

(Correction made as per speaking to minutes order dated 20.10.2023)

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

CRIMINAL WRIT PETITION NO.5728 OF 2018

1. Abdulkarim Nurmahammad Pathan
Age 39 years, Occ:Business,

2.Nurmahammad Mansoor Pathan
Age: 73 years, Occ: Pensioner,

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3. Jaiurabi Nurmahammad Pathan
Age : 72 years, Occ: Nothing,
All R/o. Opposite Hotel Moonlight,
Vidhyagiri, Bagalkot, Ta.Bagalkot,
District: Bagalkot, Karnataka,

... Petitioners.

Versus

1. Mehboobsa Mansoor Pathan
Age: 66 years, Occ: Pensioner,
R/o.Rajhans Society, Vijaynagar East,
Wanlesswadi, Tal.Miraj, Dist:Sangli

2.The State of Maharashtra

... Respondents.

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Mr Kuldeep U. Nikam, Advocate a/w Mr Om N. Latpate a/w
Surajsingh S. Malas for petitioners.

Mr AA Palkar, APP for State.

Mr Datta Mane a/w Maruti Sarkar for respondent no.1.

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Coram : R.N.Laddha,J.

Date: 7 September 2023.

P.C. :

The petitioners have approached this Court under Section 482 Cr.P.C. for quashing and setting aside the order dated 04.12.2018 of the Sessions Judge, Sangli, in Criminal Revision No.153 of 2017, as also, for quashing order of issuance of process against them for the offence punishable under Sections 380,452, 323, 504, 506 read with 34 of the Indian Penal Code by the Judicial Magistrate, First Class, Sangli, in RCC No.351 of 2014.

2. Mr Kuldeep Nikam, learned Counsel for the petitioners, submitted that the impugned order betrays a total non application of mind by the learned Magistrate. No case, according to the learned Advocate for the petitioners was made out against the petitioners for issuance of process. Elaborating the submissions he submitted that the learned Magistrate erroneously relied upon the bare words of the original complainant and his friend. The original complainant had already sold the property in question to a person named Badiger, so it is unlikely that the complainant had possession of the original documents related to the property. It is submitted that there was a significant delay in filing the

complaint and that it was done with the intention of pressurising the petitioners to withdraw their civil proceedings. According to learned Counsel the dispute is predominantly of a civil nature.

3. On the other hand, Mr Datta Mane, the learned Counsel appearing on behalf of respondent no.1, submitted that the incident occurred on 21.11.2013, and the second respondent was examined on the same day, with a medical certificate to that effect being on record. In his view, the trial Court correctly evaluated the evidence presented by the respondent/original complainant and issued the process after applying its mind.

4. The complaint and the verification statement of the respondent shows that the accused/petitioners, in furtherance of their common intention, went to the first respondent's house on 21.11.2013, snatched the documents related to the disputed immovable property, assaulted the second respondent, and fled from the spot. The averments in the complaint makes out prima facie case for issuance of process against the accused and the impugned order of the Magistrate reflects application of mind. Though it is claimed that there

are contradictions in the statements of witnesses, and that they are got up witnesses. However, at this stage, this Court cannot consider the petitioners/accused's defence by conducting a mini- trial.

5. The scope of a writ petition challenging the issuance of process is limited to considering the allegations in the complaint. By a catena of judicial pronouncements, the legal position to the effect is clear that the merits of the defence should not be considered at the stage of cognizance and that the order of issuance of process need not be elaborate or in detail.

6. In view of this, there is no merit in this writ petition. Accordingly, the writ petition stands dismissed.

[R.N.Laddha, J.]