

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 735 OF 2022

KISHOR HIRALAL CHAVAN (PATIL)

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioner : Mr. Brahme Shailesh P.

APP for Respondent No.1/State : Mr. S. R. Yadav-Lonikar

Advocate for Respondent No.2 : Mr. Joshi Milind Madhu

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CORAM : KISHORE C. SANT, J.

DATE : 11th JANUARY 2023.

Per Court :

Heard.

1. The accused facing trial pending before the learned Judicial Magistrate First Class, Chopda, Dist. Jalgaon, has filed this Writ Petition challenging the order passed by the learned JMFC issuing process and thereafter rejection of Revision Application.

2. The respondent no.2/informant filed a complaint in the Court of JMFC, seeking direction under Section 136(3) of the Code of Criminal Procedure (Cr.P.C. for short). The learned Magistrate however was

pleased to put the complaint for verification under Section 202 of the Cr.P.C. and called the report under Section 202. On receipt of the report, the learned Magistrate issued process against the accused person by order dated 27.11.2019. The petitioner therefore filed a Criminal Revision Application No.3/2020 before the learned Sessions Judge, Amalner. The learned Sessions Judge after hearing the parties and going through the record, was pleased to reject the said Revision by judgment and order dated 22.12.2021.

3. It is submitted by the learned Advocate for the petitioner that in fact the complaint itself was false. The learned Magistrate was pleased to record the statement of some of the persons. Out of those, two persons/witnesses namely Bharat Pandurang Chavan and Liladhar Girdhar Chavan later on filed their affidavits in the Court of learned JMFC. Their statements recorded in the enquiry under Section 202 of Cr.P.C by the police, are in fact not given by them. They were only requested to sign the documents by representing that their signatures are being taken for recording panchnama. It is under that impression they have signed those statements. They also stated that the said

statements are false and imaginary and no any incident as stated in those statements has taken place. The affidavits were executed on 11.01.2019. The petitioner submits that thus there is no sufficient material to proceed against the petitioner and therefore the order of issuance of process dated 27.11.2019 and consequently the order of Revisional Court dated 22.12.2021 are not proper and deserves to be quashed and set aside. Lastly he submits that if the proceeding is allowed to continue, it would be an abuse of process of law.

4. The learned Advocate for respondent no.2 submits that the police during the enquiry under Section 202 of the Cr.PC. have recorded the statements of various persons. Out of those, only two persons have retracted from their statements. There is an evidence in the form of medical certificate and statements of other persons which, if proved, are sufficient to prove the guilt of the accused person. At this stage, the Court is not supposed to go into minute details. It is sufficient at this stage only to examine as to whether there exists material to proceed against the accused.

5. The learned APP also submits that since there is material collected during the investigation and there are also statements of the witnesses recorded by the police, there is sufficient material on record. Considering this material, both the Courts below have rightly passed the order. There is no perversity in the order passed by the learned Sessions Judge.

6. Considering the arguments and the judgment passed by the learned Revisional Court, this Court finds that there is no illegality committed by the learned Sessions Judge, while passing the order and findings cannot be said to be perverse. It is rightly submitted by the Advocate for respondent no.2 that at this stage what needs to be seen is only as to whether there is sufficient material available on record or not. There is substance in the argument that though two persons have retracted from their earlier statements still there are statements of some other persons recorded by the Investigating Officer to prima-facie show that the petitioners have committed an offence.

7. Considering the judgment by the Hon'ble Supreme Court reported

in 2013 AIR SCW 1906 in the case of **GHCL Employees Stock Option Trust Vs. M/s. India Infoline Ltd.**, in which it is held that it was rightly appreciated by the learned Sessions Judge to hold and consider the case in proper perspective. The learned Sessions Judge has rightly observed in this case, that the Magistrate has taken care to follow procedure under Section 202 of Cr.PC. and it is only by obtaining the report of police, the Magistrate has formed the opinion that the case is made out.

8. Considering the above discussion, this Court finds that there is no merit in the petition. Therefore, the petition deserves to be dismissed and is disposed off accordingly.

[KISHORE C. SANT, J.]

Najeeb.