THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1081 OF 2013
WITH
CRIMINAL WRIT PETITION NO. 1082 OF 2013
WITH
CRIMINAL WRIT PETITION NO. 1083 OF 2013

1] Ajaykumar Laxminarayan Kogta,
Age-43 years, Occupation-Medico,
R/o. Near New Bus Stand,
Sangita Building, Jalgaon.

...**Petitioner**

VERSUS

1] Rajkumar Laxminarayan Kogta,
Age-41 years, Occupation-Trade
R/o. At 18- A,Ramdas Colony,
Near Soft-aid, Computers, Jalgaon.

2] The State of Maharashtra
Through the Superintendent of Police,
Jalgaon. **...Respondents**

WITH
CRIMINAL APPLICATION NO. 4108 OF 2024
IN
CRIMINAL WRIT PETITION NO. 1081 OF 2013

1] Rajkumar Laxminarayan Kogta,
Age-52 years, Occupation-Trade
R/o. At 18- A,Ramdas Colony,

Near Omkareshwar Temple,
Jalgaon, Dist.Jalgaon. …**Applicant**

VERSUS

1] Ajaykumar Laxminarayan Kogta,
Age-43 years, Occupation-Medico,
R/o. Near New Bus Stand,
Sangita Building, Jalgaon.

2] The State of Maharashtra
Through the Superintendent of Police,
Jalgaon.
Tq.Yawal,Dist.Jalgaon. **...Respondents**

WITH
CRIMINAL APPLICATION NO. 4114 OF 2024
IN
CRIMINAL WRIT PETITION NO. 1082 OF 2013

1] Rajkumar Laxminarayan Kogta,
Age-52 years, Occupation-Trade
R/o. At 18- A,Ramdas Colony,
Near Omkareshwar Temple,
Jalgaon, Dist.Jalgaon. …**Applicant**

VERSUS

1] Ajaykumar Laxminarayan Kogta,
Age-55 years, Occupation-Medico,
R/o. Near New Bus Stand,
Sangita Building, Jalgaon.

2] The State of Maharashtra
Through the Superintendent of Police,
Jalgaon.
Tq.Yawal,Dist.Jalgaon. **...Respondents**

WITH

CRIMINAL APPLICATION NO. 4111 OF 2024
IN
CRIMINAL WRIT PETITION NO. 1083 OF 2013

1] Rajkumar Laxminarayan Kogta,
Age-52 years, Occupation-Trade
R/o. At 18- A,Ramdas Colony,
Near Omkareshwar Temple,
Jalgaon, Dist.Jalgaon. ...**Applicant**

VERSUS

1] Ajaykumar Laxminarayan Kogta,
Age-55 years, Occupation-Medico,
R/o. Near New Bus Stand,
Sangita Building, Jalgaon.
Dist.Jalgaon.

2] The State of Maharashtra
Through the Superintendent of Police,
Jalgaon.
Tq.Yawal,Dist.Jalgaon. **...Respondents**

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Advocate for Petitioner in all writ petitions : Mr.Kshitij Surve
h/f. Mr. Hemant Surve
Advocate for Respondents in all writ petitions and Advocate for Applicants in all three criminal applications : Mr.Navin S.Shah
h/f. Mr. Swapnil S.Patil
APP for Respondents/State in all matters : Mrs. Ashlesha S.Deshmukh

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CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 07th APRIL 2025

PRONOUNCED ON : 22nd APRIL 2025

JUDGMENT :

1. Rule. Rule is made returnable forthwith by the consent of the parties. Heard finally.

2. These petitions are emanating from three distinct complaints instituted by the respondents against the petitioner. The orders of issuance of process passed by trial magistrate and revisional court's orders confirming them are impugned in these petitions. I propose to decide them by common order as relevant facts and circumstances are common.

3. Petitioner and Respondent No.1 and real brothers. They were part of the joint family till october 2008. Petitioner was orthopedic surgeon and the respondent No.1 was in the business of selling of ayurvedic and herbal medicines. It is alleged that petitioner was looking after the matters relating to bank, income tax and investments for and on behalf of the respondent no.1. It is alleged that petitioner wanted to grab the property and share of the Respondent No.1, hence, he opened bogus accounts in various banks by committing forgery. He managed to operate the account and defalcated the amount of the respondent. On these foundational

facts, Respondent No.1 lodged following proceedings :

a) **Regular Criminal Case No. 703 of 2010**:

It is alleged that petitioner opened bogus accounts in the name of respondent and his wife and grabbed amount of 11 cheques. Already R.C.C No. 435 of 2010 was filed by respondent. Petitioner instigated father to lodge false offence against the complainant for demanding Rs.1 crore as ransom from father. It was being done to pressurize the complaint for withdrawing R.C.C No. 435 of 2010. By forged signatures of complaint, saving account was opened in the name of the complainant. By operating the said account in collusion with employees of the bank, complainant was deceived.

b) **Regular Criminal Case No. 740 of 2010**:

Petitioner is alleged to have opened false account of complainant in Bank of Maharashtra. From 19.09.2005 to 02.03.2009, the cheques of the complainant were deposited in the said account and amounts were withdrawn by the petitioner. Thus, the mischief was done in collusion with officers of the bank.

c) **Regular Criminal Case No. 739 of 2010.** It is alleged that two bogus accounts were opened in IDBI bank in the name of complainant and his wife by forged signatures and amounts were transferred under the signature of complainant. One such false account was also opened in the name of complainant with Jalgaon Merchant Co.Bank Ltd. in collusion with the officers of the bank. Petitioner is alleged to have entered into bank transactions and deceived the complainant.

4. Learned counsel Mr.Surve for petitioner submits that process in all matters were issued mechanically without following due procedure of law and ignoring report of police under section 202 of Cr.P.C (Section 225 of B.N.S.S). He would submit that dispute between the parties is civil in nature and the frivolous complaints are filed due to strained relations between real brothers. He would submit that no ingredients of offence under Sections 420 and 472 of I.P.C exists. Complaints were filed beyond limitation. It is further submitted that after receiving report, magistrate should have inquired himself under Section 202 (1) of code, if he was not satisfied with the report of the police. It is submitted that it would be abuse of process of law to drag petitioner to face prosecution.

5. Reliance is placed on the judgment of Supreme Court in the

matter of **Shiv Jatia v. Gian Chand Malick and Ors.** reported in 2024(4) SCC 289.

6. The contesting Respondent No.1 is represented by learned counsel Mr.Shah who would submit that complaint of the Respondent No.1 was very specific disclosing incriminating role of the petitioner. The ingredients of offence under Sections 420,465 and 472 of code are made out and process was rightly issued. It is further submitted that before issuing process, verification was recorded and report of the police was called for which is due exercise of power. It is further submitted that impugned orders can not be faulted for the lapses on the part of investigating officer to conduct proper inquiry. It is submitted that inquiry at length is not contemplated while issuing the process, which is not mini-trial. Both the courts below have rightly exercised the jurisdiction and no interference is called for.

7. Reliance is placed on the judgment of Supreme Court in the matters of **Sonu Gupta vs. Deepak Gupta And Others** reported in (2015) 3 SCC 424 and **Kamal Shivaji Pokarnekar vs. State of**

Maharashtra And Others reported in (2019) 14 SCC 350.

8. In each proceedings before magistrate, first verification was recorded and thereafter report of investigating officer was called for under section 202 of code. After receiving the report, process was issued which was challenged before revisional court. Following are the undisputed events which are relevant for consideration :

Criminal Writ Petition Nos.	**R.C.C Nos. before J.M.F.C**	**Date of verification**	**Date of Police Report**	**Date of issuance of process**
1081 of 2013	703 of 2010	22.12.2010	07.03.2011	01.10.2012
1082 of 2013	739 of 2010	19.01.2011	04.06.2012	01.10.2012
1083 of 2013	740 of 2010	20.01.2011	14.03.2011	01.10.2012

9. At the outset, the submission of learned counsel Mr.Surve appearing for petitioner that incident in question took place long back and the complaints are filed belatedly and they are not entertainable in view of Sections 468 and 469 of the code, can not be approved. Considering the punishment prescribed to the offences in question, the objection of the plea of limitation is liable to be rejected.

10. In each case, the verification was recorded on a particular date

and magistrate thought it fit to call for report from police resorting to section 202 (1) of code. Magistrate was not satisfied with the contents of complaints, the documents and verification on record at that stage. Hence, issuance of process was postponed. In each case, independent inquiry was conducted by the police under section 202(1) of the code. A distinct reports of investigation were submitted in each matters on the date given in earlier paragraphs. Thereafter orders of issuance of process were passed by the magistrate.

11. As per the orders of magistrate, investigation was conducted by the police officer. Those reports are on record. Reports in Criminal Writ Petition No.1081 of 2013 and Criminal Writ Petition No.1083 of 2013, candidly disclosed that due enquiry was conducted not only with the parties by recording their statements but also by verifying the record of the concerned bank. On the basis of that enquiry, it was reported that no offence was made out as alleged by Respondents. In both the matters, adverse reports were given under Section 202(1) of code.

12. In case of Criminal Writ Petition No.1082 of 2013 statement of

complainant was recorded by investigating officer. The record of the bank was not made available to the police officer. Accordingly, report under Section 202(1) was submitted to the magistrate.

13. After receiving reports in all matters, it was the duty of magistrate to inquire into the case himself more specially when reports in first two matters were adverse. Without resorting to the said procedure, the orders of issuing process were passed which is against section 202 (1) of the code. No fresh material was before magistrate after the reports of the investigation were received so as to get satisfied for prima-facie case.

14. Magistrate in all matters has discarded the reports of the investigation. He fell back onto the contents of complaints and found prima-facie case. Initially while calling for the report under section 202(1), he was not satisfied with the complaint and verification and thought it fit to have investigation into the matter by the police. This exercise is not only arbitrary but against statutory procedure. Revisional court failed to appreciate this aspect of the matter and it has also committed error of jurisdiction. Considering reports of the police investigation in all matters, it would be abuse of process of

law to permit Respondent No.1 to proceed against the petitioner.

15. Learned counsel Mr.Surve has rightly referred to judgment of Supreme Court in the matter of **Shiv Jatia** (supra). In that case appellant was prosecuted in a complaint lodged by respondent/ complainant under section 200 of code. Magistrate recorded statements of three witnesses but the process was not issued. Instead of that report of the police was called for under Section 202 postponing issuance of process. Without waiting for reports and without conducting an enquiry himself, the process was issued against the appellant. Appellant approached High Court for quashing, unsuccessfully. Thereafter he was before the Supreme Court. In that context following observations are made :

> "11. After recording the evidence of the three witnesses and perusing the documents on record, the learned Magistrate passed the order calling for the report under Section 202 of the Code of Criminal Procedure He postponed the issue of the process. The learned Magistrate ought to have waited until the report was received. He had an option of conducting an inquiry contemplated by Sub-section (1) of Section 202 of the Code of Criminal Procedure himself due to the delay on the part of the Police in submitting the report. But, he did not exercise the said option. For issuing the order of summoning, the learned Magistrate could not have relied upon the same material which was before him on 15th December 2011 when he passed the order

> calling for the report Under Section 202 of the Code of Criminal Procedure. The reason is that, obviously, he was not satisfied that the material was sufficient to pass the summoning order. It is not the case of the 1st Respondent-complainant that when the learned Magistrate passed the order dated 16th July 2013, there was some additional material on record. At least, the order of the learned Magistrate does not say so. The order does not even consider the earlier order dated 15th December 2011 calling for the report Under Sub-section (1) of Section 202 of the Code of Criminal Procedure. The order issuing process has drastic consequences. Such orders require the application of mind. Such orders cannot be passed casually. Therefore, in our view, the learned Magistrate was not justified in passing the order to issue a summons."

. In the present matter also magistrate has fallen into error of jurisdiction identical to that of reported judgment. Ratio is squarely applicable to cases in hand.

16. The process was issued on 01.10.2012 in each matter, before 13 years back. The investigation reports are very candid. In all probabilities *inter se* family dispute would be caused to wreck the allegation and implicate the employees of the bank in it. In my considered view these are not the fit matters for remand.

17. Reliance is placed by the respondents on the judgment of **Sonu Gupta** reported in (2015) 3 SCC 424. I have gone through

paragraph nos 8 to 11. This Court is bound by the law laid down by Apex Court. Petitioner in the present case is not relying on any defence but ground of mandatory procedure and purport of investigation report. Cited case is distinguishable and it would not enure to the benefit of the Respondents.

18. Another judgment relied upon by the respondents of Supreme Court in the matter of **Kamal Shivaji Pokarnekar** (supra). I have gone through paragraph Nos. 4 and 9 of the judgment. It is clear cut distinguishable from the facts of present case. In present case I have not approved the submission of the petitioner that dispute is civil in nature neither I am dealing with the merits of the contentions of the parties. This judgment is also not helpful to the respondents.

19. The above analysis leads to following conclusions :

a) Criminal Writ Petitions are allowed.

b) Impugned orders of issuance of process passed on 01.10.2012 in R.C.C No. 739 of 2010, R.C.C No. 740 of 2010 and R.C.C No. 703 of 2010 as well as judgment and order dated 05.04.2013 passed in Criminal Revision Application No.279 of 2012 and Criminal

Revision Application No.277 of 2012 and judgment and order dated 06.04.2013 passed in Criminal Revision Application No.278 of 2012 are quashed and set-aside.

c) Consequently, R.C.C No. 739 of 2010, R.C.C No. 740 of 2010 and R.C.C No. 703 of 2010 are dismissed.

d) All Criminal Applications are disposed of.

e) Rule is made absolute in above terms.

[SHAILESH P. BRAHME, J.]

vsj