

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

936 CRIMINAL WRIT PETITION NO.603 OF 2022

NAGNATH GANGARAM BOLEGAVE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioner : Smt. U T Pathan h/f T W Pathan
APP for Respondents : Mr. Y G Gujrathi
Advocate for Respondent 2 : Mr. K S Warad

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CORAM : KISHORE C. SANT, J.
Dated: January 31, 2023

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PER COURT :-

1. Heard learned advocates for respective parties. By consent, taken up for final disposal.

2. The petition is filed challenging the order passed by the learned Additional Sessions Judge, Biloli in Cri. Revision Application no.9 of 2019 dated 11.3.2022. Revision was filed challenging the order passed by the learned J.M.F.C., Degloor dated 2.2.2019 in RCC No.131 of 2018. The learned JMFC, Degloor had issued process against accused persons i.e. present petitioner under section 204 of the Cr.P.C. for the offence punishable under sections 354, 323, 504, 506 r/w 34 of the IPC.

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3. The facts in brief are that, on 30.3.2018 an incident took place wherein son of the present respondent lodged the FIR with the allegations that when he was working on his hotel with his mother and brother, accused persons came to the hotel and abused in filthy language and assaulted the informant. It is further allegation that accused persons even abused and assaulted mother of the informant. On that basis, crime was registered for the offence punishable under sections 294, 323, 504, 506, r/w 34 of the IPC. The respondent no.2/mother of the informant was under impression that even police had added section 354 of the IPC as she had stated before the police that her modesty was also outraged. However, she realized that allegations so far as outraging of modesty is not in the earlier offence. Police carried out the investigation, had already filed the charge-sheet and only thereafter she realized this fact.

4. The respondent no.2, therefore, filed Criminal MA on 30.10.2018 which was registered as RCC No.131 of 2018 and process came to be issued. Against which a revision was filed and the same came to be rejected. It is this matter which has now come before his Court.

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5. It is the submission of the learned counsel for the petitioner/accused that once the Court has taken cognizance of the offence on the basis of the FIR lodged by son of the present informant/respondent no.2 in the present case and after police having filed charge-sheet; this private complaint could not have been entertained by the learned JMFC. She submits that this amounts to double jeopardy and prays for quashing of the proceeding. Looking to the allegations, she submits that those are in respect of the same incident on the same date and the petitioner cannot be made to face both the complaints. Learned counsel for the petitioner relies upon a judgment in the case of **T.T.Antony Vs. State of Kerala and others** in criminal Appeal No.689 of 2001 reported in (2001) 6 SCC 181 decided by the Hon'ble Apex Court and submits that there cannot be two FIR's in respect of the same incident. There is no dispute about this proposition. In this case, there are no two FIR's. Here FIR is already lodged and the Court has taken cognizance. Second complaint is a private complaint as discussed in the paragraphs. She relies upon a judgment reported in (2013) 6 Supreme Court cases 648 **Amitbhai Anilchandra Shah Vs. Central Bureau of Investigation and**

another. This Court finds that in the present facts of the case, said judgment is not applicable.

6. Learned advocate for respondent no.2 submits that, in fact, there is no question of double jeopardy in this case. He has taken this Court to section 210 of the Criminal Procedure Code. He submits that section 210 takes care of the situation when the State case is filed and in respect of the same allegations, private complaint is filed. He submits that in such circumstances, both the cases can be tried together. Learned counsel further submits that, in this case, in the earlier offence no trial is yet over. Principle of double jeopardy comes in question when the trial is over and accused is again made to face the trial in respect of the same incident and offence. He relies on a judgment in case of **R.K.Khanna Vs State and others reported in (2003) 11 Supreme Court Cases 758**, wherein, the facts are almost similar. In paragraph no.5 the Hon'ble Apex Court has observed as under :-

5. Having examined the provisions of section 210 crpc, more particularly **sub-section (3) of Section 210**, we have no hesitation to come to the conclusion that the High Court committed serious error in exercising its power under Section 482 CrPC in quashing the complaint case merely because the Magistrate had not exercised his powers by staying the complaint case

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under **sub-section (1) of Section 210 CrPC** and, therefore, the impugned order cannot be sustained. We accordingly set aside the impugned order of the High Court and direct that the complaint case be proceeded with. This appeal stands allowed accordingly.”

7. Heard learned APP for the State. He also submits that, in this case, section 210 subsection (3) of Cr.P.C. takes care of this situation. He also submits that, there is no question of double jeopardy as the trial is not held and it is only pending before the trial court. Considering the submissions, judgment and section 210 of Cr.P.C., this Court finds that it would be in the interest of justice if the learned JMFC is directed to take recourse to section 210 of the Criminal Procedure Code and, more particularly, sub-section (3) of Section 210 of Cr.P.C. With these directions, writ petition stands disposed off.

(KISHORE C. SANT, J.)

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