

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

CRIMINAL WRIT PETITION NO.1830 OF 2022

Bharat Vithoba Tupe

... Petitioner
[Orig. Accused]

Versus

Mahesh Machhindra Suse & Others

... Respondents

...

Mr. Thorat Nanabhau R , Advocate for Petitioner

Mr. R. S. Kasar, Advocate for Respondent Nos.1 and 2

Mr. S. B. Narwade, APP for Respondent No.9/State

...

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 31.08.2023

FINAL ORDER :

1. The present writ petition is filed under Article 227 of the Constitution of India.
2. The petitioner takes exception to the Judgment and order dated 15/10/2022 passed by Principle District Judge, Ahmednagar on Exhibit-22 in Criminal Revision No.67/2022 as well as the the order passed by the Additional Chief Judicial Magistrate, Ahmednagar below Exhibit-66.
3. Mr. Thorat, learned Advocate appearing for the petitioner would submit that respondent no.1 is a practicing Advocate. He is shown as witness in RCC No.698/2013. The respondent no.1 was having knowledge that he is cited as a witness or likely to be

examined as a witness in the said case. In spite of his knowledge, he made an application in RCC No.698/2023 at Exhibit-63 seeking permission to serve summon upon the petitioner present in court, in respect of SCC No.6342/2017 filed by him against the petitioner. The case of the petitioner is that, respondent no.1 has committed breach of the provisions of Advocates Act, 1961 [hereinafter referred to as 'the Act' for short] so also he is guilty of the offences which fall within the purview of Section 340 of the Code of Criminal Procedure [hereinafter referred to as 'Cr.PC' for short]. Accordingly, the petitioner moved an application to initiate action under Section 340 of Cr.PC against respondent no.1, which was filed. The prayer of the petitioner to reconsider the said application came to be rejected vide order dated 22/03/2022, observing that the Criminal Court has no power to review his own order.

4. Aggrieved by the said order of the learned Magistrate, the petitioner preferred Criminal Revision No.67/2022 before the Sessions Judge, Ahmednagar. However, it came to be dismissed vide order dated 15/10/2022. It is the contention of the petitioner that patently, respondent no.1 is guilty of the offences punishable under the provisions of IPC, for which, an inquiry under Section 340 of Cr.PC can be initiated.
5. The learned Advocate appearing for respondent nos.1 and 2 would submit that respondent no.1 has filed application only for permission to serve the summons on the accused in SCC No.6342/2017. He has done the said act on instructions of his Senior and not in his own capacity as an Advocate. He would

submit that even respondent no.1 is a complainant in SCC No.6342/2017 and in that capacity, he was entitled to make such prayer before the learned Magistrate. He would submit that respondent no.1 has not acted as an Advocate in RCC No.698/2013.

6. Having considered the submissions advanced, apparently, petitioner has already filed a complaint before the Bar Council in respect of his grievance, particularly, regarding his allegations of breach of code of conduct or the rules under the Advocates Act. The prayer made vide Exhibit-66 to initiate the criminal proceeding against respondent no.1 is based on vague allegations. Pertinently, the application filed by respondent no.1 below Exhibit-63 in RCC No.698/2013 was not relating to the proceedings of that case, but it was only for the purpose of seeking permission to serve the summons on accused in court premises in respect of another criminal case pending against the accused persons. There is no reason to initiate any action under Section 340 of Cr.PC. The learned Sessions Judge in his order dated 15/10/2022 has considered all the aforesaid aspects and dismissed the revision. Perusal of reasoning recorded in the impugned order takes this Court to conclude that no case is made out by the petitioner to grant the prayer incorporated in his application below Exhibit-66. In that view of the matter, there is no merit in the writ petition. Hence, the writ petition is dismissed.

[S. G. CHAPALGAONKAR]
JUDGE