



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 101 OF 2024

1. Jagdish Harikrishna Khandelwal, aged 76, Occupation : Business, resident of Bodwad, Tahsil Bodwad, District Buldana
2. Kailash Harikrishna Khandelwal, Aged 66 years, Occupation : Business, resident of Bodwad, Tahsil Bodwad, District Buldana
3. Atul Jagdish Khandelwal, Aged 44, Occupation Business, Resident of Bodwad, Tahsil Bodwad, District Buldana
4. Smt. Rajani Rajendra Khandelwal, Aged 57, Occupation : Business, Resident of Bodwad, Tahsil Bodwad, District Buldana
5. Sangita Anil Khandelwal, Aged 54, Occupation Business, resident of Bodwad, Tahsil Bodwad, District Buldana

...Petitioners

// VERSUS //

The State of Maharashtra through
Special Investigation Officer, Police
Station Malkapur City, Malkapur
District Buldhana

... Respondent

CRIMINAL APPLICATION (APPW) NO. 33 OF 2024
IN
WRIT PETITION NO. 101 OF 2024

1. Jagdish Harikrishna Khandelwal, aged 76, Occupation : Business, resident of Bodwad, Tahsil Bodwad, District Buldana
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...Petitioners

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The State of Maharashtra through
Special Investigation Officer, Police
Station Malkapur City, Malkapur
District Buldhana

... Respondent

1. Subhash Arjun Khathade
Aged about 53 years, Occupation –
Agriculture, Resident of Talni, Tahsil
Motala, District Buldana

2. Purushottam Totaram Patil,
Age about 65 years, Occupation
Agriculture, Resident of Dabhadi,
Tahsil Motala, District Buldhana
3. Dipak Ashok Tekade
Aged about 44 years, Occupation-
Agriculture, Resident of Dabhadi,
Tahsil Motala, District Buldhana

...Applicants

Shri S.S.Deshpande, Advocate for the petitioner.
Shri H.D.Futane, APP for the respondent/State.
Shri A.S.Manohar, Advocate for the intervenors.

**CORAM : SMT. VIBHA KANKANWADI, AND
MRS. VRUSHALI V. JOSHI, JJ.**

DATED : 28th JUNE, 2024.

ORAL JUDGMENT : [PER : SMT. VIBHA KANKANWADI, J.]

Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. The petitioners in the writ petition have challenged the summons issued by the respondent dated 15th January, 2024 to them which is stated to be under Section 91 of the Code of Criminal Procedure (in short hereinafter referred as “CrPC”). The application no. 33 of 2024 has been filed for intervention.

3. Heard Shri S.S.Deshpande, learned advocate for the petitioners and Shri H.D.Futane, learned Additional Public Prosecutor for the respondents/State.

4. It has been vehemently submitted on behalf of the petitioners that the petitioners run ginning and pressing factory. They had agreed to sell the factory to Jagan R. Narkhede for a consideration of Rs.6,01,00,000/- on 11th July, 2023. Jagan R Narkhede had made a part payment to the petitioners. As per the agreement the petitioners were bound to handover the possession of the factory only after payment of the entire consideration amount. However, it appears that one Atul Patil had lodged First Information Report against Jagan Narkhede with Police Station Malkapur, District Buldhana on 30th November, 2023. It was in respect of said Jagan and others had taken amount from some farmers and had not repaid it. In the said FIR bearing no. 600 of 2023 lodged on 10th November, 2023 entire allegations were against the said Jagan and others. However, Malkapur Police Station gave notice to the petitioner no.2 on 22nd November, 2023 asking him to remain present for the inquiry in the police station. Thereafter, again respondent had sent notice to the petitioner no.2 on 12th December, 2023, wherein it was stated by the respondent that the petitioners should not enter into any sale agreement in favour of Jaggan and others. The said notice was replied by the petitioners. In the reply, it was stated by the petitioners that the petitioners are ready to deposit of Rs.25,00,000/- in Court out of the amount it was received by them from Jaggan but all of a sudden they received summons from the respondent on 15th January, 2024 stated to be under Section 91 of the CrPC to remain present in the police station and amount of Rs.2 Crores be deposited in the Police Station. Again, a notice was issued under Section 160 of the CrPC by the respondent on 19th

January, 2024. The said summons under Section 91 of CrPC is illegal. The police authorities cannot ask to the petitioners to deposit the amount without there being any legal proceedings against petitioners.

5. Per contra, learned APP submitted that the inquiry is going on and in the intervention application, the applicants alleges that huge amount is due from Jaggan. Offence under Sections 406 and 420 read with Section 34 of Indian Police Station has been lodged against said Jaggan and others. Said Jaggan and others have cheated the intervenors. Thereby, amount has been duped and therefore their intervention in the matter is necessary.

6. The facts as on today are not in dispute. There is no transaction and allegations of the intervenors against the petitioners. They have their dispute against the said Jaggan. Under the said circumstances, they cannot be allowed to intervene in the present matter.

7. The facts also disclose that the concerned Police Officer from the respondent appears to be bent upon collecting the money from the petitioners, though it is tried to be projected that it is for the sake of the intervenors and similarly situated persons. In the said FIR, which the intervenors had filed against said Jaggan and others, whether the police can act as a recovery agent ? The summons issued under Section 91 of the CrPC is interestingly worded we would like to observe that the police officer who had issued the said notice i.e. Mr. Eknath Pandale, Police Officer attached to Special Investigation Squad, Buldhana has developed

a novel method. When in fact he has or it can be presumed that he should have had knowledge that there was absolute no connection between the intervenors or the informant who had lodged the Crime No. 600 of 2023 with petitioners. Still, Police Inspector is assertively directing the petitioners to cancel the contract with said Jagan and deposit the amount with the Police Station. We deprecate such practice on the part of police to act as a recovery agent.

8. Section 91 of the CrPC authorises a Court or Police Incharge of Police Station to summon a person to produce or thing in possession of a person. Here, money cannot be taken as a 'thing'. If such interpretation is allowed then it would lead to chaos and day will not be far away when the police officer would start working as a recovery agents for the complainants or the informants. Another fact to be noted is that transaction between the petitioners and said Jaggan was in respect of purchase ginning and pressing company/factory. The transaction between said Jaggan and some farmers was in respect of purchase of cotton by Jaggan from said farmers. How these two transactions were connected with each other would be a question. Merely, because Jaggan had entered into agreement with petitioners and gave them part of consideration that does not mean that amount was the amount due to the said farmers from Jaggan. By any stretch of imagination, it cannot be said that the said summons under Section 91 of the CrPC could have been for the purpose or would have been helpful in the investigation of Crime No. 600 of 2023. The said summons is illegal and therefore deserves to be quashed and set aside. We pass the following order.

- i. Writ Petition No. 101 of 2024 stands allowed.
- ii. Summons issued by the respondent under Section 91 of the Code of Criminal Procedure to the petitioners on 15th January, 2024 stands quashed and set aside.
- iii. Intervenor application No.33 of 2024 stands rejected.

[MRS. VRUSHALI V. JOSHI, J.] [SMT. VIBHA KANKANWADI, J.]