



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2091 OF 2021

ASHOK RAJARAM BAGUL

VERSUS

THE STATE OF MAHARASHTRA AND
KARBHARI SHANKAR GAIKWAD,
PRAVIN (PRAMOD) ASHOK BAGUL
AND
SANDEEP (DEEPAK) ASHOK BAGUL.

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Shri Nagargoje Ankush N., Advocate for the Applicant.
Shri V.M. Lomte, APP for Respondent No.1/State.
Shri D.M. Mane, Advocate for respondent Nos.3 and 4.
Respondent No.2, though served, none present.

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CORAM : SUSHIL M. GHODESWAR, J.

DATE : 04 December 2025

P. C. :-

1. By this Criminal Application filed under Section 482 of the Code of Criminal Procedure, the applicant/ original accused No.1 is challenging the judgment and order dated 05.05.2021 passed by the learned Additional Sessions Judge, Ahmednagar, in Criminal Revision No.5/2019 whereby, the said revision came to be dismissed by confirming the order dated 29.08.2015 passed by the learned JMFC, Newasa, below exhibit-

1 in R.T.C. No.189/2012. Vide the order dated 29.08.2015, the learned JMFC has issued the process against the accused persons for the offence punishable under Sections 324, 323, 504, 506 r/w 34 of the Indian Penal Code. Complaint bearing RTC No.189/2012 was filed by respondent No.2/ original complainant against the petitioner (accused No.1) and respondent Nos.3 and 4 (accused Nos.2 and 3).

2. Learned advocate for the applicant submits that the learned Magistrate, while issuing the process against the applicant and other accused persons, has not considered the report submitted by the Sonai Police Station. So also, the guidelines issued by this Court in various judgments as regards exercising powers under Section 202 of the Code of Criminal Procedure, have not been followed by the learned Magistrate. It was pointed out before the learned Magistrate that out of three accused persons, two accused i.e. accused Nos.2 and 3 are the sons of the petitioner (accused No.1) and they are employed in the Police Department. At the time of offence, accused Nos.2 and 3 were on their job and were performing their duties. However, they are also falsely implicated in the complaint due to previous

enmity.

3. Learned advocate for the applicant further submits that there is long standing rivalry between the accused persons and respondent No.2. On every occasion, whenever respondent No.2 has tried to implicate the accused persons, the accused persons had approached to this Court and this Court granted relief by staying the prosecution instituted by respondent No.2. The applicant is witness in one crime which is registered against respondent No.2. In order to prevent the applicant to depose against respondent No.2, the present complaint came to be filed implicating not only the applicant, but also his sons who are in government service. The applicant is also in Government service and is working as veterinary doctor.

4. Learned advocate for the applicant further submits that before issuing process, the learned Magistrate ought to have recorded the statement of the complainant. Having failed to comply with necessary procedure, the learned Magistrate has committed an error in issuing process against the accused persons. However, the learned Sessions Judge also has not considered this aspect in revision and observed in paragraph

No.9 that it was for the accused persons to point out to the learned Magistrate at the time of issuance of process that they were not present on the spot on the alleged date of incident. This finding is patently illegal since at the time of issuing process, the learned Magistrate is only required to verify the contents of the complaint through the complainant and witnesses and at that time, the accused persons do not have any right to address the Court. Learned advocate for the applicant, therefore, submits that both the impugned orders are illegal and are liable to be quashed and set aside.

5. The main contesting respondent in this matter is respondent No.2/ complainant, who has been served long back in the year 2022 with the notice for final disposal. Learned advocate for the applicant submits that even in previous litigation before this Court, respondent No.2 chose to remain absent and never participated in those proceedings before this Court. Today also, neither respondent No.2 is present in person, nor anybody on his behalf is present in the Court. Learned advocate for respondent Nos.3 and 4 adopted the submissions of the learned advocate for the applicant. Learned APP submits that in the facts of the case,

appropriate order may be passed.

6. Looking to the documents brought on record in this matter, I found that there are previous complaints filed by respondent No.2 or his wife or at their behest against the applicant and his sons. Therefore, the submissions of the learned advocate for the applicant that the accused have been falsely implicated due to previous enmity between the parties, assume significance. As per the allegations in the present complaint, the incident took place on 18.03.2012, however, the complaint has been filed on 09.04.2012. There is delay in filing the said complaint, which is not properly explained by respondent No.2. The Honourable Supreme Court in *Pepsi Foods Ltd. vs. Special Judicial Magistrate, (1998) 5 SCC 749*, observed that while passing the order of process, the learned Magistrate has to apply his mind and such order should not be passed in mechanical manner. However, in the present case, it is apparently seen that the learned Magistrate has not verified the complaint and passed the order in mechanical manner. The learned Sessions Judge in revision has also not properly appreciated the findings of the learned Magistrate and has committed an error while rejecting

the revision.

7. It is well settled that before issuing process in a private complaint, the Magistrate must comply with Sections 200 and 202 of the CrPC. The impugned order reveals that no verification of the complainant under Section 200 was carried out. The Magistrate was duty-bound to postpone issuance of process and conduct an inquiry, particularly when the accused include public servants residing outside the territorial jurisdiction. The absence of any such inquiry shows that the order issuing process is mechanical and without application of mind, contrary to the principles laid down in *Pepsi Foods Ltd. (supra)*.

8. The material placed on record further shows that several previous complaints were filed by respondent No.2 and his family members against the applicant and his sons, which lends credence to the applicant's contention of a continuing dispute and misuse of criminal process. Considering the unexplained delay in filing the present complaint and the previous litigation, the complaint is malicious proceeding instituted with an ulterior motive to harass the accused.

Therefore, continuation of such proceeding would be an abuse of process of law.

9. For the above reasons, the present application succeeds. Hence, the Criminal Application is allowed. Both the impugned orders are quashed and set aside and the impugned proceedings initiated by respondent No.2 are also quashed and set aside.

kps

(SUSHIL M. GHODESWAR, J.)