

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

CRIMINAL WRIT PETITION NO.116 OF 2023

**SOMNATH PANDHARINATH FULMANTE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. S. V. Gundre, Advocate for the petitioner
Mr. A. V. Patil, Advocate for respondent No.2

CORAM : R. M. JOSHI, J.

DATE : 10th AUGUST, 2023

P.C. :-

1. This petition takes exception to order dated 02/08/2019 whereby the learned Trial Court has refused to issue process against accused No.2.

2. Learned counsel for the petitioner submits that in the complaint filed before the Magistrate there is specific averment that on 25/05/2019 both accused persons abused and assaulted him with fist and kick blows. Thus, according to him the learned Trial Court committed error in not issuing process against the accused No.2 in ignorance of t averment in the complaint.

3. The complainant after filing of the complaint under Section

200 of Cr.P.C. examined himself on oath wherein he does not refer to the presence of accused No.2 on 25/05/2019. On the contrary it is specifically stated that accused No.1 and two unknown persons assaulted him on that day. Thus, there is absolutely no evidence in order to prima facie accept the involvement of the accused No.2 in this crime. The learned Trial Court therefore was fully justified in refusing to issue process against this accused. Hence, there is no merit in this petition, petition stands dismissed.

(R. M. JOSHI, J.)

ssp