



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

CRIMINAL WRIT PETITION NO.1120 OF 2024

Mr. Ajit s/o Bhavarlal Jain,
Aged : 52 years, Occ : Business
Vice Chairman,
Jain Irrigation Systems Ltd. (JISL),
C/o Jain Plastic Park, NH-6,
Jalgaon-72.

...PETITIONER
(Accused No.1)

-VERSUS-

1. The State of Maharashtra.
Through Senior P.I.,
Kotwali Police Station,
Ahmednagar,
Taluka and District Ahmednagar.

2. Dadasaheb Shankar Suryawanshi,
Age : 62 years, Occ : Nil,
R/o Ajinkya Housing Society,
Bhushan Nagar, Kedgaon,
Taluka and District Ahmednagar.

...Orig. Complainant

...RESPONDENTS

...
Shri Ashok Mundargi, Senior Advocate i/by Mrs.Rashmi
Kulkarni and Shri Jayant Bardeskar, Advocates for the petitioner.
Shri Sunil B. Jadhav, APP for respondent No.1/ State.
Shri Dattatraya R. Markad, Advocate for respondent No.2.
...

CORAM : SUSHIL M. GHODESWAR, J.

DATE : 17 OCTOBER 2025

ORAL JUDGMENT :-

1. This petition under Article 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure is filed by the original accused, challenging the concurrent orders passed by learned Judicial Magistrate First Class, Ahmednagar and learned Sessions Judge, Ahmednagar.

2. Rule. Rule made returnable forthwith and heard finally by the consent of parties.

3. The main reliefs sought by the petitioner, through prayer clauses C and D, are as under:-

“C. That this Hon'ble Court may be pleased to allow the present Writ Petition and quash and set aside the Order dated 02.04.2024 passed by the Learned Additional Sessions Judge, Ahmednagar passed in Criminal Revision Application No. 185 of 2019 and further be pleased to quash and set aside the Order of issue process dated 24.10.2019 in R.C.C. No. 85 of 2012(B Summary Proceedings) passed by the learned Judicial Magistrate First Class Ahmednagar for offence punishable under Section 363, 365, 368 r/w. 34 of I.P.C. in the interest of justice which is now numbered as R.C.C No. 456 of 2011 pending on the file of the learned Judicial Magistrate First Class, Ahmednagar.

D. That this Hon'ble Court may be pleased to allow the present Writ Petition and quash and

set aside the proceedings bearing R.C.C No. 456 of 2011 pending on the file of the learned Judicial Magistrate First Class, Ahmednagar.”

4. RCC No.456/2011 is the complaint filed by respondent no.2 before the learned Chief Judicial Magistrate, Ahmednagar, for the offences punishable under Sections 363, 365, 368 r/w 34 of the Indian Penal Code. Respondent no.2/ complainant stated that the accused persons have abducted him from 14.04.2011 to 25.05.2011 without his consent and they detained him in company office. During this period on 20.05.2011 they compelled him to write an affidavit and resignation and also obtained the cheque of Rs. 4,40,000/- dated 28.11.2011 from him. On 26.05.2011, he approached to police, however, since they didn't take any action, therefore, he filed complaint on 11.07.2011 before the learned Chief Judicial Magistrate, Ahmednagar which is registered as RCC No.456 of 2011. On 02.08.2011, the learned JMFC, Ahmednagar directed the police to register the case and investigate the matter. After investigation, the police submitted 'B' Summary report bearing RCC No. 85 of 2012 on 26.02.2013. Therefore, the notice was issued to the complainant wherein, he appeared and filed his say

cum objection on 04.05.2013. Thereafter, the Learned JMFC, Ahmednagar was pleased to accept the 'B' Summary report and disposed of RCC No. 456/2011 vide order dtd. 16.04.2016. In fact, on 16.04.2016 learned JMFC passed another order below Exhibit 1 thereby, not permitting the counsel for accused to appear as the accused was not yet summoned and the matter was at a pre-cognizance stage. However, it was noted that the complainant has filed another RCC No.115/2013 which was based on same contents and prayer, when 'B' summary was filed. The said RCC No. 115/2013 is already stayed by this Court in Writ Petition no. 1335/2014. However, later on the Complainant withdrew RCC No.115/2013 by filing pursis below exhibit 30 before learned JMFC, Ahmednagar.

5. Being aggrieved by the order dtd. 16.04.2016 of disposing of RCC No. 456/2011, Respondent No.2 filed Criminal Revision Petition No.79/2016 before Additional Session Judge, Ahmednagar. Vide order dated 19.04.2018, said revision petition was allowed thereby, rejecting the "B" summary report no. 85 of 2012. The Police Inspector was directed to re-investigate the offence registered vide CR No. 41 of 2011 of Kotwali Police

Station. Thereafter, on 02.08.2018 after detailed investigation, the police have again filed again 'B' Summary report before learned JMFC, Ahmednagar. Respondent no.2 / complainant filed his say cum objection on 05.09.2018. Learned JMFC, Ahmednagar was pleased to take cognizance vide order dtd. 24.10.2019 of regular Criminal Case thereby, rejecting the 'B' summary report no. 85/2012 and issued process against accused nos.1 and 2 for the offences punishable under section 363, 365, 368 read with 34 of IPC. The said order is challenged in Criminal Revision No.185/2019 by the Petitioner and other accused before learned Sessions Court, Ahmednagar. The said Criminal revision no.185/2019 came to be allowed by learned Sessions Judge vide his order dated 08.09.2021. According to learned Sessions Judge, it was not appropriate for the JMFC Ahmednagar to pass the impugned order dtd. 24.10.2019 of issuing process in RCC no. 456 of 2011 when the stay is granted by this court in Writ Petition No.1335/2014 wherein, issuance of process order in RCC no.115/2013 between the same parties is under consideration. Thereafter, Respondent no.2 preferred Criminal Writ Petition no.1166 of 2021 challenging the order dtd. 08.09.2021 passed by the Sessions Judge in Criminal Revision

No. 185/2019. This Court vide order dtd. 30.06.2023 in Criminal Writ Petition no.1166 of 2021 set aside the order dated 08.09.2021 passed by learned Sessions Court, Ahmednagar and relegated Criminal Revision No.185/2019 to the Sessions Judge for its decision afresh in accordance with law. Again detailed hearing took place before another learned Sessions Judge and after hearing the parties, the revision preferred by the Petitioner came to be dismissed vide impugned order dated 02.04.2024. Against this order dated 02.04.2024, the petitioner has approached this court in this petition.

6. Mr. Mundargi, learned Senior Counsel for the petitioner, submitted that learned JMFC as well as learned Sessions Judge have relied upon the material i.e. the statement of complainant recorded in another complaint i.e. RCC No.115 of 2013 and the said RCC No.115/2013 has been withdrawn by the complainant unconditionally. Thus, the said material was extraneous and ought not to have been relied upon by the courts below. He further submitted that learned Magistrate was required to consider the whole report u/s 173 of Cr. P.C. and was required to apply his mind while taking cognizance. Both the courts have

failed to appreciate that a completely frivolous litigation has been filed against the petitioner, which is liable to be quashed and set aside. He further submitted that during investigation more than 20 witnesses from his company have stated that there is no “tin shed in the plastic park” where the complainant was alleged to have been confined. Even the statements of neighbours of the complainant disclose that nobody has seen him that he was forcibly taken in a jeep. The complainant later on improvised his statement that he was not kept at tin shed, but in a locker room. The other workers used to keep their tiffins in the said room and nobody has seen the complainant there. Even in further investigation, the statements of bond writer, notary etc. have been recorded and they have not supported the complainant. Learned Magistrate also did not give any reason while rejecting the B summary report submitted by Investigation Officer. Learned Sessions Judge, while passing the impugned order, has also wrongly observed that the petitioner being rich and powerful, can manipulate and instead of facing trial, he is running away from trial and challenging the orders. The said observation is extraneous and in the nature of surmises and conjectures. Thus, learned Senior Advocate has prayed for quashing of the

impugned orders.

7. In support of his submissions, learned Senior Advocate Shri Mundargi has relied on following judgments:-

(a) Pepsi Foods Ltd and another vs. Special Judicial Magistrate and others, (1998) 5 SCC 749.

(b) Mehmood Ul Rehman vs. Khazir Mohammad Tunda and others, (2015) 12 SCC 420.

(c) M/s India Carat Pvt. Ltd. vs. State of Karnataka and another, AIR 1989 SC 885.

(d) Minu Kumari and another vs. State of Bihar and others, (2006) 4 SCC 359.

(e) Krishna Lal Chawla and others vs. State of Uttar Pradesh and another, (2021) 5 SCC 435.

8. Mr. Markand, learned counsel for Respondent No. 2/ complainant, submitted his written notes of argument and made legal submissions that the Investigating Officer has recorded the statement of 53 witnesses. The investigation report does not reveal whereabouts of the complainant from 22.04.2011 to 25.05.2011. Mr. Markand submitted that the complainant has firmly narrated the abduction and confinement, therefore, merely because the complainant did not call for help and there are no neighbours to witness the incident, are not satisfactory grounds to

disbelieve him. His another submission is that though the cheque of Rs. 4,80,000/- was dishonoured, still the company did not file the complaint against him. The finding of the Investigating Officer that the complaint is filed to avoid consequences of misappropriation, is not satisfactory and not supported by any document. The car, which is used during abduction, is also owned by the company. He also stated that the spot of abduction is shown by the complainant to the investigating officer on 25.05.2018, which supports him to corroborate his case. Thus, he strongly supported the impugned orders. Mr. Markand also took me through the contents of reply filed by the complainant. He also submitted that there is concurrent finding against the petitioner and as such, now at this stage same may not be disturbed.

9. Before adverting to legal issues, first the facts which are undisputed can be summarized as under:-

Date	Particulars of events
19.05.2011	Complainant's wife filed criminal proceedings under section 97 of CrPC vide Misc. Cri. Application no. 433 of 2011 before JMFC Ahmednagar wherein learned JMFC was pleased to issue show cause notice to the Company.

- 20.05.2011 The Complainant's wife had been to company's office to serve the above notice.
- 11.07.2011 The Complainant filed RCC no. 456 of 2011 before JMFC Ahmednagar against the petitioner and other accused for the offences punishable u/s 365, 368 r/w 34 of IPC.
- 02.08.2011 Learned JMFC was pleased pass order under section 156(3) of CrPC directing Kotwali Police Station to register and investigate the crime.
- 04.08.2011 Crime No. MECR No. 41 of 2011 is registered for the offences punishable under section 363, 365, and 368 r/w 34 of IPC against the petitioner and Accused no. 2.
- 31.01.2013 In the meantime, the Complainant again filed another RCC no. 115/2013 on same facts against the petitioner and other accused before JMFC Ahmednagar.
- 26.02.2013 In RCC 456 of 2011, after completion of investigation, B summary report was submitted before the JMFC and learned Magistrate issued notice to the Complainant.
- 09.12.2013 In RCC No. 115/2013, JMFC was pleased to issue process against Petitioner.
- 14.10.2014 Learned Sessions Judge rejected Revision no. 4/2014 challenging issuance of process order dated 09.12.2013.
- 16.04.2016 In RCC No.456 of 2011, JMFC was pleased to accept the B Summary Report.
- 19.04.2018 The above order dtd. 16.04.2016 of Ld. JMFC came to quashed and set aside by learned Sessions Judge in Cri. Rev. Application 79/2016 and further directed the investigating officer to re-investigate the case and to file report.
- 02.08.2018 Accordingly, the Investigating officer Kotwali PS conducted investigation and filed B summary Report.

- 24.10.2019 The Magistrate issued notice to the Complainant. The complainant filed Protest petition and thereafter, the Magistrate rejected B Summary Report dtd. 02.08.2018.
- 08.09.2021 The Petitioner, therefore, challenged order dtd. 24.10.2019 before the Sessions Court in Cri. Rev. Appln No. 185 of 2019, which came to be allowed and the matter was remanded back to JMFC Ahmednagar.
- 30.06.2023 The Complainant preferred Cri. WP 1166 of 2021 before High Court wherein this court quashed and set aside the order dtd. 08.09.2021 and reminded matter to Sessions Court Ahmednagar to take a fresh decision.
- 02.04.2024 The Sessions Court dismissed Cri. Rev. 185/2019, therefore, the petitioner challenged said order in this petition.

10. In the aforesaid facts and circumstances, now at this stage, it is to be seen that whether, both the courts below have committed any mistake or error while passing the impugned orders so that instant writ petition can be entertained even under Section 482 of Cr.PC. The first order is passed by learned Judicial Magistrate First Class Court No. 10, Ahmednagar on 24/10/2019. This order runs into 13 paragraphs and after giving detail reasoning, the B summary report came to be rejected. The cognizance of the complaint came to be taken and process came to be issued against accused nos.1 and 2 for the offences punishable under sections 363, 365, 368 read with section 34 of

the Indian Penal Code. Learned JMFC, Ahmednagar was pleased to observe that since *prima facie* material on record suggest sufficient grounds to proceed against the accused, therefore, the process came to be issued against them. Learned JMFC in its said order has recorded that he has perused the B-summary report and also gone through the investigation papers. The statements of 53 witnesses have been recorded. It is observed by learned JMFC that in B Summary report, it is stated that the complainant was present in the meeting of company from 15th April to 21st April, 2011 and as such, he was never abducted. However, the said report does not reveal the whereabouts of the complainant from 21st April to 25th May, 2011. Though the complainant did not call for help during alleged abduction and there are no neighbours to witness the incident, are not satisfactory grounds to deny the allegations of the complainant. It was also observed by learned JMFC that there was allegation that the complainant had misappropriated funds of Rs.4,80,000/-. According to the petitioner, in order to avoid legal consequences, he has filed false complaint against the company. However, it is admitted position that the company neither reported any misappropriation nor undertaken any legal process against the complainant. The report

also discloses that cheque of Rs.4,80,000/- procured from the complainant was dishonoured. However, the company did not file any complaint for said cheque issue. No record of misappropriation is produced by the company as regards alleged misappropriation. Thus, learned JMFC disbelieved the theory of false allegation.

11. On the contrary, the complainant is firm on the point of his abduction and confinement. There is also investigation to the effect that the company owns Sumo car since 2004. The spot panchnama conducted on 25.05.2018 reveals that there is small room in the company premises at Jalgaon. The said spot is shown by the complainant himself to the investigating officer. Thus, there is corroboration as regards the allegation of complainant are concerned. However, though learned JMFC was pleased to consider that there is sufficient material for believing the complainant's version to proceed against the accused, in paragraph No.12 of the order dtd. 24.10.2019 it is observed that another RCC no.115/2013 filed by the complainant, wherein, verification of the complainant was recorded and statements of six witnesses were recorded. Relying on the said evidence,

cognizance was taken in that matter and the process was issued against the accused. Here, the submission of learned senior counsel for the petitioner that learned JMFC was pleased to consider the extraneous material while issuing process in this matter, is incorrect submission for the reason that learned JMFC has only referred to said actual aspect of record and not even considered what the said six witnesses have stated in those statements. So it is clear that learned JMFC while passing order dtd 24.10.2019 thereby issuing process against the accused, has not considered any extraneous material as tried to be canvassed by the petitioner. After going through the complete order passed on 24.10.2019 by learned JMFC, it is absolutely clear that learned JMFC not only applied his mind after scrutinizing the complete material, but he has also considered the investigation reports in proper perspective. It is thus, clear that learned JMFC has not passed the order dtd. 24.10.2019 in mechanical manner. It is also clear that learned Magistrate is empowered to take cognizance of the case even if the police report is adverse.

12. I have also minutely considered the Judgment delivered by learned Sessions Court on 02.04.2024 in Criminal

Revision No. 185/2019. The said order also shows detail consideration not only in respect of the impugned order dtd. 24.10.2019 passed by learned JMFC, but also the complete material available against as well as in favour of the petitioner. Though the learned Sessions Judge in some paragraphs commented on the recourse taken by the petitioner in challenging the orders of court and also upon higher status of the petitioner, however, same can not be considered to throw away the case of the complainant which is rightly ordered to be processed against accused persons after giving detail reasons. The impugned order passed by learned Sessions Judge is elaborative and with detail reasoning. Learned Sessions Judge is also pleased to consider the grounds raised by the petitioner while challenging the order dtd. 24.10.2019 passed by learned JMFC, therefore, as such no fault or mistake is found in his order.

13. Now I deal with the judgments cited by learned Senior Counsel for the petitioner. In *Pepsi Foods Ltd. (supra)*, the Honourable Supreme Court has observed in paragraph No.28 as under:-

“28. *Summoning of an accused in a criminal case is a*

serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

14. As it is already seen in this case that learned Magistrate has applied his mind while passing the order and he has scrutinized the evidence brought on record in proper manner. It is clear that the criminal law has not been set into motion as a matter of routine course. Therefore, the above citation in ***Pepsi Foods Ltd. (supra)*** is not useful to the petitioner in any way. Again in paragraph 22 of the very same judgment, it is held by the Hon’ble Apex Court that the power conferred under Articles

226 and 227 of the Constitution of India and under section 482 of CrPC have no limits, but more the power more due care and caution is to be exercised while invoking these powers.

15. In *Mehboob Rehman vs Khazir Mohammad Tunda (supra)*, in para 20 of the said judgment a reference has been made to the judgment delivered in *Pepsi Food (supra)* wherein, aspect of application of mind by the Magistrate while issuing process is stated. As discussed earlier that learned Magistrate has considered all the material before him and his order of issuing process discloses proper application of mind by him, therefore, this verdict has been duly followed by the learned Magistrate.

16. Both judgments in *M/s India Carats (supra)* and *Minu Kumari (supra)*, state that learned Magistrate can take cognizance of the offence even if police report is to the effect that no case was made out. In the case in hand, in the order passed by learned Magistrate, there is sufficient discussion as regards material brought by the police in their report. After considering the material, learned Magistrate was pleased to issue the process against the accused persons. Therefore, the said order passed by learned Magistrate is not contrary to these pronouncements of the

Hon'ble Apex Court.

17. The verdict in *Krishana Lal Chawla (supra)*, points out duty of learned Magistrate in preventing abuse of court process as regards frivolous and vexatious complaints. However, here in this case, from the various incriminating material like spot panchnama, application by wife of the complainant to the court, availability of Sumo car and various other factors, it does not go to show that the complaint filed by the respondent/complainant is false and frivolous. Hence, the above judgment will not be applicable to the instant case.

18. In view of above discussion, it is clear that learned Judicial Magistrate First Class, while passing the impugned order dtd. 24.10.2019, has considered the detail aspects involved in the matter and applied his mind. He has also sufficiently given reasons to arrive at his conclusion to issue process against the accused persons. The said order is also rightly maintained by the learned Sessions Judge in Revision by again passing the detailed order. The concurrent and well reasoned orders against the petitioner do not go to show that same are in excess or amounts to abuse of process of court or without the jurisdiction. There is

also nothing to suggest that both the courts have not acted in accordance with law. Writ jurisdiction is limited to examining legality, propriety, and correctness of the orders. This Court, while exercising jurisdiction under Article 227 of the Constitution and Section 482 of the Cr.P.C., is not expected to re-appreciate evidence, but to ascertain whether the impugned orders suffer from perversity or patent illegality.

19. Hence, the Writ Petition being devoid of merit is dismissed. Interim order dated 11.07.2024 passed by this Court stands vacated. The learned JMFC, Ahmednagar, is directed to proceed with RCC No.456/2011 in accordance with law.

20. Rule is, accordingly, discharged.

21. At this stage, learned advocate Ms.Kulkarni requests for continuation of interim relief granted earlier so as to enable the petitioner to approach the Honourable Supreme Court. However, learned APP as well as learned advocate for respondent No.2 strongly opposed the said request on the ground that RCC No.456/2011 is pending since 2011 and the petitioner is adopting delaying tactics.

22. In view of the findings recorded hereinabove and the dismissal of the writ petition on merits, this Court does not find any justification to continue the interim protection. Once the petition itself stands dismissed, the interim relief automatically stands vacated. Continuation of such relief would amount to indirectly granting what has been refused on merits. Hence, the prayer for continuation of interim relief stands rejected.

kps

(SUSHIL M. GHODESWAR, J.)