



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

CRIMINAL WRIT PETITION NO. 769 OF 2008

1. Jasbir Singh Chawla,
Proprietor Chawla Financial Services,
Age 52 years, Occu. Business
2. Ajit Singh Jasbir Singh Chawla,
Age 30 years, Occu. Business,
Both R/o. 2715, Bank Street,
Near P.P. Jewellers, Karolbag,
New Delhi

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Petitioners
(original Accused)

Versus

1. The State of Maharashtra
2. Shri. Dattatraya Ganesh Naik,
Age 54 years, Occu. Profession
(Loan Advisor), R/o.384,
Jaikisanwadi, Navi Peth,
Jalgaon

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(original Complainant)
Respondents

Mr. A. V. Hon, Advocate holding for Mr. V. D. Hon, Advocate for the
Petitioners;

Mr. A. S. Shinde, A.P.P. for Respondent No.1;

Mr. Pramod Gaikwad, Advocate holding for Mr. Ajay G. Talhar,
Advocate for Respondent No.2

CORAM : S. G. MEHARE, J.

DATE : 21-08-2024

PER COURT:-

1. Heard the learned counsel for the petitioners/original
accused and the learned A.P.P. for respondent No.1/State and the
learned counsel for respondent No.2/complainant.

2. The petitioners have impugned the order of issuance of process under Section 406, 426 of the Indian Penal Code against them by the learned Chief Judicial Magistrate, Jalgaon, passed below Exhibit-1 in Regular Criminal Case No.192 of 2005.

3. Respondent No.2 had lodged a complaint against the petitioners that they received an amount of Rs.2,75,000/- from him for making an arrangement to raise the loan. However, the petitioners did not make any arrangements for the loan. Therefore, the Complainant asked the petitioners to repay his amount of Rs.2,75,000/-. Before initiating the action, respondent No.2 had issued a notice to them, but the money was not returned. The petitioner issued a notice after the complaint was filed that Rs. 60 lakhs with interest @ 20% as his commission and services rendered.

4. After filing the complaint, the learned Chief Judicial Magistrate ordered an inquiry under Section 202 of the Code of Criminal Procedure ("Cr.P.C.") from the police. The police made an inquiry and submitted a report. The learned Chief Judicial Magistrate considered the contents of the complaint and the inquiry report of the police and issued the process against the petitioners under Sections 406 and 426 of the Indian Penal Code.

5. The learned counsel for the petitioners submits that the learned Chief Judicial Magistrate did not apply his mind before the

issuance of the process. The contents of the complaint show it was a civil dispute. Hence, there was no question of breach of trust. There was an exchange of notices between the parties. There was no material to issue the process against the petitioners. Issuing process for want of sufficient material is oppression or endless harassment for the petitioners. The petitioners run the business of financial assistance. So, naturally, they were entitled to their charges. He prayed to allow the petition.

6. The learned counsel for respondent No.2/complainant submits that the order passed by the learned Chief Judicial Magistrate was not mechanical. The order reflects the application of the mind. The learned Chief Judicial Magistrate not only complied with the law but also considered the material on record. The allegations were specific about the conduct of the petitioners. The conduct of the petitioners shows that since inception, they intended to grab the money from the petitioners. They made a false promise to arrange a loan from the financial institutions for the petitioners. Due to their lapses, his business was affected. To create a ground, they had issued notices to him. No simultaneous actions under criminal and civil law are allowed. The impugned order is free from infirmity and illegality. The impugned order was passed in 2006, and since then, the matter is kept in 2008. He prayed to dismiss the petition.

7. Perused the complaint, the documents placed on record and the impugned order.

8. Undisputedly, there was an exchange of notices between the petitioners and respondent No.2. After the complaint, the learned Chief Judicial Magistrate postponed the issue of process and ordered the inquiry under Section 202 of the Cr.P.C. On receiving the report from the Investigating Officer, he read it and went through the allegations levelled against the petitioners. The law is well settled that issuing the process is not a bare formality. Such an order should reflect the application of the mind. The Court issuing process must satisfy from the contents of the complaint that *prima facie* offence is made out.

9. The learned counsel for the petitioners is right in arguing that simultaneous proceedings under criminal law as well as civil law were not barred. The material placed before the learned Magistrate appears sufficient to take cognizance and issue process. However, before taking cognizance, the learned Chief Judicial Magistrate ordered to inquire under Section 202 of the Cr.P.C. from the police against the petitioners. The learned Chief Judicial Magistrate considered the complaint, verification, documents and report called u/s. 202 of Cr.P.C. The order reflects that the learned Chief Judicial Magistrate applied his mind. The impugned order is legal, proper, and correct and does not warrant

interference.

10. Hence, the criminal writ petition stands dismissed.

11. Rule stands discharged.

12. The learned counsel for the petitioners prays for staying this order. The matter is very old. There appears to be no reason to grant stay this order. The petitioners are not immediately going to be arrested. Hence, prayer to stay this order is declined.

(S. G. MEHARE)
JUDGE

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