



(1)

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

CRIMINAL WRIT PETITION NO.1068 OF 2021

1. Balasaheb s/o Babarao Aghav
 2. Dnyandev s/o Babarao Aghav
 3. Rama Babarao Aghav
-PETITIONERS

VERSUS

1. The State of Maharashtra,
Thr. the Secretary,
Home Department, Mantralaya,
Mumbai
 2. Atmaram s/o Pandurang Aghav
-RESPONDENTS

.....

Mr J. M. Murkute, Advocate for Petitioners
Ms U. S. Bhosale, APP for Respondent No.1/State
Mr A. D. Choure, Advocate h/f Mr M. S. Karad, Advocate for
respondent No.2

.....

CORAM : SUSHIL M. GHODESWAR, J.

DATE : 12 NOVEMBER 2025

P. C. :

1. By this petition, the petitioners are challenging the order dated 08/04/2021 passed by the learned Additional Sessions Judge Parbhani, below exhibit No.1 in Criminal Revision Application No.179/2019 and the order dated 08/11/2019, passed by the learned Judicial Magistrate First Class, Sailu, Dist. Parbhani, below Exhibit No.1 in Criminal M. A. No.185/2019.

(2)

2. According to the petitioners, there is dispute as regard approach way to Gut No.23 between the petitioners and respondent No.2. On 23/06/2018, respondent No.2 and others beaten the petitioners, and therefore, the petitioners had filed report against accused persons including respondent No.2, wherein crime for the offence punishable under Section 307 of the Indian Penal Code and other Sections was registered by Charthana Police Station, Tq. Jintur, Dist. Parbhani. Thereafter, to counterblast the said FIR, respondent No.2 also filed complaint with Charthana Police Station on 29/04/2019 alleging that the petitioners abused and threatened him. The Police registered N.C.R. No.68/2019. Mr Murkute, learned Advocate for the petitioners invited attention of this Court on the contents of the said N.C. report. As per the said contents, it is alleged that, on 28/04/2019, one Bababrao Aghav had quarrelled with respondent No.2 on account of giving complaint against petitioners. Thereafter, his children came there and they also abused and assaulted him. According to Mr Murkute, learned Advocate for the petitioners, since the Police did not register serious offence against the petitioners, respondent No.2 lodged another private complaint by exaggerating the contents on the basis of same incident. The said complaint was lodged by respondent No.2 on 03/07/2019 before the learned Judicial Magistrate First Class, Sailu,

(3)

Dist. Parbhani. In paragraph No.4 of the said complaint, serious allegations have been levelled in respect of same incident which took place on 28/04/2019. According to respondent No.2, the accused persons armed with weapons, they assaulted him and also threatened him.

3. In pursuance of the aforesaid complaint, the learned Judicial Magistrate First Class issued process against all the accused persons vide order dated 08/11/2019. The said order of issuance of process dated 08/11/2019 came to be challenged by the petitioners by filing revision petition before the learned Additional Sessions Court, Parbhani, which came to be registered as Criminal Revision No.179/2019. The learned Sessions Court, while disposing of the said criminal revision, partly allowed the same. The learned Sessions Judge, vide said order, set aside the order of issuance of process against the revision applicant No.1 i.e. Babarao Gyanba Aghav. However, as regards the order of issuance process against revision applicant Nos.2 to 4 i.e. petitioners herein, was maintained. The petitioners are challenging the said order in the instant petition.

4. Mr Murkute, learned Advocate for the petitioners points out that, if at all the allegations as levelled by respondent No.2 vide his complaint dated 03/07/2019 are taken to be true on their face value, the

(4)

victim has not suffered any injury at the hands of the accused persons and there was no medical examination to that effect as regards assault. He also points out that learned Judicial Magistrate First Class, before passing the order of issuance of process against the petitioners, has not called report from the Police, and therefore, according to him, the order of issuance of process against the petitioners is illegal and same is required to be quashed and set aside. He further submits that had respondent No.2 been not satisfied with the registration of N.C. report against the petitioners vide his complaint dated 29/04/2019, in view of the provisions of Section 154(3) of the Code of Criminal Procedure, he was required to approach before the higher Police Officer in order to canvass his grievance. Having failed to do so, respondent No.2 directly approached the learned Judicial Magistrate First Class by filing private complaint. He also submits that there is no whisper in the complaint filed by respondent No.2 that the Police have not recorded his report according to his grievance. In view of the aforesaid submissions, Mr Murkute submits that the impugned order of issuance of process against the petitioners is abuse of process of Court and the same is required to be quashed and set aside.

5. Per contra, Mr Choure, learned Advocate holding for Advocate Mr Karad for respondent No.2 submits that the complaint

(5)

filed by respondent No.2 is self explanatory and the learned Judicial Magistrate First Class, after recording the verification of respondent No.2, has rightly issued process against the petitioners/accused persons. He supports the said impugned order and submits that the present petitioners are liable to be prosecuted for crime they have committed, and as such, he prays for dismissal of this petition.

6. Learned APP Ms Bhosale for respondent/State supports the submissions of learned Advocate for respondent No.2 and prays for dismissal of this petition.

7. After going through the entire record and submissions made by learned Advocates for the respective sides, it is clear that initially, there was dispute between the parties pertaining to the approach way to the agricultural field. Initially, the petitioners themselves had filed report against the accused person including respondent No.2. Thereafter, respondent No.2 also filed report with the Police Station on 29/04/2019, which ultimately came to be registered as N.C. Having not satisfied with the said registration of the serious offences, respondent No.2 approached the learned Judicial Magistrate First Class by filing private complaint. In paragraph 4 of the said complaint, he tried to exaggerate the incident only with

(6)

intension to register serious offence against the petitioners. There is no appropriate response from the learned Advocate for the respondent No.2, as to what prompted respondent No.2 for filing such report on 29/04/2019 before the Police Station where respondent No.2 alleged to have been assaulted by the petitioners. Learned Advocate Mr Murkute for the petitioners is justified in saying that learned Judicial Magistrate, without verifying the dispute between the parties and without calling the police report, has wrongly issued process against the petitioners/accused persons.

8. In that view of the matter, the petitioners have made out case. The petition is allowed. The the order dated 08/04/2021, passed by the learned Additional Sessions Judge Parbhani, below exhibit No.1 in Criminal Revision Application No.179/2019 to the extent of the petitioners herein and the order dated 08/11/2019, passed by the learned Judicial Magistrate First Class, Sailu, Dist. Parbhani, below Exhibit No.1 in Criminal M. A. No.185/2019 are hereby quashed and set aside.

[SUSHIL M. GHODESWAR, J.]

sjk