

SA Pathan

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.392 OF 2023

Azar Nijamuddin Dhanse ... Petitioner
V/s.
Pramod Narasingrao Kadam & Ors. ... Respondents

Mr. Rajesh L. Dharap, for the Petitioner.

Mr. Arfan Sait, APP for the State – Respondent
No.12.

CORAM : AMIT BORKAR, J.

DATED : MARCH 14, 2023

P.C.:

1. The challenge to the order dated 27 July 2021 is raised by the Petitioner/complainant/victim whereby the learned Additional Sessions Judge, Mangao, Raigad, in a cryptic order granted stay to the order of issuance of process against the Respondents No.1 to 11.

2. According to the Petitioner, on 24 April 2019 when he went to Mhasla police station, due to exchange of words between him and police officials, Respondents No.1 to 9 assaulted him. He ran away from the spot and approached the jurisdictional Magistrate. He lodged a complaint against the nine (9) police officials. The injury certificate dated 25 April 2019 issued by the medical officer, Class-II, Sub-District Hospital

Shriwardhan, District Raigad was annexed. The injury to the Petitioner was of 5x2 c.m. The weapon was shown as blunt. Learned Magistrate recorded the statement of Petitioner on oath. Learned Magistrate issued process against the police officials by passing a detailed order, which runs into five pages. This order passed by the learned Judicial Magistrate First Class (JMFC), has been challenged by Respondents No.1 to 10 before the learned Additional Sessions Judge, Mangao. The learned Additional Sessions Judge by impugned order stayed the order of issuance of process without assigning reasons.

3. The scope of revision against the order of issuance of process has been held to be limited to examine *prima facie* the truth or falsehood of allegations made in the complaint. Detailed discussion of the merits or demerits of the case need not be embarked. Once the learned Magistrate has exercised his discretion in forming an opinion that there is ground for proceeding, it is not for higher Courts to substitute own discretion for that of Magistrate.

4. Considering limited scope of revision, while considering the Application for stay, it was obligatory on the learned Sessions Judge to assign plausible reasons for grant of such relief. On perusal of the order passed by the learned JMFC, the said order runs into five pages. However, the learned Additional Sessions Judge has granted stay to the said order without assigning reasons. Such order cannot be sustained.

5. The impugned order dated 27 July 2021 passed by the learned Additional Sessions Judge, Mangaon, Raigad in Criminal Revision Application No.08 of 2021 is, therefore, set aside.
6. Learned Additional Sessions Judge, Mangaon, Raigad shall decide the Revision Application or Application for stay on merits as per his convenience.
7. The Writ Petition stands disposed of.

(AMIT BORKAR, J.)