



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

CRIMINAL WRIT PETITION NO. 733 OF 2024

1. Sambhaji s/o Shivaji More,
Age : 31 years, Occu. : Agri.,
2. Vitthal s/o Ramrao More,
Age : 64 years, Occu. : Agri.,
3. Ranjit Vitthalrao More,
Age : 34 years, Occu. : Agri.,

All R/o. : Valag, Tq. Degloor,
Dist. Nanded.

.. Petitioners

(Orig. accused Nos. 1, 2 & 3
respectively)

Versus

1. The State of Maharashtra
Through P.S.O., Ramtirth Police Station,
Tq. Naigaon, Dist. Nanded.
2. Uttamrao s/o Datta Patil,
Age : Nil, Occu. : Agri.,
R/o. : Valag, Tq. Degloor,
Dist. Nanded.

.. Respondents

(Orig. Complainants)

WITH

CRIMINAL WRIT PETITION NO. 731 OF 2024

1. Sambhaji s/o Shivaji More,
Age : 31 years, Occu. : Agri.,
2. Ranjit Vitthalrao More,
Age : 34 years, Occu. : Agri.,

All R/o. : Valag, Tq. Degloor,
Dist. Nanded.

.. Petitioners
(Orig. accused Nos. 1, 2
respectively)

Versus

1. The State of Maharashtra
Through P.S.O., Ramtirth Police Station,
Tq. Naigaon, Dist. Nanded.
2. Uttamrao s/o Datta Patil,
Age : Nil, Occu. : Agri.,
R/o. : Valag, Tq. Degloor,
Dist. Nanded.

.. Respondents
(Orig. Complainants)

Mr. Ajinkya Reddy, Advocate for the Petitioners in both the matters.

Mr. R. B. Dhaware, APP for Respondent No. 1 in both the matters.

Mr. V. R. Dhorde, Advocate for Respondent No. 2 in both the matters.

CORAM : KISHORE C. SANT, J.

Date on which reserved for order : 03rd July, 2025.

Date on which order pronounced : 29th July, 2025.

FINAL ORDER :-

. Since in both the petitions the parties are same and since the issue involved is also similar, both the matters are taken up together.

2. Heard. By consent of the parties taken up for final disposal.
3. Criminal Writ Petition No. 733/2024 is filed by original accused persons in Criminal M.A. No. 105/2021 challenging an order of issuance of process in the said Criminal M.A. dated 20.01.2022 for the offences punishable under Sections 384, 506, 511 r/w Section 34 of the Indian Penal Code (for short "I.P.C."). In Criminal Writ Petition No. 731/2024, a prayer is for quashing and setting aside the order dated 16.03.2021 passed in R.C.C. No. 191/2019 by the learned J.M.F.C., Degloor thereby issuing process against the petitioners for offences punishable under Sections 457, 380, 506 r/w Section 34 of the I.P.C. The petitioner Nos. 1 and 3 in Criminal Writ Petition No. 733/2024 are the petitioners in Criminal Writ Petition No. 731/2024.
4. The facts in short in Criminal Writ Petition No. 733/2024 are that, respondent No. 2 filed miscellaneous application seeking directions under Section 156(3) of the Code of Criminal Procedure (for short "Cr.P.C."). It is the allegation that, the complainant happens to be President of one Ashram school at Valag, District Nanded. The complainant is related to accused

No. 1 as accused No. 1 happens to be brother in law of son of the complainant. Accused Nos. 2 and 3 are the uncle and cousin of accused No. 1. The petitioner Nos. 1 to 3 are accused Nos. 1 to 3 respectively. It is alleged that, there is dispute about the land of the Ashram school. The accused persons started asking for transfer or to change the location of the school. It is threatened that, if the school is not transferred to any other school, the accused will abduct the children from the school. These threats were given to the employees in the school. On 02.02.2019 as per the allegation, the petitioners asked one of the employee in the school as to whether he has brought Rs. 1,00,000/-. On replying in negative, the accused Nos. 1 and 2 put a sharp weapon named 'Katti' on the neck of the employee and threatened that they will cut his body in two pieces. It is thereafter, the complainant went to Police Station Markhel, however, the Police refused to register an offence. The application was also made to Deputy Superintendent of Police, Nanded. Office of Deputy Superintendent of Police told the complainant to approach Markhel Police Station again. However, still no complaint was taken. The complainant, therefore, filed an application before the

learned J.M.F.C. The learned J.M.F.C. on recording verification statement of the complainant and witnesses issued process against the accused persons.

5. So far as facts in Criminal Writ Petition No. 731/2024 are concerned, the complainant approached the learned J.M.F.C. by filing Criminal Miscellaneous Application. It is stated in the compliant that, sister of petitioner No. 1 married to son of the complainant. The marriage took place on 21.05.2010. On 08.03.2018 there was incident of fire in the bedroom of the sister of present petitioner No. 1 and she died in the said incident. It is alleged that, since sister of accused No. 1 died, the accused persons started blackmailing the complainant and demanded the land of Ashram school with Ashram school. There was a meeting of people. In the said meeting, the complainant flatly refused to give the school as it belongs to a Trust. On this, the accused persons lodged the FIR with the Police Station against the complainant, his sons and wife. It is further alleged that, thereafter, the accused persons started demanding an amount of Rs. 1,00,000/- as ransom and further to shift the school to some other place, otherwise they will abduct the students from the

school. It is alleged that, on 02.02.2019 they threatened one of the employees. Therefore, again complaint was tried to be lodged with the Police and the Deputy Superintendent of Police, Nanded. However, since no cognizance was taken and no offence was registered, an application is filed praying for directions under Section 156 (3) of the Cr.P.C. for the offences punishable under Sections 383, 307, 511, 506 (2) r/w Section 34 of the I.P.C. The learned Magistrate directed to put up the complaint for verification of complainant and witnesses and thereafter issued process. Thus, these orders are challenged in these petitions.

6. The learned A.P.P. and learned advocate for respondent No. 2 raised preliminary objection of maintainability of the petitions in view of availability of alternative remedy of filing of a revision.

7. On the point of maintainability, the learned advocate Mr. Reddy for the petitioners submits that, alternative remedy is not an absolute bar. He further vehemently argued that, both the complaints are imaginary. It is the case that, the sister of accused No. 1 died in the house of son of the complainant and since they filed a complaint the complainant is trying to bring pressure by

giving a concocted story before the learned J.M.F.C.

8. The accused No. 1 has lodged the FIR for the offences punishable under Sections 306, 304-B r/w Section 34 of the I.P.C. wherein, the complainant, his wife and his two sons are shown as accused. In that connection, the complainant could not get the bail. That FIR was lodged on 25.03.2018 whereas, the present application is filed in the year 2021. The story even if taken as it is, it clearly shows that the entire story is imaginary and without any substance. Son of the complainant and complainant had tried to seek anticipatory bail, however, the same was rejected by this Court. Even the Hon'ble Supreme Court rejected the S.L.P. by order dated 23.07.2018. He further submits that, it is only to come out of earlier complaint the complainant has filed the present complaints. Continuance of proceeding under such circumstances would be an abuse of process of law.

9. In Criminal Writ Petition No. 731/2024 the learned advocate Mr. Reddy for the petitioners submits that, initially, Police was directed to submit the report under Section 200 of the Cr.P.C. The Police had conducted investigation. They submitted report of 'B'

summary dated 05.08.2021 and it is submitted that, no material is found and no case was made out under Sections 457, 380 of the I.P.C. He submits that, still the learned J.M.F.C. issued process. The order appears to be passed mechanically. There is nothing on record to show as to why 'B' summary report is not accepted. The Police found that, the complaint is lodged only due to enmity between the parties.

10. The learned A.P.P. and learned advocate for respondent No. 2 vehemently opposed the petitions. They submit that, in the present cases, clearly a case is made out for issuance of process. The complaint by accused No. 1 was filed in the year 2018. It is thereafter, in the year 2021 now the complaint is filed. Had it only been by way of retaliation, it could have been filed long back. It is a matter of fact that, after death of sister, the accused persons started harassing the complainant and the employees of the school. There was demand that they should give the school and the land of the school to the petitioners. Clearly, averments are made in the complaint. An order passed by the learned Magistrate in both these cases clearly show application of mind. The learned Magistrate has not issued process mechanically, but has recorded

the verification. An order is well reasoned order wherein, the learned Magistrate has recorded the reasons for issuing process and the material on the basis of which he is satisfied about the existence of prima facie case. They both, therefore, pray for rejection of writ petitions.

11. So far as alternative remedy is concerned, the learned advocate for the respondent No. 2 has placed reliance on the judgment in the case of **Ashok Mehta Vs. State of Maharashtra and others** reported in **2005 Cri. L.J. 3321**. In the said case, this Court at Nagpur held that, order of learned Magistrate issuing process is not an interlocutory order and thus, the writ petition is not maintainable.

12. The learned advocate for the petitioners relies upon the judgment in the case of **Kirti Kumar Jayantilal Patel and Ors. Vs. State of Maharashtra** reported in **AIR Online 2023 BOM 355**. In the said case it is held that, the writ petition can be directly entertained by this Court wherein, challenge is raised to an order of issuance of process. In the said case, it is found that the facts were undisputed. It was the case that, a complaint was lodged

against the manufacturer of drug as the product manufactured was found to be not of standard quality. In that case, the standard itself was prescribed after the manufacturing of the drug. In that view of the matter this Court had entertained the writ petition.

13. In the present petitions, the facts are disputed. The evidence is required to be appreciated and for that reason this Court holds that it was necessary for the petitioners to approach the Revisional Court first. So far as submission that, no offence is made out under Section 390, the Court held that even taking the allegations as it is, no case was made out. On that the S.L.P. was allowed and the complaint was quashed. Presently, this Court does not find, no ingredients are made out of the offences.

14. Further judgment relies upon by the petitioners is from High Court of Karnataka in **Criminal Petition No. 8922/2017** in the case of **Sri Nagaraj Rao C.H., S/o C. H. Rao Vs. State by its S.P.P. Bangalore and another**. In the said petition it is held that the learned Magistrate ought to have applied his mind and to have passed an order by giving proper reasoning. In that case, the Police had filed a 'B' summary report. The complainant had filed a

protest petition. There was evidence of the complainant taken. It is in that view the Court held that reasoning was required to be given.

15. Further case is relied upon by the petitioners is in the case of **Issac Isanga Musumba Vs. State of Maharashtra** reported in **AIR Online 2013 SC 231**. In the said case, it is held that, unless the property is delivered to accused person pursuant to threat, no offence of extortion can be said to have been made out. In the said complaint, though there was allegation of threats given for extortion, no amount was delivered by the complainant and in that view it was held that, offence of extortion was not made out under Section 383 of the I.P.C.

16. Coming to the present petitions, in both the complaints the facts alleged are not in view of extortion. In Criminal Writ Petition No. 733/2024, Cri. M. A. No. 105/2021 is concerned, it is seen that the allegations are not only under Section 383, but under Sections 307, 511, 506(2) r/w Section 34 of the I.P.C. From the petition paper book it is seen that, verification of the complainant is recorded. The order of the learned J.M.F.C. also

shows that, he has applied his mind and it is only thereafter the process is issued. Thus, on merits this Court finds that, no case is made out calling for interference with the order impugned in Criminal Writ Petition No. 733/2024.

17. So far as Criminal Writ Petition No. 731/2024 is concerned, here also this Court finds that the complaint is lodged for the offences punishable under Sections 457, 380, 506 r/w Section 34 of the I.P.C.

18. Looking to the order passed by the learned J.M.F.C. this Court finds that, the learned J.M.F.C. while passing the order considered the verification statement and the statements of other witnesses and has gone through the papers on record. It is only on that, an order is passed. Considering overall facts and the material, this Court is of the opinion that, there are several questions which need to be addressed on factual aspects involved in the present petitions. The scope of interference under Article 227 of the Constitution of India is very limited. The interference is permissible only if this Court comes to a conclusion by looking to the contents of the complaint that no case is made out and the

order passed by the learned Magistrate is without application of mind. When the complaint makes out a case attracting the ingredients of offence and when the learned Magistrate has passed an order on getting himself satisfied on prima facie case, this Court would not interfere with the order. Criminal Writ Petition No. 731/2024, therefore, also deserves to be dismissed.

19. In view of the above, both the criminal writ petitions stand dismissed. No order as to costs.

(KISHORE C. SANT, J.)

PS.B.