

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

**10 CRIMINAL REVISION APPLICATION NO.222 OF 2014**

Sunil s/o Digambar Kapote,  
age 44 yrs, Occ. Business,  
R/o 77, Baliram Peth, Jalgaon,  
Tq. & Dist. Jalgaon.

Applicant.  
(orig complainant)

VERSUS

1. Jitendra s/o Vasant Gaikwad,  
age 33 yrs, Occ. Service.
2. Prasad s/o Vasant Gaikwad,  
age 36 yrs, Occ. Service.

Both R/o Sector No.21, Plot No.35/A,  
Sankalp Vihar Society, Kharghar,  
New Mumbai. (orig accused.)

3. The State of Maharashtra Respondents.

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Advocate for Applicant : Ms. Chaitali Chaudhari Kutti  
Advocate for Respondents No.1,2 : Mr. H.F. Pawar & M.T.  
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APP for Respondents No.3 : Mrs P. V. Diggikar

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**CORAM : S. G. CHAPALGAONKAR, J.**  
**Dated: August 28, 2023**  
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**PER COURT :-**

1. In this criminal revision application filed by original complainant, the order dated 11.8.2014 passed by the learned Sessions Judge, Jalgaon in Criminal Revision application No.94 of 2014 is assailed by which, the order of

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J.M.F.C., Jalgaon below Exhibit-1 in Regular Criminal Case no.495 of 2013 thereby issuing process against the accused persons has been quashed and set aside and complaint bearing RCC No.495 of 2013 is dismissed.

2. Ms. Kutti learned advocate appearing for the applicant would submit that the averments in the complaint filed before the J.M.F.C. would show that there are specific allegations against the accused persons that they have committed theft of tins and other material worth Rs.75,000/-. She would submit that the learned Magistrate, after taking into account the averments in the complaint, had issued the process against the accused persons for the offence punishable under section 379 r/w 34 of the IPC. She would further submit that the learned Sessions Court while setting aside the order of the Trial Court relied upon the material which is not part of the complaint and virtually, conducted mini trial. In support of her contentions, she would rely upon the judgment of this court in case of *Harischandra Lekhraj Melwani and another Vs. Bhalchandra Naik* reported in [2009 (3) Mh.L.J. 580] and contend that the pending civil dispute between the parties cannot have any significance while considering challenge to the order of issuance of process which is based on the contents of the complaint making out the case for issuance of the process.

3. Learned advocate appearing for the respondent nos.1 and 2 vehemently opposed the contentions. He would

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submit that the allegations in the complaint, particularly, paragraph no.3 specifically suggests that the complainant was out of station on the day of incident and some unknown persons have removed the tin sheets and iron angles worth Rs.75,000/-. He would submit that even taking contents of the paragraph no.3 as it is, it is difficult to make out the case for the purpose of issuing process. He would further point out that prior to filing of the private complaint, the applicant had approached to police and submitted written complaint regarding the alleged incident, however, there is material inconsistency. He would, therefore, submit that the learned Sessions Judge has rightly considered the material aspects and dismissed the complaint.

4. Having considered the submissions advanced, apparently, as per the averments made in the complaint that was given to the police, the applicant was out of town. Even from paragraph no.3 of the complaint filed before the Magistrate, it is apparent that the applicant was out of town and alleged incident took place when he was not at the spot. No specific role of the accused persons is described in the complaint. Perusal of the title clause shows that the accused persons are resident of Mumbai. Civil dispute regarding eviction is pending between the parties.

5. In that view of the matter, for want of specific averments in the complaint thereby making out alleged offences, it is difficult to justify the order of issuance of the

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process. Learned Sessions Court, after taking material into account alongwith the relevant consideration has rightly dismissed the complaint. No interference is required to be called for in the revisional jurisdiction. Hence, revision application is dismissed.

( S. G. CHAPALGAONKAR, J. )

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