

VRJ

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

WRIT PETITION NO.1673 OF 2019

Suresh Nana Gholap	... Petitioner
V/s.	
Vaibhav Baban Gholap & Ors.	... Respondents

Mr. Priyal G. Sarda for the petitioner.

Mr. Raviraj Parmane for the respondent Nos.1 to 12.

Mr. A.R. Patil, APP for the respondent No.17/State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 25, 2023

P.C.:

1. The petition is directed against legality and validity of order dated 28th February 2019, passed by the Additional Sessions Judge, Khed-Rajgurunagar, Pune allowing Criminal Revision Application No.26 of 2017, setting aside order of issuance of process for offence under sections 143, 147, 148, 447, 427, 323, 504, 506, read with section 34 of the Indian Penal Code, 1860 passed by learned Judicial Magistrate First Class, Junnar in RCC No.218 of 2016 against the respondent Nos.1 to 16 alleging that the all accused on 17th June 2016, around 11:00 a.m. went to the land of the complainant armed with sticks and stones with unlawful intention to assault complainant and his family members. Accused

Vishal, Tanaji, Laxman, Sameer and Vaibhav pelted stones towards JCB machine and abused the complainant. The complainant Raghunath gave kick blows to Nirmala and Rajendra, gave fist and kick blows to Surekha. Popat, Vijay and Manoj assaulted to Subhash by means of sticks.

2. The learned Magistrate took cognizance of the complaint and referred it for inquiry under section 200 of the Code of Criminal Procedure, 1973. Based on report, the Magistrate issued process against all accused. The accused, therefore, filed revision before the learned Sessions Court which is allowed by the impugned order hence the complainant has filed application.

3. Learned advocate for the petitioner submitted that the material on record was sufficient to issue process against the accused persons. Specific role was assigned to the accused. Cumulative effect of the material on record was sufficient to constitute essential ingredients of offences alleged against the accused.

4. Per contra, learned advocate for the respondents/accused submitted that the material on record and statement of independent witnesses does not attribute any role to the accused. The police report is in favour of the accused. Learned Magistrate failed to apply judicial mind and hence the Sessions Judge has rightly allowed the revision application.

5. I have heard both the sides perused material on record. On perusal of the material on record, it appears that there was quarrel between the complainant and the accused Nos.1 to 4. It appears

that the complainant did not assigned specific role to the accused in a statement recorded by the police. The learned Sessions Judge based on statements of the complainant recorded by the investigating officer and other witnesses recorded a finding that the accused persons quarred with the complainant. The police report submitted before the Magistrate does not indicate that the accused persons mentioned in the complaint were holding stones in their hand and pelted stones towards JCB machine. It also does not support averments in the complaint. On overall reading of statements produced on record and the order of the revisional Court, in my opinion, the revisional Court has rightly set aside order of issuance of process on the ground that prima facie there is no material on record against the accused. Hence, there is no merit in the writ petition.

6. The writ petition is dismissed. No costs.

(AMIT BORKAR, J.)