

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

CRIMINAL WRIT PETITION NO. 1935 OF 2022

Sunanda Shankar Hindivali and Ors. ...Petitioners

Versus

The State Of Maharashtra And Anr. ...Respondents

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Mr. Prakash V. Vare, Advocate for the Petitioners

Mr. Manohar Kandalkar a/w Ms. Shrutika Padwankar, Mr. Chaitanya S. Kotnis, and Sagar Pasi Advocate for the Respondent No.3.

Mr. Arfan Sait, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 30th JANUARY, 2024.

P.C.:

1. The Petitioners are challenging (i) the order dated 23/07/2015 passed by the learned Additional Chief Metropolitan Magistrate 19th Court, taking cognizance for the offences under Sections 465, 471, 447, 448, 452, 454, 426, 380, 504, 506 (2), 120 (B), 34 of the Indian Penal Code ("IPC"), (ii) the order dated 27/09/2021 passed by the learned Additional Chief Metropolitan Magistrate issuing summons to Accused Nos.2 and 4 and (iii) order dated 25/02/2022 passed by learned Additional Sessions Judge, Greater Bombay rejecting Criminal Revision Application No.523 of 2021.

2. The Respondent No.3 filed a private complaint in the Court of learned Additional Chief Metropolitan Magistrate 47th Court at Esplanade, Mumbai against the Petitioners and others seeking directions under Section 156 (3) of Cr. P. C. It was alleged that the Accused has forged documents in respect of Room Nos. 6 & 8 situated on 2nd floor, 89, Dhanji Street, Mumbai. The accused forged documents such as Ration Card, Electric Bill and MTNL Bill concerning the said premises. The complaint was filed on 8th September, 2011.

3. Directions were issued under Section 156 (3) of Cr. P.C. MECR was registered for the offences under Sections 465, 471, 447, 448, 452, 454, 426, 380, 504, 506 (2), 120B, 34 of IPC. Report was submitted before the Court that investigation did not reveal involvement of the sister-in-law and niece of complaint (Accused No.2 / Petitioner No.1 and Accused No.4 / Petitioner No. 2). The learned Magistrate vide order dated 23rd July, 2015 took cognizance for the aforesaid offences against all the accused.

4. The Complainant preferred an application before the Trial Court for directions that fresh summons be issued to accused Mrs. Sunanda Hindivali and Ms.Shilpa Hindivali for securing their

presence and placed the matter for framing charge. The complainant contended that the Court took cognizance of the case on 23rd March, 2015 where summons was issued to the Accused. Accused Nos.2 to 4 were absent and the Court issued fresh summons to Accused Nos.2 to 4 for appearance. By virtue of the final report, the Court has taken cognizance of the case and summons were issued to Accused Nos.2 and 4.

4. Learned APP filed say on behalf of prosecution stating that I.O. had inadvertently filled the name of Accused Nos.2 and 4 in Form 5B instead of Form 5C.

5. The learned Magistrate vide order dated 27th September, 2021 issued summons to Accused Nos.2 and 4.

6. The Petitioners challenged the order dated 27th September, 2021 by preferring the Criminal Revision Application No.523 of 2021. Vide order dated 25/02/2022 the Revision Application was rejected.

7. Learned Advocate for the Petitioners submitted that the orders passed by the Court below is erroneous. The Petitioner No.1 is wife of Accused No.1 and the Petitioner No.2 is their daughter

they are falsely implicated in this case. While filing the charge sheet it was categorically stated that there is no evidence against the Petitioners. However, the learned Magistrate took cognizance of the charge sheet without assigning any reasons. The dispute is of civil nature. After taking cognizance of the charge sheet the complainant preferred an application without locus for issuing summons to the Petitioners. The learned Magistrate issued summons to them. The question of issuing summons did not arise as the Court had taken cognizance of charge sheet. The prosecution surprisingly contended that the name of the Petitioners were wrongly mentioned by the I.O. in Form No.5B instead of Form 5C. The learned Magistrate mechanically issued summons. The Sessions Court has rejected the Revision Application preferred by the Petitioners on flimsy ground. The Petitioners cannot be prosecuted for the alleged offences and the order passed by the learned Magistrate is contrary to law.

8. Learned Advocate for the Petitioner has relied upon the decision of the Apex Court in the case of ***Lalankumar Singh & Ors V. State of Maharashtra*** dated 11th October, 2022 passed in Criminal Appeal No.1757 of 2022.

9. The learned Advocate for the Respondent No.3 submitted that the Rozanama dated 23rd March, 2015 indicates that the Court had taken cognizance against Accused for punishable under Sections 465, 471, 447, 448, 452, 454, 426, 380, 504, 506, 120(B), 34 of IPC. It was also recorded that the charge sheet be reported as warrant triable case. Summons was issued to all the accused. Thus, cognizance was taken against all the accused. The proceedings are pending since long the Accused are delaying the trial. The earlier order was not challenged. The case of the complainant is that pursuance to conspiracy, the Accused Nos.1 to 4 have illegally and unlawfully entered in the Room No.8 on 15th December, 2010. The Accused assaulted complainant's wife. She was treated for the injuries. Her cell phone was snatched away and thrown on the ground. The accused 3 threw away the articles. The cash of Rs.50,000/-, gold ornaments and other articles including documents were lying in Room No.8. Complaint was made to the police. No offences was registered. Statement of complainant was recorded on 8th February, 2012 wherein he has provided details of the crime committed by the Accused. It is clearly stated that the Accused had conspired and prepared false documents to disposses the complainant from the room premises and utilize the documents

in Government Offices. On 15/12/2010 they forcefully entered in the said premises, assaulted complainant's wife and committed theft of articles and cash. There was sufficient evidence against the Accused. The Sessions Court has considered all these aspects while rejecting the Revision Application. Assuming that the police filed negative report, the Court has taken cognizance of the charge sheet filed by the police, vide order dated 27/09/2021, the Court found that there is evidence against the Accused and taken cognizance of charge-sheet.

10. Learned Advocate for the Respondent No.3 has relied upon the following decisions.

- i. ***Abhinandan Jha and Ors V/s Dinesh Mishra***¹
- ii. ***Tula Ram V/s Kishor Singh***²
- iii. ***India Carat Pvt. Ltd. V/s State of Karnataka***³
- iv. ***Sampat Singh and Ors V/s State of Haryana***⁴
- v. ***H. S. Bains V/s State (Unit Territory of Chandigarh)***⁵
- vi. ***Gangadhar Mhatre V/s State of Maharashtra***⁶
- vii. ***Motilal Songara V/s Premprakash and Ors.***⁷

1 [1968 Cri. L. J. 97]

2 [1978 Cri. L. J. 8]

3 [AIR 1989 SC 885]

4 [(1993) 1 SCC 561]

5 [(1981) SCC (Cri) 93]

6 [2004 (4) Crimes 228 SC]

7 [2013 ALL MR (Cri) 2657]

11. The Petitioners are wife and daughter of Accused No.1. The dispute relates to the property. The complainant has alleged that the Accused had barged into the premises in question and assaulted his wife, caused damage to the property and took over the belongings of the complainant. Police did not take cognizance of complaint. A private complaint was filed, on the basis of which investigation report was submitted to the Court. While submitting the final report, it was stated that during the investigation and from the statements of the witnesses no involvement of Accused Nos.2 and 4 (Petitioners) was revealed.

12. The learned Magistrate, however issued summons and took cognizance of the offences vide order dated 22/09/2021. Although the police report was negative against the Petitioners. The learned Magistrate mechanically took cognizance of the charge sheet for the alleged offence without assigning any reasons, as to why, the Applicants / Petitioners should be summoned by taking cognizance of charge sheet. The order reflects total non-application of mind. In all the applications preferred by the complainant, learned Magistrate issued summons to the Petitioners. The Revision Application preferred by the Petitioners were rejected. Surprisingly the prosecution filed reply say to the application preferred by the

complainant for issuing summons to the Petitioners stating that the I.O. has inadvertently recorded the names of the Petitioners in form No. 5B. However, the Court fails to consider the fact that in the charge sheet, there is a categorical statement about lack of evidence against the Petitioners. The learned Sessions Court vide order dated 25/02/2022 had observed that the Magistrate had taken cognizance without forming an opinion that he was disagreeing with the report filed by the police and without calling objection of the complainant. The order dated 27/09/2019 passed on the application filed by the Respondents for appropriate directions indicate that summons was issued as already cognizance was taken and in the absence of any inherent powers he could not have passed any other order.

14. There is a specific finding that after carrying out investigation, no offence is made out against the Applicants. The Court has already taken cognizance. The Sessions Court is not empowered to set aside the order dated 23/09/2019 which is under challenge and only recourse available to the Petitioners is to seek remedy available to them.

15. The order passed by the learned Magistrate reflects complete non-application of mind. Even otherwise there is no

cogent evidence show involvement of the Petitioners except vague statement of complainant.

16. Hence, the impugned order is quashed and set aside.

ORDER

(i) Criminal Writ Petition No. 1935 of 2022 is allowed.

(ii) The impugned order dated 23/07/2015 and 27/09/2021 passed by the learned Additional Chief Metropolitan Magistrate 28th Court, Esplanade, Mumbai in CC No. 231/PW/2015 are quashed and set aside.

17. Petition is allowed in terms of prayer clause (b).

(PRAKASH D. NAIK, J.)

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