

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1242 OF 2021  
WITH  
CRIMINAL WRIT PETITION NO. 430 OF 2022

Ganesh Hiranman Pimple

...Petitioner

**Versus**

The State of Maharashtra and Anr

...Respondents

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Mr. G. K. Muneshwar, Advocate for the Petitioners.

Mrs. G. L. Deshpande, APP for Respondent – State.

Mr. V. P. Kadam, Advocate for Respondent No. 2 in  
WP/1242/2021 and for Respondent No. 3 in WP/430/2022.

Mr. S. S. Shinde, Advocate for Respondent No. 2 in  
WP/430/2022.

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CORAM : R.M. JOSHI, J.

DATE : OCTOBER 18, 2023

COMMON ORDER:

1. Petitioner being aggrieved by order dated 23.04.2019 passed by learned Additional Sessions Judge allowing Revision Petition bearing No. 36/2015 thereby remanding the matter back to JMFC, Hadgaon for decision of issuance of process afresh has preferred Petition No. 1242/2021. He filed Petition No. 79/2016 being not satisfied by order dated 12.03.2020 passed by Sessions Judge, Nanded allowing Criminal Revision Application No. 79/2016 filed by Shyam Apet against order of

issuance of process against him in RCC No. 30/2013 (OMCA No. 30/2013).

2. Petitioner has filed application under Section 156(3) of CrPC before learned JMFC, Hadgaon for the offences punishable under Sections 302, 325, 326, 201, 191, 463, 470 read with Sections 34 & 120-B of Indian Penal Code alleging custodial death of Deepak Shinde on 08.07.2012. It is alleged that Deepak was assaulted by police personnel at Hadgaon Police Station and was admitted in Hospital for treatment of injuries and he succumbed to the said injuries on 08.07.2012. After filing of the said application, learned JMFC called upon the Petitioner to examine himself as well as examine independent eye witnesses. The Court has passed the order of issuance of process against accused Nos. 1 to 3 and 5 for the offences punishable under Sections 302, 201 read with Section 34 of IPC and process was issued against accused No. 4 for offence punishable under Sections 201, 470 of IPC. Accused No. 4. Uddhav Panchal, Accused No. 5, being aggrieved by said order of issuance of process filed Criminal Revision Application No. 36/2015. By passing order dated

23.04.2019, learned Additional Sessions Judge, Nanded remanded matter back to Magistrate for passing order recording *prima facie* evidence against Accused No. 5. Accused No. 4 Shyam Apet challenged the said order of issuance of process before Sessions Judge, Nanded in Criminal Revision Application No. 79/21016. By passing impugned order dated 12.03.2020, the said revision was allowed and order of issuance of process against accused no. 4 for the offences punishable under Sections 201, 407 off IPC came to be quashed. Being dissatisfied by order passed by Revisional Court, original complainant/Petitioner has preferred these Petitions.

3. Learned Counsel for the Petitioner submits that it is a case of custodial death of the deceased and that Respondents police personnel have caused assault on the deceased in the police station and due to injuries caused in the said assault deceased died. He further alleges that MLC was falsely recorded by accused no. 4 indicating facts different than actually occurred. It is also submitted that record is created to show that the injuries caused to the deceased are

not in assault by accidental one. Thus, it is his contention that there is evidence showing his involvement in the screening of crime. It is submitted that the revisional Court has failed to consider the material facts and has set aside the order of issuance of process against accused No. 4. As far as other Petition is concerned, it is argued that the complaint and material on record is sufficient to issue process against all accused persons and the Revisional Court fell in error in setting aside order against Accused No. 5 and remitting matter back to Magistrate.

4. Learned Counsel for contesting Respondents submitted that the orders passed by Revisional Court are well reasoned orders and as such, they are in accordance with settled law no interference is called therein.

5. *Prima facie* perusal of complaint indicates that there are allegations against Accused no. 5 — Uddhav that he along with other police personnel caused assault on the deceased which has led to his death. The Revisional Court interfered in the said order of issuance of process with observation that the order

passed by the learned Magistrate does not indicate *prima facie* evidence/material available on record in order to proceed against him. In the light of these observations, order of issuance of process against accused no. 4 is set aside and the matter was referred back to the Magistrate for passing appropriate order.

6. In this regard, perusal of order dated 16.02.2015 passed by Magistrate does not show anything to indicate as to what evidence led before him was considered sufficient to issue process against Accused No. 3 for offences punishable under Sections 302 and 201 of IPC. It is trite law that while passing order of issuance of process no detailed discussion is necessary of evidence but the order so passed must indicate the reasons/material taken into consideration against the accused. The order passed by learned Magistrate vaguely/generally refers to the statements of witnesses examined but failed to show any reason or justification for issuance of process against accused no. 5. It is not clear from the order as to which material is taken into consideration or appealed to Magistrate for issuance of the process. In such circumstances, order

passed by Revisional Court relegating matter back to Magistrate cannot be faulted with.

7. As far as order in Criminal Revision Application No. 79/2016 is concerned, the issue was raised before the learned Sessions Judge that process came to be issued against accused without obtaining sanction under Section 197 of CrPC. By referring to the judgment in case of Anil Kumar and others Vs. M.K. Aiyappa and another, (203) 10 SCC 705 wherein it is held that question of sanction is paramount importance for protecting public servant who is acted in the good faith while performing his duty. The purpose of obtaining sanction is to see that the public servant be not unnecessarily harassed on a complaint of unscrupulous person. Learned Revisional Court *prima facie* held that prior sanction under Section 197 CrPC is just and necessary in respect of the allegation made against PSI Apet. Since, admittedly there is no prior sanction is obtained before taking cognizance of complaint against him, order of issuance of process was quashed and set aside.

8. Admittedly learned Magistrate while passing order dated 16.02.2015 had issued process against Accused No. 4 Shyam for offence under Section 201 and 470 of IPC. No process is issued for offence under Section 302 of IPC against him. The complainant/Petitioner has not challenged the said order. Thus, at this stage, it is conclusive that he is not to be charged for offence of murder. Though there is no specific allegation in the complaint against this accused but it is sought to be alleged that false panchnama was drawn and false report was lodged against deceased in order to suppress the incident of assault.

9. In the backdrop of these facts, provision of Section 197 CrPC needs to be considered, which reads thus:

*197. Prosecution of Judges and public servants.*

*(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous*

*sanction-*

*(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;*

*(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government*

(2)     xxx

(3)     xxx

(4)     xxx

10.       This provision clearly shows that for any act done by a public servant in discharge of his duty or even purported discharge of duty, cognizance thereof cannot be taken unless previous sanction of prosecution is obtained from competent Authority. Undeniably, there is no sanction obtained in this case. *Prima facie* allegations against Accused No. 4 touches to discharges of this duties. Hon'ble Apex Court in case of D. Devaraja Vs. Owais Sabeer Hussain, (2020) AIR (SC) 3292, has held that even in such situation no cognizance can be taken of such offence without prior sanction. This judgment squarely applied to the present case. Thus, order passed by learned Sessions Judge is

in consonance with settled law and on proper appreciation of facts of present case.

11. Having regard to aforesaid discussion, this Court finds no substance in challenge to the impugned orders. Hence, both Petitions stand dismissed.

(R. M. JOSHI, J.)

Malani