

VRJ

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

WRIT PETITION NO.563 OF 2021

Maleka Dagadu Fakir & Ors. ... Petitioners
V/s.
Aasad Yahia Chaus & Anr. ... Respondents

Mr. Subhash V. Gutte for the petitioners.

Mr. Sanjeev Kadam with Mr. Raju M. Y. and Ms. Bharti
Lokhande for the respondent No.1.

Mr. A.R. Patil, APP for the respondent No.2/State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 10, 2023

P.C.:

1. The petition is directed against order dated 8th January 2021 passed by learned Principal District and Sessions Judge in Criminal Revision Application No.169 of 2017, confirming order dated 18th August 2017 passed by the learned Additional Chief Judicial Magistrate, Thane issuing process against the petitioner.

2. The complaint was filed by respondent No.1 against the petitioners for offences under sections 193, 195, 196, 211, 406, 420, 427, 465, 468, 469, 471, 473, 476, 500, 504, 506, and 507 read with section 34 of the Indian Penal Code, 1860. Learned Magistrate recorded the statements of complainant and the witness. On perusal of the statements, it appears that oath was not administered to the complainant and the witness. Verification

under section 200 of the Code of Criminal Procedure, 1973 mandates administration of oath by the authority/Court.

3. The Single Judge of this Court in the case of **Captain Lance Irwin Lobo vs. Mr. Ismail D'Souza Alias Angelo**, delivered on 24th January 2007 in paragraph No.16 held as under:

“16.

A conjoint reading of Sections 203/204 Cr.P.C. shows that process is to be issued after considering the statement on oath of the complainant and of the witnesses and the result of the inquiry or investigation, if any, under Section 202. The recording of the statement on oath of the complainant under Section 200 Cr.P.C. is not an empty formality. Commonly it is nicknamed as verification. To verify means to establish the truth. In other words, verification is done in order to ascertain as to what is pleaded by the complainant is true or not. It is with a view to separate chaff from the grain as many a times complaints do contain unfounded allegations and it is the duty of the Court to ensure that what is stated in the complaint is also stated by the complainant on oath and it is only then that based on such statement that process can be issued. The corollary of this would be that unless offences are disclosed from the statement on oath, no process can be issued only based on averments in the complaint. The complainant is bound to make a statement on oath as to how the offence was committed and how the accused persons are responsible therefor. After the statement on oath is recorded, a Magistrate is required to apply his judicial mind to the facts of the case and the law applicable thereto and find out what offence/s is made out, notwithstanding that the other party at that stage is unrepresented. As observed by the Apex Court time and again, summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course.

.....”

4. Considering the requirement as mandated by section 200 of the Code of Criminal Procedure and interpreted by the Single Judge of this Court in **Captain Lance Irwin Lobo** (supra), in my opinion, the sworn statement of complainant and witness is not in accordance with section 200 of the Code of Criminal Procedure. The Magistrate, therefore, could not have issued process based on such defective examination.

5. For the reasons stated above, impugned orders cannot be sustained. The impugned orders passed by the Additional Chief Judicial magistrate in Criminal Miscellaneous Application No.994 of 2015 and Principal District and Sessions Judge in Criminal Revision Application No.169 of 2017 are quashed and set aside.

6. Proceedings are remitted back to the Judicial Magistrate First Class, Thane by granting liberty to the complainant/witness to present before the Magistrate for giving statement on oath. On such statement on oath being made, the learned Magistrate shall proceed in accordance with law.

7. The writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)

Note:- This order is modified as per order dated 17th April 2023 to substitute paragraphs 4 and 6 of this order.