IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

925 CRIMINAL WRIT PETITION NO. 1636 OF 2024

Anandkumar Saudagar Mirgane,
Age: 33 years, Occu: Service,
R/o: Bhagwant Colony, Alipur Road,
Barshi, Tal. Barshi Dist. Solapur **……Petitioner**

Versus

Chaya Shankarrao Kuhire,
Age: 61 years, Occu: Retired,
R/o: Yashwant nagar, Ambad road,
Tal. & Dist. Jalna **….…..Respondent**

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Ms. Pradnya S. Talekar i/b Talekar And Associates, Advocate for the Petitioner
Mr. Mangesh M. Tade, Advocate for the Respondent

CORAM : Y. G. KHOBRAGADE, J.

DATE : 03.01.2025

Oral Judgement :-

1. Rule. Rule made returnable forthwith. With the consent of both the sides, it is heard finally at the stage of admission.

2. By the present Petition, the Petitioner prayed to quash and set aside the proceeding bearing SCC No.945 of 2024 and order dated 20.07.2024 passed by the learned Judicial Magistrate

First Class, Jalna, thereby issued process against the present Petitioner for the offence punishable under Sections 199 and 200 of the Indian Penal Code.

3. The learned counsel appearing for the Petitioner canvassed that, the Respondent instituted a Criminal Complaint SCC No. 945 of 2024 before the J.M.F.C., Jalna, alleging that after death of her married daughter, namely, Smt. Sneha, the wife of the petitioner in pandemic COVID-19 on 21.08.2021, the Petitioner misused his powers being a Block Development Officer(BDO) and on the basis of false and fabricated documents, he tried to get financial benefit and started giving trouble to her. On 21.07.2023, the Petitioner/Accused submitted an application for transfer of vehicle with Sub-Regional Transport Office, Nagewadi and intentionally furnished his false address showing that he is presently residing at Income Tax Colony, Jalna, though he is residing at Barshi, Dist. Solapur and posted in Panchayat Samiti office, Mohol Tq. & Dist. Solapur. The petitioner/ accused is giving her trouble due to false and fabricated documents. She submitted an application before the Competent Court seeking permission to meet her grand-son, namely, Anvik, the son of her deceased daughter and the petitioner, however, the petitioner made a

statement that his son Anvik is studying in junior KG at Mohol Dist. Solapur which is 700 km away from Jalna. Therefore, the Petitioner/ accused intentionally prepared false and bogus documents and showed his address as Income Tax Colony, Jalna. Therefore, the Petitioner/ accused committed offence under Sections 199 and 200 of the IPC.

4. Per contra, the learned counsel appearing for the Respondent-Complainant canvassed in vehemence that the Petitioner furnished undertaking with the Regional Transport Office on 22.08.2024 and disclosed his address R/o Income Tax Colony, Railway Station Road, Jalna and it is his permanent address. Further, the Petitioner executed affidavit before the Regional Transport office (RTO) Jalna and showed his address R/o Income Tax Colony, Jalna while seeking transfer of ownership of vehicle (Maruti Suzuki) bearing No. MH 21 BF 1085. However in the proceeding of custody of the child, the Petitioner has given his address R/o Mohol Dist. Solapur. Therefore, the Petitioner has committed offence under Sections 199 and 200 of the IPC. Accordingly, on 20.07.2024, the learned Judicial Magistrate First Class, Jalna passed the impugned order and issued process against the Petitioner for the offence

punishable u/s 199 and 200 of the Indian Penal Code. Therefore, the impugned order is just and proper and it is not amount to abuse process of law, hence, prayed for dismissal of the petition.

5. Section 199 of IPC provides that, whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

Section 200 of IPC provides that, whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

6. In the case of ***Chandrapal Singh AIR 1982 Criminal LJ 1731 equivalent AIR 1982 SC 1238***, it has been held that, the complaint for an offence under Section 199 of IPC must make out the offence by signing out false averment in the complaint. Thus where the allegation was that the accused had used a false affidavit before

the Rent Controller but the complaint did not set out a single averment from the said affidavit which is said to be false, it was held that the complaint was not maintainable.

7. In the case of ***Jagannath Singh V. State of Madhya Pradesh, 2011 Criminal LJ 3008 (MP)***, the Madhya Pradesh High Court held that the Petitioner has appeared as surety in favour of an accused person. He had filed his affidavit, bail declaration form and title document. It is revealed that, surety was unknown to the accused of crime. He was not competent for furnishing bail for accused. It was further revealed that Petitioner filed false declaration as well as false affidavit in support of the said declaration under these circumstances, it has been held that there is no illegality in framing the charge under Section 199 of IPC.

8. In the case of ***Anil Kapoor Vs. Finance-cum-Health Secretary, Chandigarh, 1974 Cr LJ 862 (P&H),*** it has been held that where a candidate appended a false affidavit to his application to the Director of Health Services seeking admission to M.B.B.S. Course against the reserved quota. Under these circumstances, it has been held that, it being not a declaration which any Court or public servant or other person was bound or authorised by law to receive as

evidence of a fact, the accused could not be held guilty under Section 199/200 of IPC.

9. Similarly, in the case in hand, the present Petitioner appears to be executed the affidavit before the Sub-Regional Transport Office, Jalna showing his current address R/o Bhagwant Colony, Barshi Tq. Barshi Dist. Solapur and temporary address R/o Income Tax Colony, Jalna. The Petitioner furnished his address as Income Tax Colony Railway Station Road, Jalna while furnished undertaking with the Transport Authority for transfer of the vehicle. The Sub-Regional Transport Office, Jalna is not the authority under the law to receive any evidence. Moreover, the said address appears to be given for the sake of convenience and future correspondence. The Petitioner has given his address as Bhagwant Colony, Barshi, Tq. Barshi, Dist. Solapur. The petitioner is working as a Block Development Officer with Panchayat Samiti, Mohol Tq. & Dist. Solapur and residing at Barshi, Dist. Solapur. Therefore, to my view, no offence is constituted u/s 199, 200 of IPC as alleged by the Respondent/ complainant. So also, the allegations made in the complaint are not sufficient to issue process as against the present Petitioner. The impugned order of issuance of process by the learned

Judicial Magistrate for the offence under Section 199 and 200 of IPC which is wholly unjustifiable, groundless as well as without considering the scope of Section 199 and 200 of IPC and continuing the prosecution against the petitioner is certainly abuse of process of law. Therefore, the complaint beaing SCC No.945 of 2024 is liable to be quashed and set aside. Resultantly, the order of issuance of process passed by the learned Judicial Magistrate First Class, Jalna on 20.07.2024 is hereby quashed and set aside. Accordingly, Rule is made absolute in above terms.

[Y. G. KHOBRAGADE, J.]

HRJadhav