



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1087 OF 2024

1. Girdharilal s/o Lekhraj Tanwani
Age 57 years, Occ: Business.
R/o Plot No.107, Sindhi Colony,
Jalna Road, Aurangabad
2. Rajesh s/o Lakshmandas Paraswani
Age 55 years, Occ. Business,
R/o Plot No. 122-B, Sindhi Colony,
Jalna Road, Aurangabad
3. Rohit s/o Gulshan Chopda
Age 48 years, Occ. Engineer,
R/o 43, Deepnagar, Near Shahnoorwadi,
Aurangabad.
4. Pradip s/o Mulchand Jain
Age 54 years, Occ. Business,
R/o Khara Kuwa, Pandhari, Bhandi Bazaar,
Aurangabad.

... **APPLICANTS**

V/s.

1. Bhima s/o Narayan Gunjal,
Age 42 years, Occ: Private Service,
R/o c/o Hotel Smile Stone, Kamargaon,
Ahmednagar Pune Highway,
Dist. Ahmednagar.
2. The State of Maharashtra

... **RESPONDENTS**

.....
Mr. Jagiasi Dinesh S., Advocate for the Applicants
Mr. N.D. Batule, APP for the Respondent-State
Mr. PP. Kothari, Advocate for the Respondent No.1
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CORAM : Y.G. KHOBRADE, J.

DATE : 09.12.2024

ORAL JUDGMENT:-

1. Rule. Rule made returnable forthwith. With the consent of both the sides heard finally at the admission.

2. Heard at length advocate Mr. Jagiasi the learned counsel appearing for the Applicants, Mr. Kothari the learned counsel appearing for the Non-Applicant No.1 and the learned APP for the Non-Applicant No.2.

3. By the present application under Section 482 of the Cr.P.C., the Applicants have prayed for quashing of the complaint bearing SCC No.3314/2019 pending before the learned 4th Jt. JMFC, Court No.4, Ahmednagar, for the offences punishable under Section 323, 504, 506 read with Section 34 of the I.P.C..

4. In nutshell facts giving rise to this application are that on 24.02.2019 at about 19.31 hours, during hospitalization and the oral report of the Applicant recorded by the Police personnel attached with Taluka Police Station, Ahmednagar. As per version of oral Report, on 24.02.2019 at about 8.00 a.m., the present Applicant No.1 with his friends was proceeding towards Mumbai by Innova vehicle No.MH-20-DJ-7608. At about 11.30 am., said Car was stopped in parking area of Hotel Smile Stone situated on Ahmednagar-

Pune-Mumbai Highway. After the car was parked, he and his friends visited the Hotel Smile Stone for breakfast. Thereafter, when he and his some friends were proceeding towards the tea stall situated nearby parking area. At that time the Watchman asked him to take away his Car from the parking area but he told the Watchman that his other friends are taking breakfast in said Hotel. However, the Watchman abused him in filthy language and assaulted him with wooden log. Further, when his friends Rohit Chopda and Pradip Jain intervened, the Watchman also assaulted his friends with the wooden logs. Therefore, he and his friends sustained grievous injuries and hospitalized in Shreedeeep Hospital, Ahmednagar. The Complainant further alleged that during course of assault, he lost gold chain weighing 10 gram. On the basis of oral report, Crime No.0088/2019 was registered against the accused persons i.e. 1) Bhima Narayan Gunjal, 2) Pawras Madhav Saswade, 3) Manager Deshmukh, 4) Manager Arora and 12 to 13 unknown persons for the offence punishable under Section 325, 326, 143, 147, 148, 149, 109, 427 of the I.P.C. read with Section 37 and 135 of the Maharashtra Police Act (Bombay Police Act).

5. The learned counsel appearing for the Applicants canvassed that the informant Shri Bhima Gunjal is the accused no.1 in Crime No.0088/2019 registered an oral report of the Applicant. Shri Bhima Gunjal lodged a private complaint bearing SCC No.3314/2019 against the present Applicants for the offence punishable under Section 323, 504, 506 read with Section 34 of the

I.P.C., on the ground that though he lodged a report with the concerned Police Station and reported the incident occurred on 24.02.2019 at about 11.30 hours but the Police has not registered FIR but only registered NCR. Therefore, he filed a complaint and prayed for action against the accused persons/ Applicants for the above offences.

6. The learned counsel appearing for the Applicants submits that the Complainant has instituted SCC No.3314/2019 after lapse of 72 days from the date of the incident. Though the complainant produced Medical Certificate but it does not appear that the Complainant was admitted due to any injury. Further, nature of injuries described in Injury Certificate are of simple nature. Per contra, the present Applicant No.1 – Girdharilal Tanwani/Informant was hospitalized at Shreedeeep Hospital, Ahmednagar in unconscious state and soon after he regained consciousness his statement was recorded by the Police. Therefore, lodging of the complaint by the Respondent/Complainant after lapse of 72 days is an afterthought and no *prima facie* case is made out as against the present Applicant/original accused.

7. It is further canvassed that Section 202 of the Cr.P.C., mandatorily provides that the Judicial Officer requires to make an inquiry through the concerned Police Station or himself, if the accused are residing beyond the jurisdiction of the concerned Magistrate. The present Applicants are residing at

Aurangabad i.e. beyond the jurisdiction of the learned Magistrate. The learned Magistrate did not call report from the concerned Police Station. However, the Magistrate only recorded statements under Section 200 of the Cr.P.C., and issued process under Section 202 Cri. P. C., Therefore, issuance of process as well as pending proceeding before the learned JMFC, Ahmednagar is unwarranted, hence, prayed to quash and set aside the same.

8. In support of these submissions, the learned counsel for the Applicants relied on Judgment dated 23.02.2024 passed by the Hon'ble Supreme Court in **Criminal Appeal No.776/2024 (Shiv Jatia V/s. Gian Chand Malick & Ors.)**, wherein it has been held that, the requirement of postponing the issue of the process was introduced on 23.06.2006 which is applicable only when one of the accused stays outside the jurisdiction of the Court. The said requirement is held to be mandatory.

9. The learned counsel appearing for the Applicants further relied on Judgment dated 02.02.2024 passed by the Hon'ble Bench of Calcutta High Court in **CRR No.2188/2016 with CRAN No.10/2022 (Aloka Gooptu V/s. The State of West Bengal and Ors.)**, wherein, it has been held that the compliance of provisions of Section 202 of the Cr.P.C. is mandatory, in case the alleged offender resides outside the territorial jurisdiction of the Magistrate.

10. Per contra, the learned counsel appearing for the Respondent/Complainant canvassed that alleged the incident occurred on 24.02.2019 at about 11.30 hours. The Respondent No.1/Complainant was apprehended and subsequently he has been released on bail. Thereafter, the Respondent No.1/Complainant filed a private complaint. Since the Applicants/original accused are residing outside the jurisdiction of JMFC, Ahmednagar, therefore, the learned Magistrate himself conducted an inquiry under Section 202 of the Cr.P.C. and examined two witnesses Pawan Viswasrao Nikam and the Complainant himself. Thereafter, on satisfaction and on application of mind, the learned Judicial Magistrate passed an order and issued process as against the Applicant on 22.10.2019. After service of summons, the Applicants/accused appeared in the matter. Therefore, there is compliance of Section 202 of the Cr.P.C.

11. It is further canvassed that arising out of same incident dated 24.02.2019, FIR No.0088/2019 was registered against the present Respondent for the offences punishable under Section 325, 326, 143, 147, 148, 149, 109, 427 of the I.P.C. read with Section 37 and 135 of the Maharashtra Police Act (Bombay Police Act) and trial of crime is pending before the same Judicial Magistrate. Therefore, prayed to decide both the complaints i.e. private complaint as well as trial of Crime No.0088/2019 together.

12. To buttress these submissions, the learned counsel appearing for the Respondent relied on the case of ***Bansilal S. Kabra V/s. Global Trade Finance Ltd. and Ors.; 2024 ALL MR (Cri.) 1643***, wherein it has been held that before the Magistrate acts on the complaint by issuing process against the persons named as an accused therein, he shall satisfy himself about the existence of sufficient grounds for proceeding against him, particularly when he is residing outside his jurisdiction. The amendment to the provisions is aimed to prevent innocent persons residing at far places, from harassment of unscrupulous persons, filing unfounded and false complaints.

13. It further relied on the case of ***Vijay Dhanuka and Ors. V/s. Najima Mamtaz and Ors; 2014 (2) ALL MR (Cri.) 1924***, wherein the Hon'ble Apex Court considered Section 202 of the Cr.P.C. as well as the amended Act 2005 and held in para 13 and 14 as under:

“13. In view of our answer to the aforesaid question, the next question which falls for our determination is whether the learned Magistrate before issuing summons has held the inquiry as mandated under Section 202 of the Code. The word “inquiry” has been defined under Section 2(g) of the Code, the same reads as follows:

“2. xxx

(g)”inquiry” means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;

xxx

14. It is evident from the aforesaid provision, every inquiry other than a trial conducted by the Magistrate or Court is an inquiry. No specific mode or manner of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under

Section 200 of the Code, examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section 202 of the Code. In the present case, as we have stated earlier, the Magistrate has examined the complainant on solemn affirmation and the two witnesses and only thereafter he had directed for issuance of process.”

14. Reverting back to the present case it is an undisputed fact that the Applicants have prayed for quashing of complaint bearing SCC No.3314/2019 filed by the Respondent No.1 against the present Applicants for the offence punishable under Section 323, 504, 506 read with Section 34 of the I.P.C.

15. In the case in hand, legal question arises is that; whether the learned Magistrate complied with the mandatory provisions of Section 202 of the Cr.P.C. prior to issuance of process against the present Applicants who are residing beyond the jurisdiction of the learned Magistrate. Indeed, the Applicants are residing at Aurangabad, which is beyond the Judicial Magistrate, Ahmednagar. It is undisputed that offence allegedly committed within the jurisdiction of JMFC, Ahmednagar on 24.02.2019 at about 11.30 a.m. It is also not in dispute that the present Applicant No.1 lodged a report with Tahsil Police Station, Ahmednagar regarding incident occurred on 24.02.2019 in parking place of Hotel Smile Stone.

16. It is also not in dispute that the present Respondent No.1 lodged a report with Taluka Police Station and reported incident occurred on 24.02.2019 but the Police registered said report as non-cognizable. Therefore, the Respondent No.1 filed a private complaint and prayed for necessary action against the present Applicants. It is apparent on face of record that soon after the incident, the present Respondent (accused no.1 in Crime No.0088/2019) was absconding but subsequently he was arrested and enlarged on bail.

17. On 14.05.2019, the learned Judicial Magistrate passed an order below Exh.1 in SCC No.3314/2019 and placed the complaint for verification. On 05.09.2019, the learned Magistrate examined the Respondent No.1/Complainant - Bhima Gunjal and another witness Pawan Nikam on 14.11.2019. On 22.10.2019, the learned Judicial Magistrate passed the following order:

“Perused the complaint. Verification & documents. Heard. Material on record prima facie shows commission of offence punishable under Section 323, 504, 506 read with Section 34 of the I.P.C. There are sufficient grounds to proceed against accused persons. Hence, issue process against accused nos.1 to 4 for the offence punishable u/s. 323, 504, 506 r/w Section 34 of the IPC.”

18. Needles to say that there is no specific formula for conducting inquiry other than the trial as contemplated under Section 202 of the Cr.P.C. In the case in hand, initially, the learned Judicial Magistrate called upon the

complainant for verification as contemplated under Section 200 of the Cr.P.C. Since the Applicants are residing outside the jurisdiction of the learned Magistrate, therefore, the learned Judicial Magistrate himself examined two witnesses under Section 202 of the Cr.P.C., and after satisfaction and application of mind, issued the process as against the present Applicants for the offence punishable under Section 323, 504, 506 read with Section 34 of the I.P.C.

19. No doubt, the learned trial Court recorded statements of the Complainant and one more witness under Section 200 of the Cr.P.C. and then satisfied about committing the alleged offence at the hands of the Applicants/ Accused. Since, the learned Judicial Magistrate himself recorded statements of the Complainant and another witness, thereafter formed an opinion about existence of grounds to proceed with the complaint against the Applicants for the alleged offences and issued process. Therefore, impugned order does not appear to be illegal, bad in law.

20. It is submitted that after considering the allegations made in the FIR lodged by the present Applicant No.1 as well as the averments made by the Respondent No.1 in his complaint, it *prima facie* appears counterblast against each other. The disputed question of facts cannot be adjudicated without substantial evidence. Therefore, I do not find that it is a proper case to quash

and set aside the order of issuance of process as well as the quashment of the proceeding, hence, the Petition is dismissed.

21. Accordingly, the Rule is discharged.

[Y.G. KHOBRADE, J.]