

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

916 CRIMINAL WRIT PETITION NO.1864 OF 2022

**JAVED BASHIR ANSARI AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. Shashikant E. Shekade, Advocate for the petitioner
Mr. Y. G. Gujrathi, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 01st FEBRUARY, 2023

P. C.

1. Heard the learned advocate for the petitioners and learned APP for the respondents/State.

2. By way of this petition, the petitioners are challenging the order of issuance of process dated 08-07-2022 passed by the learned Judicial Magistrate First Class, Ahmednagar in Criminal Misc. Application No.349/2020 and the order passed by the learned Sessions Judge dated 14-10-2022 in Criminal Revision No. 73/2022. The petitioners are shown as accused Nos. 1 and 2 in the complaint filed by the respondent before the Chief Judicial Magistrate, Ahmednagar. The Magistrate after receipt of the complaint had refused the prayer under Section 156(3) of the Code of Criminal Procedure and fixed the complaint for verification under Section 200 of the Cr. P.C. After recording of the verification the Magistrate thereafter

passed an order dated 23-06-2021 directing the concerned police station to conduct an inquiry contemplated under Section 202 of the Cr. P. C. and called for report. Pursuant to the said order police filed a report in the court on 12-01-2022. It is only after considering the said report the learned Magistrate issued the process after satisfying itself about the existence of case to issue process to the respondents.

3. Learned advocate for the petitioners vehemently argued the Petition. He relied upon the judgment reported in *(2004) 7 SCC 338 in the case of Adalat Prasad Vs Rooplal Jindal and others* to submit that once verification is recorded under Section 200 it was necessary for the learned Magistrate to immediately either dismiss the complaint or to issue process. It was not open for the learned Magistrate that thereafter to send the complaint for inquiry under Section 202. In the alternative he submits that there was no sufficient material on record so as to come to a conclusion that issuance of process is necessary. He submits that the report of the police also does not show that case is made out to issue process against the accused persons. He further submits that at the most allegations are against petitioner No.2 however, against petitioner No.1 there are no allegations at all making out a case for issuance of process. He submits that continuous of the proceeding in this case would be clear abuse of process of law. All the accused persons are residing in Mumbai. He further submits that in fact this was a

family dispute and the complainant is the mother-in-law of petitioner No.2. Thus, a family dispute is given a criminal colour and for that reason also the proceeding would be an abuse of process of law and prays for setting aside the order dated 08-07-2022.

4. Learned APP for the respondents submits that the learned Magistrate has rightly followed the process. First the learned Magistrate recorded the verification of the complaint. After being satisfied that case is made out an inquiry is necessary he issued the order under Section 202 directing the police to make an inquiry. It is only after his satisfaction on the basis of police report that the process is issued. The course adopted by the learned Magistrate in fact shows that he has taken all care before passing the order and no fault can be found in the impugned order.

5. Coming to the submission of the learned advocate for the petitioners and in view of the judgment in the case of Adalat Prasad (supra) it would be necessary to see the paragraph No.12 which is reproduced below:

12. Section 200 contemplates a Magistrate taking cognizance of an offence on complaint to examine the complaint and examine upon oath the complainant and the witnesses present, if any. If on such examination of the complaint and the witnesses, if any, the Magistrate if he does not want

to postpone the issuance of process has to dismiss the complaint under Section 203 if he comes to the conclusion that the complaint, the statement of the complainant and the witnesses have not made out sufficient ground for proceeding. Per contra, if he is satisfied that there is no need for further inquiry and the complaint, the evidence adduced at that stage have materials to proceed, he can proceed to issue process under Section 204 of the Code.

6. Thus, it is clear from the said para i.e. on the examination of the complaint and the witness, if any, the learned Magistrate if he does not want to postpone the issuance of process has to dismiss the complaint. This fact shows that it is open for the learned Magistrate to postpone issuance of process as contemplated under Section 202. Thus, considering the submission at bar and the facts of the case, this court finds that no case is made out for interference. Hence, the criminal writ petition stands dismissed.

[KISHORE C. SANT, J.]