the purpose of passing order of issuance of process, no detailed order is expected. However, the present case is one wherein the FIR was lodged and the same was investigated into by the police. Undisputedly a detailed report is filed and as the police found this to be a false case, 'B' summary was filed before the concerned Magistrate. In such circumstances, it was not open for the learned Magistrate simply to record the verification of the complainant and to issue process.

6. Though no detailed order was necessary to have been passed for the issuance of the process, however the order must disclose the application of mind by the learned Magistrate for issuance of the process. When there is a detailed report submitted by the police by referring to the documentary evidence on record, it does not stand to any reason as to how on the basis of the verification

statement of the complainant and without discarding such report, the Court could issue process even without recording any specific reason for the same. Thus, having regard to the facts of the present case there ought to have been some reason may be not in detail recorded before issuance of process and for taking different view than the one reported by the police by filing 'B' summary. In such circumstances order passed by learned JMFC cannot sustain. Resultantly said order ought to have been interfered with by learned Revisional Court. In the result, following order is passed.

ORDER

- (i) Criminal Writ Petition stands allowed.
- (ii) The impugned order dated 25.11.2015 passed by learned Judicial Magistrate First Class, Paithan in R.C.C. No.116 of 2016 and order dated 05.11.2019 passed by the Additional Sessions Judge, Aurangabad in Criminal Revision Application No.10 of 2017 stand set aside.
- (iii) Matter is relegated back to the learned Magistrate for passing appropriate order in accordance with law.

[R. M. JOSHI]
JUDGE