



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

14 CRIMINAL WRIT PETITION NO. 1650 OF 2024

Ram Ganeshrao Bedre And Others

VERSUS

The State Of Maharashtra And Another

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Mr. V.V. Ingale, Advocate for Petitioners

Mr. V.M. Jaware, APP for Respondent No.1 – State

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[CORAM : Y. G. KHOBRADE, J.]

DATE : 02nd DECEMBER, 2024

ORDER :

1. Leave granted to invoke section 482 of the Code of Criminal Procedure Code read with Article 227 of the Constitution of India. The necessary amendment to be carried out within a period of one week from today.

2. Heard at length the learned counsel appearing for the applicant and the learned APP for Respondent no.1 – State.

3. By the present petition, the petitioners have prayed for setting aside the order dated 18.07.2024 passed by learned Additional Sessions Judge, Gangakhed, District Parbhani in Criminal Revision Petition No.25/2023, whereby the learned Revisional Court declined to quash and set aside the order of issuance of process passed by the learned Judicial

Magistrate, First Class, Sonpeth, District Parbhani on 13.09.2022 in R.C.C. No.71/2022 for the offences punishable under sections 323,504,506 read with section 34 of the Indian Penal Code.

4. On face of the record it appears that, on 01.06.2022, Respondent No.2/victim lodged the N.C. Report under section 155 of the Code of Criminal Procedure with Sonpeth Police Station, alleging that on 01.06.2022 at about 10.30 a.m., he along with others had visited the office of Talathi. At that time, Ram Ganesh Bedre, Ganesh Vitthal Bendre and Balasaheb Prakash Bedre visited him. The accused Ram Ganesh Bendre told him as to why he lodged a complaint against the Sarpanch with District Collector, Parbhani. Thereafter, all of them abused him and assaulted with fist and blows. Therefore, the complainant prayed for taking action against accused persons. Therefore, the NCR No.0101/2022 came to be registered for the offence punishable under sections 323, 504, 506 read with section 34 of the Indian Penal Code.

5. Thereafter, respondent no.2/complainant filed a private complaint before the learned Judicial Magistrate, First Class, Sonpeth. The learned Judicial Magistrate, First Class examined the respondent/complainant in order to verify the

contents of the complaint. On 13.09.2024, the learned Judicial Magistrate, First Class passed an order and issued process against the present petitioners. The learned Magistrate satisfied about existence of prima facie case is made out against the present petitioners for issuance of process under sections 323, 504, 506 read with section 34 of the Indian Penal Code after consideration of contents of complaint, verification as well as after hearing the counsel for the complainant.

6. It is matter of record that, the petitioners have assailed the said order in criminal revision No.25/2023 before learned Additional Sessions Judge at Ganagakhed. On 18.07.2024, the learned Revisional Court passed the impugned order holding that, the learned trial Court after satisfying the averment made in the complaint as well as statement made in the verification, the complainant has made out a prima facie case for issuance of process and dismissed the revision.

7. Learned counsel appearing for the petitioners placed his reliance in case of ***Lalankumar Singh and Others Vs. State of Maharashtra, 2022 SCC Online SC 1383***, wherein the Hon'ble Supreme Court has held as under :-

"38. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the Accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of Sunil Bharti Mittal v. Central Bureau of Investigation, (2015) 4 SCC 609, which reads thus:

51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This Section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred Under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the Accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed

only after due application of mind that there is sufficient basis for proceeding against the said Accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the Accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect.

39. A similar view has been taken by this Court in the case of Ashok Mal Bafna (supra)”

8. In the case in hand, it prima facie appears that, while issuing the process, the learned Magistrate Court considered the averment made in the complaint as well as verification and opined about existence of prima faice case the present petitioners/accused Nos.1 to 3 for issuance of process for the offences punishable under sections 323, 504, 506 read with section 34 of the Indian Penal Code.

9. Since, the impugned order of issuance of process passed on 13.09.2022, does not appear to be illegal and bad in law and no substantial grounds are set out to interfere with the said findings, the present criminal writ petition is dismissed at threshold.

[Y. G. KHOBRADE]
JUDGE