

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2701 OF 2022

Sitarani @ Andrika Mahabali Mishra .. Petitioners
and anr

Versus

The State of Maharashtra and anr .. Respondents

WITH
CRIMINAL WRIT PETITION NO. 2511 OF 2021

Mahabali Tribhuvan Nath Mishra .. Petitioner

Versus

The State of Maharashtra and anr .. Respondents

...

Mr. K.R. Tiwari i/b K.R.Tiwari & Co. for the petitioner
Mr.Harekrishna Mishra i/b MKS Legal Associates for respondent
no.2.
Mr.S.R.Agarkar, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 7th NOVEMBER, 2023

P.C:-

1 The two petitions are filed being aggrieved by the order passed by the JMFC Court-5 at Shivaji Nagar, District Pune in Case No.678/2019 and in specific, the issuance of the bailable warrant and non-bailable warrant issued against the petitioners.

I have heard the learned counsel for the petitioners and the learned counsel appearing for respondent no.2 at whose instance, the proceedings were opened up before the JMFC.

The respondent no.2 filed a complaint against the accused persons, by specifically stating that the accused persons are residing at Thane, Indira Nagar and Jaunpur in Uttar Pradesh. She invoked Sections 323, 504, 506 r/w Section 34 of the IPC against the accused persons, and upon a complaint being filed, the Magistrate followed the necessary procedure prescribed u/s.200 of the Cr.P.C. After the complaint was filed, the statement made by her was verified by the Magistrate and the verification statement, which is not placed along with the petition, is brought on record by the counsel for the respondent, when he has tendered a compilation of documents during the course of hearing.

2 On 10/12/2019, the statement of the complainant was verified and on 14/1/2019, the Magistrate on perusal of the complaint, while considering the fact that the accused persons are residing outside its jurisdiction, postponed the issuance of process, for the purpose of deciding whether or not there is sufficient ground to proceed against them.

On 14/1/2019, PSO Police Station, Yerwada, was directed to conduct investigation in terms of Section 202(1) of Cr.P.C to submit the investigation report.

Further, on 4/3/2020, the Magistrate recording that there is sufficient material on record to proceed against accused nos.1 to 4, as the complainant had alleged that the accused persons had assaulted and caused insult to her and also threatened her to cause injury to her life and limb, issued process against accused nos.1 to 4 for the offences punishable u/s.323, 504, 506 IPC r/w Section 34 of the IPC.

The two Writ Petitions call in question the said order. The compilation of documents is taken on record and marked "X" for identification. The learned counsel for the petitioner would vehemently submit that the complaint filed by the respondent no.2 is nothing but a counter blast, and he would invite my attention to the FIR filed against her husband at Gazipur police station at Lucknow and Khuthan police station at Jaunpur by Pravin Mishra and Naveen Mishra, and on completion of investigation, charge-sheet is filed before the concerned Magistrate.

In any case, the petitioners are not precluded from bringing this material before the Magistrate on receipt of the summons and what arguments are sought to be advanced before me, will definitely be brought before the Magistrate, who shall then consider the same and pass appropriate directions.

3 Mere issuance of process does not amount to the charge having been proved, but it only offers an opportunity to the accused persons to contest the complaint which has been duly verified before the Magistrate.

 In the wake of the above, since the Magistrate has followed the procedural requirement as contemplated under the Code of Criminal Procedure. I see no reason to interfere with the order of issuance of process against the petitioner in both the petitions. Necessarily, the Writ Petitions are dismissed.

(SMT. BHARATI DANGRE, J.)