

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

56 CRIMINAL WRIT PETITION NO.1446 OF 2022

**VARSHA W/O. CHANGDEO KALE
VERSUS
NANDKUMAR BRIJRATAN JHAWAR AND ANOTHER**

**...
Advocate for Petitioner : Mr. Gawali Amol K.
APP for Respondent – State : Mr. S. R. Yadav - Lonikar
Advocate for Respondent No.2 : Mr. Sikchi Aditya N.**

**...
CORAM : KISHORE C. SANT, J.**

DATE : 25.04.2023

PER COURT :

01. Heard. Taken up for final disposal by consent of the parties.
02. The challenge in the petition is to an order dt.10.08.2022 passed by the learned Sessions Judge, Ahmednagar by allowing Criminal Revision No. 05/22 filed by Respondent Nos. 2 and 3. The complaint that was filed by the present applicant, came to be dismissed.
03. The applicant / complainant filed a complaint in the Court of learned Additional Chief Judicial Magistrate, Ahmednagar against the present respondent Nos. 2 and 3 for the offences punishable under Sections 354, 420, 323, 504, 506 read with Section 34 of the Indian Penal Code in respect of an incident dated 21.12.2018 at about 09.00.a.m., at her house. He has made allegations that the accused persons on the date of incident asked the applicant and her husband

to vacate the land and hand over the same to them. It is admitted fact that there is an agreement to sell executed between the husband of the applicant and accused No. 1 Nandkumar. Further, it is alleged that the accused persons even thereafter assaulted the husband of the applicant and the applicant, by saying that accused No. 1 told that he has sold the land to present respondents. It is further alleged that accused Nos. 1 and 2 even outraged modesty of the applicant. The complaint was not taken by the police and therefore, the applicant filed the complaint.

04. The learned Additional Chief Judicial Magistrate, Ahmednagar recorded the statement of the applicant under Section 200 of the Code of Criminal Code and passed an order to issue process against accused Nos. 1 to 4 for the offences punishable under Section 323, 504, 506 read with Section 34 of the Indian Penal Code. The present respondent Nos. 2 and 3 therefore filed a revision in the Court of learned Sessions Judge, Ahmednagar. The Learned Sessions Judge, Ahmednagar on hearing the parties, observed that in past there were complaints filed by the same complainant and her relatives and they are in habit of making such false complaints, the documents were not before the learned Court. The learned trial Court had not carried inquiry under Section 202 of the Code of Criminal Procedure and

therefore, the facts were not brought before the Court. It is also observed that no offence is made out under section 420 of the Indian Penal Code. On this, the learned Advocate for the petitioner at the very outset fairly conceded that on going through pleadings in complaint no offence under section 420 of the Indian Penal Code. is made out against present respondent nos.2 and 3. However, he submits that the observations of the learned Sessions Judge in respect of offence under Section 504 of I. P. C. are without any basis. He further submits that offence under section 323 of I. P. C., is clearly made out. He therefore submits that the impugned order deserves to be quashed and set aside.

05. The learned Advocate for respondent Nos. 2 and 3 vehemently opposed the petition. He submits that the observations made by the learned Sessions Judge, are totally in tune with the legal provision. He justifies the observation that before the trial Court there was no material in the form of inquiry of the 202 of Cr.P.C. He therefore, submits that no case is made out even under Section 504 of the Indian Penal Code and still the learned trial Court had issued the process. He relied upon the judgment reported in the case of *Krishana Lal Chawala and oths. vs. State of Uttar Pradesh and others reported in AIR 2021 SC at page 1281*, wherein it is held that the Court could not have immediately come to the conclusion that offence is

made out only by deposing before the Court. Further, in the case of *Mohd. Nawaz Iqbal Shaikh Vs. The State of Maharashtra and others*, *MANU/MH/1451/2023*, he submits that no case was made out under Section 504 of the Indian Penal Code making to the allegations made therein.

06. He submits that only allegation is that the accused persons abused the applicant and her husband and assaulted etc. and that by itself is not sufficient to come to conclusion that the offence under section 504 of the I.P.C. is made out.

07. The learned AGP supports the impugned order submitting that the Court has rightly considered the aspects involved and rightly passed an order.

08. Considering all the above submissions, this Court finds that the learned Sessions Judge, instead of dismissing the complaint ought to have remanded the matter for fresh consideration by the Magistrate, and to pass order by following procedure under Section 202 of Cr. P. C. when it is observed that there was no sufficient material before the Court to issue process. In this case, it is found that the Sessions Court has also recorded the similar finding in respect of the offence u/s. 504 that no other witnesses were examined and no report was called u/s.

202 of Code of Criminal Procedure. Considering this submission, without entering into the merits, this Court finds that interest of justice would be served by remanding the matter with a direction to the learned Magistrate to follow procedure under Section 202 of the Code of Criminal Procedure and pass appropriate order. Hence the following order.

ORDER

- (i) The Writ Petition stand partly allowed.
- (ii) The impugned order dated 10.08.2022 passed by the learned Sessions Judge, Aurangabad in Criminal Revision Case No. 05/2022 is quashed and set aside. The matter is remanded back to the Court of learned Chief Judicial Magistrate, Ahmednagar for passing fresh order.
- (iii) With this, Petition stands disposed off.

(KISHORE C. SANT, J.)

shp/-