

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

CRIMINAL WRIT PETITION NO.1336 OF 2020

Mrs. Mamta Jayesh Choudhari ...Petitioner
VS.
The State of Maharashtra and Anr. ...Respondents

Ms. Manju Kore, Advocate for the Petitioner.
Mr. S.R. Agarkar, APP for Respondent – State.

CORAM : S. M. MODAK, J.
DATE : 5th DECEMBER 2023

P. C. :-

1. Heard learned Advocate for the Petitioner – accused and learned APP.
2. Respondent No.2 complainant though served not appeared. In respect of the incident dated 4th September 2015 committed at about 7.19 am in the house the complainant approached the Jogeshwari Police and they have registered complaint against the present Petitioner under Sections 323, 504 of IPC. As per Law, Police cannot investigate non-cognizable complaint unless permitted by the Magistrate. The complainant filed a private case and the learned Metropolitan Magistrate, Andheri issued process under section 323, 504 of IPC. In fact, there is only one accused but in the order, it is mentioned as both accused wrongly.

3. There is counter version by the Petitioner. In fact, she has alleged that on the same date, time and place, the present Respondent No.1, 2 and others have outraged her modesty and beaten her and same Police have registered offence under sections 354, 323, 504 r/w 34 of IPC (page 57). On this background, when the order of issue of process is challenged before the Sessions Court, it was rejected (page 20) and that is why, this Writ Petition.

4. Learned Advocate tried her best to convince me that in fact, no such incident as alleged by the complainant has taken place whereas, the incident has taken place in the manner alleged by her client in the FIR. She tried to blame the Police for showing haste in registering the complaint of the Respondent No.2 by way of non-cognizable case and not registering FIR immediately. Initially, Police have registered NC complaint (page 72) and later on FIR.

5. My attention is also invited to the photographs taken from CCTV camera installed in house on page 74 and 75. It is settled law that when the order of issue of process is challenged the Court has to see whether prima facie case is made out from the averments in the complaint and the documents. The defense of the accused cannot be considered at this stage. So whether the incident has taken place or not in the manner alleged by the complainant or in the manner alleged by the present Petitioner cannot be gone into at this stage. The best course of action available to

the Petitioner is to put forth the case before the trial Court. So I do not find any illegality in the order of issue of process and the order passed by the Revisional Court.

6. In view of that, the following order is passed :-

ORDER

- (i) Writ Petition is dismissed.
- (ii) Petitioner is at liberty to pray before the trial Court for the joint trial of both these cases and trial Court to deal with the said prayer as per law.
- (iii) These are prima facie observations and the trial Court need not be influenced by the observations.

[S. M. MODAK, J.]