



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

CRIMINAL WRIT PETITION NO. 1219 OF 2024

1. Mangal W/o Sambhaji Susare
Age : 51 years, Occu.Housewife
R/o. House No.249,Nalegaon,
Kumbhar Galli, Ahmednagar. **...Petitioner**
- versus
1. The State of Maharashtra
2. Arun S/o.Balasaheb Bhagwat,
Age : 48 years, Occu.Business,
3. Yamunabai W/o. Balasaheb Bhagwat
Age : 62 years, Occu.Housewife,
Both R/o. Nalegaon,Kumbhari Galli,
Ahmednagar.
4. Surendra @ Pintu Bhau Dhole
@Surendra S/o.Ratnakar Dhorje,
Age : 35 years, Occu.Business,
R/o.Near Old Vitthal Mandir,
Tofkhana, Ahmednagar. **...Respondents**

Advocate for Petitioner : Mr. Narwade Narayan B.
APP for Respondent Nos. 1 : Mr.S.M.Ganachari
Advocate for Respondent Nos.2 to 4: Mr. Anand Dale

CORAM : SHAILESH P. BRAHME, J.

DATE : 25th MARCH 2025

FINAL ORDER :

1. Heard both sides finally at the admission stage.
2. Being aggrieved by order dated 16.05.2024 passed by Learned Additional Chief Judicial Magistrate, Ahmednagar in Criminal Revision Petition No.162 of 2023, petitioner who is original complainant is approaching this Court. Petitioner has filed R.C.C No.1438 of 2022 against the Respondent Nos.2 to 4 for offence punishable under Sections 324 and 504 r/w Section 34 of I.P.C on 07.02.2023 which is quashed by the Revisional court.
3. Petitioner and Respondent Nos. 2 and 3 are residents of same locality. Respondent Nos.2 and 3 are residing on the back side of the petitioner. There is easementary road between the house of the petitioner and the Respondent Nos. 2 and 3. It is alleged that on 08.06.2022, the respondents-accused started digging easementary road so as to cause damage to the wall of the petitioner. When the petitioner protested against them, she was abused and threatened. The work of digging was illegal. On 16.06.2022 complaint was also made by the petitioner to the Commissioner, Superintendent of

Police and District Collector. Non-cognizable offence was registered against the respondents/accused. On 18.08.2022 when the petitioner was alone in the house, respondent Nos.2 to 4 barged in the house with sticks and the weapons. She was dragged from the house by abusing her and assaulted by the weapon and again threatened.

4. Petitioner was examined by the doctor and injury certificate was issued. When she insisted for taking cognizance of the offence, only N.C was registered. She was constrained to file R.C.C No. 1438 of 2022. Her verification was recorded. Considering the material and contents of application, process was issued under sections 324 and 504 of I.P.C r/w section 34 of I.P.C.

5. Learned counsel Mr.Narwade appearing for the petitioner submits that the revisional court committed error of jurisdiction in quashing the order of issuance of process. He would submit that prima-facie case was established on the basis of verification, medical certificate and N.C.R. The revisional court conducted almost mini-trial and held that no offence is made out which is perverse. He would submit that revisional court appreciated evidence in holding

that there were no sufficient grounds to issue process. Reliance is placed on the judgment of this Court in the matter of **Jacob Harold Aranha And Anr. vs. Mrs Vera Aranha And Anr.** reported in 1979 CRI (L.J)974.

6. *Per contra*, learned counsel Mr. Dale for the contesting parties would submit that there is a variance in complaints and N.C.R. It is submitted that petitioner had alternate remedy of approaching Superintendent of Police under Section 164 of Cr.P.C.(section 183 of B.N.S.S,2023). He would submit that medical certificate does not support the complainant's theory. It is submitted that age of the Respondent no.3 is 80 years. There is no proper identification of the Respondent No.4.

7. Having considered rival submissions of the parties, it must be made clear that the scope of the revisional court while examining order of issuance of process would be confined to satisfaction of prima facie case. The magistrate was found a prima-facie case considering complaint,injury certificate, N.C.R and the verification of the complainant.

8. Non-cognizable offence report dated 18.08.2022 would not be touchstone to test the veracity of the complainant. That can be done during full-fledged trial. It is overlooked that petitioner was not satisfied in registering of non-cognizable report and therefore she was constrained to approach Magistrate under section 200 of Cr.P.C. The findings recorded by the revisional court in paragraph no.14 testing the complainant to the touchstone of non-cognizable offence report is error of jurisdiction. It is impermissible for the revisional court to draw any inference regarding use of weapons on the basis of non-cognizable offence report. Unfortunately, the revisional court treated non-cognizable offence report dated 18.08.2022 as a gospel truth.

9. After going through observations recorded by Learned Judge in paragraph Nos.15 and 16 of the impugned order, I am of the considered view that virtually mini-trial is conducted in faulting the order of issuance of process. The revisional court crossed the jurisdictional limits in passing impugned order. In that process the ratio laid down in the judgment of **Jacob Harold Aranha And**

Anr. (supra) has not been followed. In paragraph Nos.3 and 4 the parameters are laid down by the co-ordinate bench. Therefore, impugned order is unsustainable. Hence, I pass following order :

ORDER

(a) The Criminal Writ Petition is allowed.

(b) The judgment and order dated 16.05.2024 passed by the learned Sessions Judge, Ahmednagar in Criminal Revision Petition No.162 of 2023 is quashed and set aside and order dated 07.02.2023 passed by the learned Chief Judicial Magistrate, Court No.11, Ahmednagar in R.C.C No.1438 of 2022 is restored.

[SHAILESH P. BRAHME, J.]

vsj