

13 CRIMINAL WRIT PETITION NO. 1383 OF 2021

1. Ajay S/o. Nandkumar Choudhari,
Age: 38 years, Occu: Business,
R/o. Flat No.24 & 25, V. K. Market,
Devki Apartment, Pandariba, Aurangabad.
 2. Nandkumar S/o. Venkatdas Choudhari,
Age: 62 years, Occu: Business,
R/o. Flat No.24 & 25, V. K. Market,
Devki Apartment, Pandariba, Aurangabad
- ...PETITIONERS**
(Original Accused No.1 & 2)

VERSUS

1. Harjitsing S/o. Tirathsing Sawhney,
Age: 58 years, Occu: Business,
R/o. House JH No.5/155/1-P-1,
Osmanpura, Aurangabad. ...**(Original Complainant)**
2. The State of Maharashtra
(Through P.P. High Court, Aurangabad) ...**RESPONDENTS**

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Mr. Satyajit S. Bora, Advocate for the Petitioners
Mr. Harjitsing Tirathsing Sawhney, Respondent No.1-Party in person
Mr. K. K. Naik, APP for Respondent No.2-State

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**WITH
CRIMINAL APPLICATION NO. 330 OF 2022
IN WP/1383/2021**

Harjitsing S/o. Tirathsing Sawhney,
Age: 58 years, Occu: Business,
R/o. House JH No.5/155/1-P-1,
Osmanpura, Aurangabad.

**...Applicant
(Respondent No.1)**

VERSUS

1. Ajay S/o. Nandkumar Choudhari,
Age: 38 years, Occu: Business,
R/o. Flat No.24 & 25, V. K. Market,
Devki Apartment, Pandariba, Aurangabad.
2. Nandkumar S/o. Venkatdas Choudhari,
Age: 62 years, Occu: Business,
R/o. Flat No.24 & 25, V. K. Market,
Devki Apartment, Pandariba, Aurangabad **..(Non-Applicants)
(Petitioners)**
3. The State of Maharashtra **...(Non-Applicant)
(Formal Party)**

...

Mr. Harjitsing Tirathsing Sawhney, Applicant-party-in-person
Mr. Satyajit S. Bora, Advocate for Non-Applicant No. 1 & 2
Mr. K. K. Naik, APP for the Non-Applicant No.3-State

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 03.02.2025

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and with consent of both the parties, heard finally at the stage of admission.
2. Heard at length Adv. Bora, the learned counsel for the Petitioners and Mr. Harjitsingh S/o Tirathsing Sawhney party-in person and the learned APP Mr. Naik for the State.

3. The Respondent No. 1 / original Complainant filed Criminal Application No.330 of 2022 in Criminal Writ Petition No.1383 of 2021 and prayed for production of documents. The Petitioners / original Accused have not seriously resisted the Application. Since, the Respondent No. 1 / Original complainant wanted to produce documents, production of documents granted. Hence, Criminal Application No. 330 of 2022 is disposed off.

4. The Petitioners in Criminal Writ Petition No.1383 of 2021 prayed for quash and set aside the order dated 04.08.2021 passed by the learned Additional Session Judge,-14, Aurangabad, in Criminal Revision Application No.203 of 2017, whereby affirmed the order of issuance of process passed by the learned Judicial Magistrate First Class, Aurangabad, on 09.02.2016 in Regular Criminal Case No. 2039 of 2015 for the offence punishable u/s 379 of I.P.C.. The Petitioners have also prayed for quash and set aside R.C.C. No. 2039 of 2015 pending on the file of learned Judicial Magistrate First Class, Aurangabad. The Petitioners 1 & 2 are original Accused Nos. 1 & 2, whereas, the Respondent No. 1 is the original Complainant in R.C.C. No. 2039 of 2015.

5. Having regard to the submissions canvassed on behalf of both the sides, I have gone through record. It is a matter of record that, Mr. Tirathsing Sawhney, the father of present Respondent No.1 and Shri. Paramjitsingh Tirathsingh Sawhney had filed three complaints bearing S.C.C. Nos. (i) 8817 of 2007 (Tirathsingh Vs. Ajay Nandkumar Choudhari), (ii) 9030 of 2007 (Tirathsingh Vs. Ajay Nandkumar Choudhari) and (iii) 9031 of 2007 (Tirathsingh Vs. Ajay Nandkumar Choudhari) for the offences punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred as N.I. Act).

6. On 01.03.2013 after full fledged trial, the learned Judicial Magistrate First Class, Aurangabad passed judgment and order in S.C.C. No.8817 of 2007 and S.C.C. No.9030 of 2007 and acquitted the accused therein for the offence punishable under Section 138 of the N.I. Act.

7. On 18.06.2013, the learned Judicial Magistrate First Class passed an order in S.C.C. No.9031 of 2007 (Tirathsingh Sawhney) (dead) through his legal heir Shri Harjitsing S/o. Tirathsing Sawhney, and thereby acquitted the accused therein.

8. Being aggrieved by the said order of acquittal of the accused persons, the Complainant, through his legal heir filed Criminal Application No.2221 of 2013 with Application No.2222 of 2013 and Application No.3680 of 2013 and challenged the orders of acquittal of accused by seeking leave to file Appeal.

9. On 21.11.2014, this Court (Coram: T. V. Nalawade, J.) passed an order and refused to grant leave to file Appeal against the orders of acquittal of the accused persons under Section 138 of the Negotiable Instruments Act.

10. In case-in-hand it appears that, the Respondent No.1 lodged a F.I.R., on 22.01.2011 with Jinsi Police Station, Aurangabad alleging that, on 14.01.2011 his Activa Scooter bearing Registration No.MH-20-AV-911 along with important documents which were kept in dicky of Scooter stolen by some unknown person. On the basis of said report a Crime No. I-3 of 2011 registered with Jinsi Police Station against the unknown person for the offence punishable under Section 379 of IPC.

11. Though the Investigating Officer conducted investigation, but failed to trace out the Activa Scooter as well as the thief,

therefore, the Investigating Officer filed B-Summary Report on 01.04.2011.

12. Being aggrieved by said order of acceptance of B-Summary, the Respondent No.1/Informant filed Criminal Revision Application No.285 of 2011. The learned Additional Sessions Judge, Aurangabad passed an order in Criminal Rev. Appln. No. 285 of 2011 on 08.06.2012 and allowed said Revision by setting aside order of acceptance of B-Summary passed by the learned Magistrate on 01.04.2011 and remanded trial to the learned Judicial Magistrate for disposal according to the law by giving opportunity of hearing to the State. However, in the meanwhile, Respondent No.1 filed private Complaint R.C.C. No.2039 of 2015 before the JMFC, Aurangabad alleging that, as per his report a Crime No. I-3 of 2011 was registered against the Petitioner / Accused and ors., however, the Investigating Officer under the influence of the accused persons filed a B-Summary report. Respondent No.1 / Complainant further alleged that, the accused No.1 (Ajay Nandkumar Choudhari) & Accused No.2 (Nandkumar S/o Venkatdas Choudhari) with the help of accused No.3 (Paramjit Singh T. Sawhney) stolen the original Cheque Book, Bank memo and Notices which are subject matter of S.C.C. No.8817

of 2007, S.C.C. No.9030 of 2007 and S.C.C. No.9031 of 2007. Further, the accused Nos. 1 to 3 have given different statements in respect of possession of original cheques. Therefore, the accused 1 to 3 have committed an offence under Section 379 of IPC, but the Police authority filed B-Summary Report without proper investigation.

13. Needless to say that, on 09.02.2016, the learned JMFC passed an order and issued summons to the accused Nos. 1 to 3 for the offence under Section 379 of the IPC for committing theft of Activa Scooter and documents.

14. Being aggrieved by the order of issuance of summons the accused Nos. 1 & 2 filed Criminal Revision No.203 of 2017. On 08.07.2021, the learned Sessions Court passed an order and dismissed criminal revision of the Accused 1 to 3. The accused No.3 / Paramjit Singh T. Sawhney filed the Cri. Rev. No.68 of 2016. On 05.06.2017, the learned Additional Sessions Judge, Aurangabad passed an order and allowed Cri. Rev. No.68 of 2016 and set aside order dated 09.02.2016 passed by the learned JMFC in R.C.C. No.2039 of 2015.

15. Being aggrieved by said order, Respondent No.1 /

Original Complainant filed Cri. W. P. No.1458 of 2017. On 04.09.2018 (Coram: Mangesh S. Patil, J.) passed an order holding that, the earlier Crime is still pending and further progress in the matter is awaiting in view of rejection of summary report by the Learned Magistrate, the Petitioner instead of filing the Second complaint, he would have insisted for further progress in the earlier matter. This Court further observed that, the learned Additional Sessions Judge has simply pointed out couple of irregularities in the form of absence of list of witnesses, which is mandatory in view of Sub Section 2 of Section 204 of the Cr.P.C., and failure on part of the Magistrate for not taking recourse to Section 210 of Cr.P.C.

16. Thereafter, the original accused Nos.1 and 2 filed Criminal Revision 203 of 2017 challenging order of issuance of summons dated 09.02.2016 after lapse of considerable period. On 04.08.2021, the learned Additional Sessions Court passed the impugned order and dismissed the Revision as it is barred by limitation.

17. Needless to say that, while passing the order dated 06.07.2017, the learned Additional Sessions Judge considered scope of Section 210 of Cr.P.C., and held that, when the proceeding is

commenced on the private complaint, it is mandatory on part of the Magistrate to scrupulously follow Section 204 and 210 of Cr.PC. The judgment and order dated 04.09.2018 passed by this Court in Writ Petition No.1458 of 2017 itself shows that earlier crime was registered in respect of theft of Aactiva Scooter. On investigation, the I.O. filed B-Summary, which was accepted by the learned Magistrate but as per order dated 05.06.2017 passed in Cri. Rev. No.68 of 2016 by the learned Revisional Court, inquiry was in progress, however, the Petitioner instead of filing of second complaint could have insisted for further progress in the earlier matter.

18. Under these facts and circumstances of the case, questions are arises that,

(a) Whether the trial of two cases arising out of the Police report and the private complaint can be tried together?

OR

(b) Whether the private complaint filed by the Informant subsequent to the acceptance of B-Summary report can be continued independently?

19. In order to ascertain the answer it will be appropriate to incorporate Section 210 of Cr.PC., which provides as under;

Sec. 210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.--

“(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the Police Officer conducting the investigation.

(2) If a report is made by the investigating police officer under Section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.”

20. On bare reading of provisions of Section 210 of Cr.PC., it makes clear that, during an inquiry or trial relating to a complaint case, if it is brought to the notice of the Magistrate that investigation by the police is in progress in respect of the same offences, he shall stay the proceeding of the complaint and called for the record of the

police Officer conducting investigation.

21. In case of ***Harjinder Singh vs State Of Punjab And Others (1985) 1 SCC 422***, it is held that, under Section 223 of the Code to club and consolidate two cases, one on a police challan and other on complaint, if the prosecution version in two cases are materially different, contradictory and mutually exclusive should not be consolidated but should be tried together with the evidence in two cases being proceeded separately, so that both the cases could be disposed of simultaneously.

22. In case of ***Sankaran Moitra vs Sadhna Das & Another (2006) 4 SCC 584***, wherein the Hon'ble Supreme Court considered the question that, whether Section 197 of the Code of Criminal Procedure is attracted and sanction as required by that section is sine-qua-non for prosecuting the appellant and other police officers and whether the Chief Judicial Magistrate was justified in taking cognizance of the complaint filed by the complainant and proceeding with the complaint. Secondly, whether the case is covered by Section 210 of the Code and the private complaint filed by the complainant in the Court of Chief Judicial Magistrate on 28.5.2001 against the accused persons for the offences punishable under Sections 302, 201,

109 and 120-B of IPC could be proceeded with or required to be stayed?

23. In this context, the Hon'ble Supreme Court considered the scope of Section 210 of Cr.P.C. and held that before invoking Section 210 of the Code the following conditions must be satisfied, following criteria such as:

(i) there must be a complaint pending for inquiry or trial;

(ii) investigation by the police must be in progress in relation to the same offence;

(iii) a report must have been made by the police officer under Section 173; and

(iv) the Magistrate must have taken cognizance of an offence against a person who is accused in the complaint case.

In paragraph No.81, the Hon'ble Supreme Court considered the case of **Harjinder Singh** cited (supra) and held that, both the cases can not be clubbed together since the prosecution version quite different in those cases.

24. In case of **Banchhanidhi Mahapatra And Ors. vs State Of Orissa And Anr. 1992CRILJ1739**, the learned Orissa High Court observed that, the FIR was lodged and the Magistrate has taken

cognizance on the basis of final police report and in the meantime, a complaint case was filed for the same offences, cognizance of which was taken. Under this circumstance, Section 210 would not apply because complaint was instituted and charge-sheet had already submitted and no police investigation was in progress. Therefore, clubbing of both cases together is impermissible.

25. In case-in-hand it *prima facie* appears that, the Investigating Officer filed a B-Summary Report in respect of the Crime No. I-3/2011 registered with Jinsi Police Station for the offence under Section 379 on the report lodged by the Respondent No.1, but the Investigating Officer had filed B-Summary report. On 01.04.2011, the learned Judicial Magistrate passed an order accepting B Summary Report.

26. It is not in dispute that, on 08.06.2012, the learned Additional Sessions Judge passed the order in Cri. Rev. Appln. No. 285 of 2011 and set aside order of acceptance of B-Summary passed by the learned Magistrate on 01.04.2011 and remanded trial to the learned Judicial Magistrate for disposal after providing opportunity of hearing to both sides. However, in the meanwhile, the Respondent No.1 filed private Complaint R.C.C. No.2039 of 2015

before the JMFC, Aurangabad. The Respondent / Complainant alleged that, on the basis of Report lodged by him a Crime No. I-3 of 2011 registered against the Petitioner/Accused and ors., but due to influence of the accused, the Investigating Officer filed a B-Summary report.

27. On perusal of Police Report as well as the private complaint it depicts that, the Respondent/complaint alleged about stealing of original Cheque Book, Bank memo and Notices by the Accused persons. On 04.09.2018 this Court passed the order in Cri. W. P. No.1458 of 2017 holding that, earlier crime was registered in respect of theft of Activa Scooter. The learned Magistrate had accepted B-Summary but by virtue of order dated 05.06.2017 passed in Cri. Rev. No.68 of 2016, investigation in Activa Scooter theft Report is in progress. Therefore, instead of filing of second complaint, the Complainant could have insisted for further progress in the earlier matter.

28. Since, the Respondent No.1 filed the private complaint subsequently to the Police Report for theft of Scooter and other, the documents are pertained to the same cause of action but the Investigating Officer failed to conduct a proper investigation, and no

charge sheet has been filed. Therefore, as per the law laid down and discussed hereinabove, the proceedings in R.C.C. No.2039 of 2015 and crime No I-3/2011 are required to be tried together by the learned Judicial Magistrate. Accordingly, I have answered question (a), holding that, the trial of two cases i.e. arising out of the police report and private complaint can be conducted together. In view of above discussion, the Criminal Writ Petition No.1383 of 2021 and Criminal Application No.330 of 2022 are hereby disposed off. Accordingly, Rule is discharged.

[Y. G. KHOBRADE, J.]