



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

Criminal Application No. 370 of 2024

1. Akshaykumar s/o. Shashikant Sonar,
Age: 30 years, Occ.: Business,
2. Shashikant s/o. Krishnadasseth Sonar.
Age: 60 years, Occ.: Business,
3. Suwarna w/o. Shashikant Sonar,
Age: 55 years, Occ.: Household,
4. Kunal s/o. Shashikant Sonar,
Age: 25 years, Occ.: Student,
5. Shailesh s/o. Krishnadas Sonar,
Age: 52 years, Occ.: Business,
6. Kailas Krishnadas Sonar,
Age: 55 years, Occ.: Business,

All r/o. In front of Ambika Maata Temple,
Main Bazar Khaapar,
Tq. Akkalkuwa, Dist. Nandurbar.
7. Shivaji s/o. Pandit Sonar,
Age: 61 years, Occ.: Business,
8. Kalpana s/o. Shivaji Sonar,
Age: 57 years, Occ.: Household,
9. Ajay s/o. Shivaji Sonar,

Age: 30 years, Occ.: Business,

10. Vijay s/o. Shivaji Sonar,
Age: 34 years, Occ.: Business,

11. Pooja d/o. Shivaji Sonar,
Age: 30 years, Occ.: Household,
All r/o. Flat no. 12, Vasant Sangeet,
Vasant Vihar, Swami Samarth Kendra
Jail Road, Tq. & Dist. Nashik 422101.

12. Ashwin s/o. Ramchandra Saraf,
Age: 52 years, Occ.: Business,
R/o.Tilak Road, Tq. & Dist. Nandurbar.

...Applicants

VERSUS

1. The State of Maharashtra,
Th. Ld. Public Prosecutor,
High Court (AS), Aurangabad.

2. Prajakta w/o. Akshaykumar Sonar,
Age: 27 years, Occ.: Service,
R/o. C/o. Pramod Vasudev Sonar,
'9', Rishiraj Park, Near Arihant Nursing Home,
Madhukamal Nagar, Tq.
& Dist. Nashik 422005.

...Respondents

- * Mr. Shantanu A.Deshpande, Advocate for Applicants.
- * Mrs.Ashlesha S.Deshmukh, APP for Respondent No.1.
- * Mr.Chetan B.Choudhari, Advocate for Respondent No.2.

CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 17th MARCH 2025

PRONOUNCED ON : 24th MARCH 2025

FINAL ORDER :

1. Heard both sides finally considering exigency in the matter.
2. Applicants have invoked jurisdiction of this Court under Section 482 of Code of Criminal Procedure, 1973 (in short 'Cr.P.C/Code') for challenging order of issuance of process dated 29.08.2023 and quashment of R.C.C No.697 of 2023. The Respondent No.2 is the informant at whose instance the proceedings are initiated.
3. The marriage of the applicant no.1 and the respondent No.2 was solemnised on 31.12.2015. The respondent No.2 is living separately with her parents since 2019 due to matrimonial discord. Applicant Nos. 2 to 12 are the relatives of the applicant No.1. All the applicants are arrayed as accused in Criminal Misc.Application No. 904 of 2022 filed by the respondent No.2 for offences under Sections 420, 494, 323, 504 and 506 read with Section 34 of I.P.C. It is alleged

that applicant No.1 contracted marriage with applicant No.11/Mrs.Pooja Sonar when his first marriage with the respondent No.2 was in subsistence. This mischief was witnessed by Mr.Sushilkumar Pundlik Shinde whose verification was recorded before issuing process. Learned Judicial Magistrate First Class,Dhule issued process vide order dated 29.08.2023 against the applicants for offence under Sections 420,494,323,504 and 506 read with Section 34 of I.P.C. The proceedings are culminated in R.C.C. No. 697 of 2023 which is under challenge.

4. Learned counsel for the applicants submits that all the applicants are residents of places outside of the territorial jurisdiction of Judicial Magistrate First Class, Dhule. But without adhering to procedure under Section 202 of Cr.P.C, mechanically the process was issued which is liable to be quashed. He would further submit that by recording verification of witness Mr.Sakharam Shinde, the process was issued without verifying the identity of the accused. He would further submit that in support of the complaints, a donation receipt disclosing names of the applicant Nos.1 and 11 and a photograph alleged to be of the applicant No.11 were relied

on. He would submit that no prima facie case is made out for offence alleged against the applicants.

5. Learned counsel for the applicants tenders on record a copy of First Information Report lodged by the respondent No.2 on 16.06.2024 against the applicants for offence under Sections 498A, 406,494,323,504 and 506 read with Section 34 of I.P.C to show that respondent No.2 is filing frivolous complaints. He relies on the following judgments :

- i) **LalankumarSingh and Ors. Vs. State of Maharashtra** reported in AIR 2022 SC 5151,
- ii) **Bansilal S.Kabra Vs. Global Trade Finance Limited and Ors.** in Criminal Application No.1344 of 2010,
- iii) **Sayyed Mohammed Omair and Ors. vs. The State of Maharashtra and Ors** reported in 2023(1) Mh.LJ238,
- iv) **Parth Bhadresh Mehta and Ors. vs. The State of Maharashtra and Ors.** reported in 2019(5) Mh.LJ 771,

6. *Per contra*, learned counsel appearing for the respondent No.2 supports impugned order and proceedings. He tenders on record a

photocopy of extract of screenshot of portal of Registration of birth. It is submitted that out of the illegal wedlock of the applicant No.1 with applicant No.11, a baby girl was born on 02.03.2024. Learned counsel raised preliminary objection for maintainability of the application as against order of issuance or process, revision should have been filed. He would submit that the learned Magistrate followed due procedure in issuing summons. It is submitted that it would be hazy to quash the proceedings and the respondent has sufficient material to bring home the guilt of the applicants. He relied on the judgment of Uttarakhand High Court in the matter of **Harsh Kapoor and others vs. Smt. Komal Kapoor** in Criminal Misc.Application No.842 of 2023.

7. I have gone through the complaint in Criminal Misc.Application No. 904 of 2022, the verification of Mr.Sushilkumar Shinde recorded on 17.04.2023 and complaint in R.C.C. No. 697 of 2023. The relations of the applicant No. 1 and the respondent No.2 are strained. They have filed proceedings against each others.

8. The applicant Nos.1 to 6 are residents of Tq. Akkalkuwa,

Dist. Nandurbar and applicant Nos. 7 to 11 are residents of Dhule. As per the Criminal Misc.Application No. 904 of 2022, the applicant no.11 is shown to be resident of Tq. Akkalkuwa, Dist. Nandurbar. The respondent No.2 initiated the proceedings before Judicial Magistrate First Class, Dhule whereas all applicants are residents of outside of the territorial jurisdiction of Judicial Magistrate First Class, Dhule.

9. The verification of witness Mr. Sushilkumar Shinde was recorded. The verification of the respondent No.2 was not recorded. As the applicants were residents of outside of the territorial jurisdiction of the Court, no endeavour was made to follow the procedure as contemplated by Section 202 of Cr.P.C. Before issuing the process no steps were taken to ascertain the prima facie case from any witnesses or the reports. Going by the uncontroverted allegations, I find that no prima facie case is made out for offence under Sections 323,504,506 of I.P.C. The verification is also silent in this regard. If the relationships between the applicant No.1 and respondent No.2 are strained, in

all probabilities the respondent No.2 has implicated all the applicants vindictively.

10. Learned counsel Mr.Choudhari appearing for respondent No.2 raises objection regarding maintainability of the application. This Court has concurrent jurisdiction under Section 382 of the Cr.P.C for examining the orders of issuance of process. Normally, this Court does not entertain the applications filed in the High Court against orders of issuance of process, in the wake of availability of remedy of revision under Section 397 of the Code. However, in the present matter, there is apparent non-application of mind and no recourse was taken to Section 202 of the Code. The applicants have also challenged entire proceedings in R.C.S No. 697 of 2023. Under these facts of the case, I overrule the objection of the respondents.

11. There is absolutely no allegations to attract Sections 323,504,506 of I.P.C. The allegations are against applicant Nos.1 and 11 for offence under Sections 420 and 494. Against the remaining applicants, except the fact that they supported the

main perpetrators, there is nothing on record. The complaint is founded on the evidence of Mr.Sushilkumar Shinde, donation received and photograph of applicant No.11. However, the verification of the complainant was not recorded. There is nothing on the record to show that applicant Nos.3 to 12 were present for the alleged marriage. I am of the considered view that it would be abuse of process of law to make the applicants to face the proceedings.

12. The reliance is placed on the judgment of **Sayyed Mohammed Omair and Ors.** (supra) to buttress the submission that if there is non-compliance of Section 202 of the Code, then the process is liable to be quashed. In that case, the co-ordinate bench relied on the decision of *Suo Motu Writ Petition (Crl.) No.2 of 2020* reported in AIR 2021 SC 1957. The consistent view of the Court in case of non-compliance of procedure under Section 202 of Code is reiterated in paragraph Nos.4,8 and 9. I am fortified in holding that the order of issuance of process is unsustainable for non-compliance of procedure under Section 202 of the Code on the same line.

13. Further reliance is placed on the judgment of **Bansilal S.Kabra** (supra). In that full-bench of this Court considered the judgment of the Supreme Court which is also referred in the matter of **Sayyed Mohammed Omair and Ors.** (supra). I have gone through the observations in paragraph Nos. 7 and 8 of the judgment which are aptly applicable to the present case also.

14. Further reliance is placed on the judgment of **Lalankumar Singh and Ors.** (supra). In that case relevant observations are made by the Supreme Court in paragraph No.28. These are binding and the issuance of process has become vulnerable.

15. The respondents relied on the judgment of **Harsh Kapoor and others** (supra). It was decided by Learned Single Judge of Uttarakhand High Court. In that case the order of summoning the accused was directly challenged to the High Court under Section 482 of the Code and relying on the various judgments, it was held that the revisional jurisdiction under Section 397 was available against the order of issuance of process. However, I do not find that any law as a rule of thumb is laid down for that order of issuance of

process can not be challenged directly in the High Court. I am not persuaded by the judgments cited by the respondents.

16. For the reasons recorded above, I pass following order :

ORDER

a) Criminal Application is allowed.

b) Impugned order dated 29.08.2023 in Criminal Miscellaneous Application No.904 of 2022 passed by Judicial Magistrate First Class, Dhule as well as proceedings of R.C.C No.697 of 2023 pending before Chief Judicial Magistrate, Dhule are quashed and set-aside.

[SHAILESH P. BRAHME, J.]