

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

Writ Petition No.1534 of 2022

Shri Kishore Ramchand Punjabi

Age:47 years, Occupation:Business

R/at:Gat No.264, Baur chi Brahmanwadi, Petitioner.

Tal.Maval District:Pune (Original Complainant)

Versus

1. Shri Bhau Eknath Walunjkar

Age: 50 years, Occupation:Agriculture

R/at: Baur chi Brahmanwadi, Tal.Maval

District:Pune

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2. Shri Ganesh Eknath Walunjkar

Age: 45 years, Occupation:Service

R/at: Baur chi Brahmanwadi, Tal.Maval

District:Pune

.... Respondents.
(Original Accused)

3. The State of Maharashtra

Through Kamshet Police Station,

Pune Rural, District:Pune

(Notice be served upon the office
of the Public Prosecutor State of
Maharashtra High Court A.S.Cr.J.

Bombay High Court, Bombay)

.... Respondent.

Mr DM Gupte for the petitioner (through V.C.)

Mr Priyal Sarda, Advocate a/w Adv. Shubham Sane for
respondents.

Mr AD Kamkhedkar, APP for State.

Coram : R. N. Laddha, J.

Date : 13 December 2023.

P.C. :

Heard learned Counsel for the parties.

2. By way of this Petition, the Petitioner seeks to challenge the Order dated 29 November 2019 passed by the learned Judicial Magistrate First Class, Vadagaon, Maval, Pune, in Criminal Miscellaneous Application No.403 of 2016, whereby the petitioner's complaint was disposed of due to his non-appearance.

The Order reads thus:

“Applicant/Complainant and his advocate are absent since long. Though the matter was referred for investigation under section 202 of Cr.P.C. on 06/08/2016, the complainant failed to take any steps for further order. This shows that, he has no interest in this case. It is not fit and proper to keep such file pending for years together. Hence, I proceed to pass following order:-

ORDER

Application is disposed off.”

3. It is the case of the petitioner that he filed a complaint under sections 471, 192 read with 34 of IPC (being criminal miscellaneous application No.403 of 2016) before the learned Judicial Magistrate, First Class, Vadagaon Maval, Pune, against respondent Nos.1 and 2, alleging that these respondents, in Civil Suit No.50 of 2015 before the Court of the Civil Judge Junior

Division, Vadgaon, relied upon an illegal and bogus release deed dated 18 July 2008 allegedly executed by one Ganpat Walunjkar in their favour, though, Ganpat Walunjkar died on 11 March 2002.

4. The petitioner states that on 6 August 2016, the learned Magistrate directed the police to investigate under section 202 CrPC. On 19 December 2016, the police submitted their report. The verification statement of the petitioner was recorded, arguments were heard, and the proceedings reached the stage of issuance of process. The petitioner states that he discovered the impugned order on 5 August 2021 when he received the certified copies of the case papers. The learned Counsel for the petitioner submits that the petitioner had a valid reason for not appearing, and therefore, in the interest of justice, the complaint should be reinstated and restored to the file of the learned trial Court by quashing and setting aside the impugned order.

5. On the other hand, the learned Counsel for the respondent, submits that the complaint was rightly disposed of by the learned Magistrate since the complainant and his Advocate were consistently absent.

6. After hearing the learned Counsel for the parties and examining the impugned order and the material placed on record,

it appears that the case was referred for investigation under section 202 CrPC on 6 August 2016 and accordingly, the police submitted their report on 19 December 2016. On 5 April 2017, the complainant's verification was recorded, and arguments were heard. However, no order was passed after that. In the circumstances, the learned Magistrate was required to pass an order after receiving the police report and recording the complainant's verification statement and hearing the parties. However, in this case, the learned Magistrate proceeded to pass the impugned order and disposed of the complaint on the ground that the complainant failed to take any steps to obtain further orders. In fact, there was no need to remain present on the date when the learned Magistrate passed the impugned order as the matter was pending for passing an appropriate order.

7. In view of this, the impugned order dated 29 November 2019 passed by the learned Magistrate in Criminal Miscellaneous Application No.403 of 2016 is quashed and set aside and the impugned complaint is restored to the file of the learned Magistrate at the stage from where it was disposed of.

8. Accordingly, the petition stands allowed in the aforesaid terms.

[**R.N. Laddha, J.**]