



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 582 OF 2018

Mohd. Ibrahim Mohd. Khalilullah
Age: 35 Years, Occ: Driver
R/o: Gadipura, Nanded,
Tq. & Dist. Nanded

... PETITIONER

VERSUS

- 1] Ahmedullha Shaikh Abdullah
Age: 57 Years, Occ: Service
R/o. Khusrnagar, Degloornaka,
Tq. & Dist. Nanded
- 2] Mohd. Raise Mohd. Hamiduddin
Age: 47 Years, Occu: Service,
R/o: Hingoli Gate, Nanded
Tq. & Dist. Nanded
- 3] Masoodullah @ Pasha Sk. Abdullah,
Age: 52 Years, Occu: Business,
R/o. Gumbetbase, Tq. Degloor,
Dist. Nanded
- 4] Mohd. Shoheb Mohd. Akbar @ Nawab
Age: 47 Years, Occu: Mesion,
R/o. Gadipura, Nanded,
Tq. & Dist. Nanded
- 5] Mohd. Mushtaq Hussain Mahmood Hussain
Age: 50 Years, Occu: Service,
R/o: Gadipura, Nanded,
Tq. & Dist. Nanded

6] Sk. Akbar Sk. Noor (R.No.6 Dismissed
Age: Major, Occu: Business, as per order dated
R/o: Village Padegaon, 17/07/2023).
Tq. & Dist. Nanded

7] In Charge of Police Station,
Itwara Police Station, Nanded
Dist. Nanded

... **RESPONDENTS**

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Mr. Parikshit S. Mantri, Advocate i/b Mr. Parag V. Barde, Advocate for the Petitioner

Mr. Shaikh Mujtaba Gulam Mustafa, Advocate for Respondent Nos. 1, 3 and 4

Mr. Santosh C. Bhosale, Advocate for Respondent No.2

Mr. S. B. Narwade, APP for Respondent No.7

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CORAM : Y. G. KHOBRAGADE, J.

RESERVED ON : 19.11.2024

PRONOUNCED ON : 25.11.2024

ORDER :-

1. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2. By the present Petition under Article 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, the Petitioner takes exception to the judgment and order dated 31.12.2015 passed by the learned Sessions Judge, Nanded in Criminal Revision Application No.79 of 2012, whereby affirmed the

Judgment and order dated 29.06.2012, passed by the learned J.M.F.C. Nanded in R.C.C. No.566 of 2011.

3. Facts rise to the present Petition are that, on 12.12.2002, the Petitioner purchased a Jeep bearing No.MH-26-B-9490 by obtaining the loan from Vijaya Bank. In the year 2005, he repaid entire loan amount, however, on 22.04.2005, the Respondent No.1 Ahmedullah Shaikh Abdullah, visited his house and called him from his house. At that time, other Respondent Nos. 3 to 5 assaulted him by fist and blows and also issued life threat. According to the Petitioner/complainant, all the Respondents compelled him to put his signatures on some blank papers. Thereafter the Respondent No.6 got transferred said vehicle No.MH-26-B-9490 in his name. Therefore, the Petitioner communicated said fact to the R.T.O. Parbhani and prayed for cancellation of the no objection certificate issued for transfer of the vehicle. On 02.02.2011, the Petitioner's father lodged a report with Itwara Police Station, Nanded, but the Police did not take any cognizance and suggested the Petitioner's father to settle the dispute amicably. Therefore, the Petitioner approached before the learned Chief Judicial Magistrate, Nanded and filed Regular Criminal Case No.566 of 2011, for the offence punishable under Sections 420, 471, 468, 468, 406 read with Section 34

of the Indian Penal Code. However, on 29.06.2012, the learned Chief Judicial Magistrate, Nanded passed an order and refused to take cognizance on the ground that the offence allegedly been occurred on 22.04.2005 and limitation for taking cognizance in respect of the complaint is barred under Section 468(2) of Cr.P.C.

4. Being aggrieved by the said order, the Petitioner / complainant filed Criminal Revision Application No.79 of 2012 before the learned Sessions Judge, Nanded. On 31.12.2015, the Sessions Court passed the impugned order and affirmed the order dated 29.06.2012 passed by the learned 2nd J.M.F.C., Nanded.

5. The learned Counsel for the Petitioner canvassed that both the Courts below failed to appreciate the material available on record as well as the nature of offence. It is contended that, though the accused have committed the offence till 25.04.2005 to 25.04.2011, hence, the complaint of the Petitioner is well within the limitation. Therefore, findings recorded by both the courts below are illegal, perverse, bad in law and prayed for quash and set aside the same.

6. Per contra, the learned APP submitted that the Petitioner/ complainant instituted a complaint R.C.C. No.566 of 2011 before the

learned Magistrate and made allegations about the incident occurred on 22.04.2005. The Petitioner has not pleaded about occurrence of any incident on 25.04.2011. The learned Magistrate passed an order under Section 202 of Cr.P.C. and called report from the concerned Police Station. Thereafter, on consideration of said report, on 29.06.2011, the learned J.M.F.C. passed the order holding that the complaint of the Petitioner/complainant is barred under Section 268(2) of Cr.P.C. and affirmed by the revisional Court. Therefore, no substantial grounds are set out, hence, prayed for dismissal of the complaint.

7. The learned Counsel for the Respondents 1 to 5 supported findings recorded by both the Courts below. It is contended that as per the averments made in the complaint on 22.04.2005 at about 2.00 p.m. to 2.30 p.m., the incident was allegedly occurred. However, the Petitioner/complainant has filed the complaint after lapse of six years. Therefore, as per the provisions of Section 268(2) of Cr.P.C., the complaint is barred by limitation and both the Courts below rightly concluded that the complaint is hit by provisions of Section 468(2)(c) of Cr.P.C. Hence, prayed for dismissal of the Petition.

8. Needless to say that, on 08-07-2011, the Petitioner/complainant filed a complaint bearing R.C.C. No.566 of 2011 against the

Respondents 1 to 5 (name of Res. no. 6 deleted) for the offence punishable under Sections 420, 471, 468, 405, 406 read with Section 34 of the Indian Penal Code. In the column of the date, time and place of the offence, the Petitioner/complainant himself given the details as under:-

“ On 22.04.2005 to 15.12.2010 at Gadipura Nanded and R.T.O. Office, Nanded. When the accused persons forcibly obtained signature of the complainant on blank papers and prepared the false and fabricated documents with their collusion along with R.T.O. Nanded with malafide intention and received to the complainant and sold out vehicle No.MH-26-B-9490 to the accused No.6.”

9. On perusal of complaint, it shows that the present Petitioner/complainant was the registered owner of Jeep No. MH-26-B-9490. The petitioner made a averments that, on 12.12.2002, he had purchased said Vehicle. It is further alleged that, on 22.04.2005, at about 2.00 p.m. to 2.30. p.m., all the Respondents/accused visited his house at Gadipura and then he was called out from his house. The accused No.2 had caught hold him and accused Nos. 3 to 5 assaulted him by fist and blow and abused him in the filthy language and they threatened him to sign on blank papers. Then all the Accused transferred the said vehicle on the basis of fabricated documents in

collusion of R.T.O., Parbhani. Thereafter, the petitioner issued a letter to the R.T.O. and requested for revocation of no objection certificate. The Petitioner/ complainant further alleged that the accused persons played forgery, fraud and harassed him. Therefore, they have committed the offence.

10. Sec. 468 (1) of Cri. P. C., provides that Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in Sub-Section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be—

- (a) six months, if the offence is punishable with fine only;
- (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;
- (c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

11. In *Amritlal Vs. Shantilal Soni and Ors., (2022) 13 SCC 128*, the Hon'ble Supreme Court held that the relevant date for the purpose of computing the period of limitation under Section 468 Cri.P.C., is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance of the offence. Section 468 of the Code of Criminal procedure deals with bar to taking cognizance after lapse of the period.

12. In case in hand it *prima-facie* appears that, on 07.10.2011, the learned J.M.F.C. passed the order and called the report under Section 202 of Cri. P. C., from the concerned Police Station. Thereafter, on 29.06.2012, the learned Magistrate passed the order after consideration of report u/s 202 of Cr.P.C., of the concerned Police Officer and held that the complaint of the complainant is barred by Section 468(2)(c) of Cr.P.C. Since the petitioner/complainant made the allegations in the complaint pertaining to offence allegedly committed by the Respondents/accused on 22.04.2005 and no complaint has been filed within the period prescribed under Section 468(2)(c) of Cr.P.C. Therefore, the learned J.M.F.C., refused to take cognizance.

13. On 31.12.2015, the learned Sessions Court passed the impugned order holding that the petitioner made allegations for causing of abuses and threats, which are general nature. So also, his signatures were obtained on some blank papers and TTO forms. Thereafter the petitioner learnt about transfer of his vehicle by the Respondents accused by using his signatures. As per averments, in the year 2002, the petitioner purchased the Vehicle on loan from the bank and entire amount of loan repaid in the year 2005 and produced no dues certificate dated 29.04.2005 and alleged incident occurred on 22.04.2005. However, it is not the case of the petitioner that, his signatures are forged on those vehicle transfer papers but it is the contention of the petitioner that his signatures are forcibly obtained on the blank papers. Further, the alleged incident took place in the year 2005 and the petitioner instituted the complaint in the year 2011, which creates doubt about genuineness of the complaint and that too without explaining the delay. Though the learned Magistrate observed about constitution of offence u/s 383 of IPC still the the learned Magistrate had to come to correct conclusion in not issuing process against the Respondents/ Accused persons. Therefore, I do not find that the findings recorded by both the Courts below are

perverse, illegal, bad in law and no case is made out for interference at the hands of this Court.

14. In view of above discussion, the Writ Petition is dismissed. Accordingly, Rule is discharged.

[Y. G. KHOBRAGADE, J.]

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