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23-APPLN-1867-2024

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

23 CRIMINAL APPLICATION NO. 1867 OF 2024

Hakkani Pasha Peerpasha Kadri And Others ...Applicants

VERSUS

The State Of Maharashtra And Another ...Respondents

...

Ms. Manjiri Achutrao Kulkarni, Advocate for Applicants.

Mr. S. B. Jadhav, APP for Respondent-State.

CORAM : KISHORE C. SANT, J.

DATE : 23rd JUNE 2025

PC :-

1. Heard Ms. Kulkarni, the learned Advocates for the applicants, and Mr. Jadhav, the learned APP for Respondent/State. The matter is heard finally at the stage of admission with the consent of both the parties.

2. By way of present Criminal Application, the Applicants have challenged an order passed by the learned Judicial Magistrate First Class (JMFC) Court No.2, Osmanabad, dated 27th November 2023 directing the Police Inspector, Osmanabad City Police Station, Osmanabad, to conduct investigation under Section 202 of the Code of Criminal Procedure, (Cr.P.C.) and file a report within 120 days. The learned Court

postponed the issuance of process in view of Section 202 of Cr.P.C. till filing of the report.

3. It is the case of the petitioner that the dispute is purely of civil nature. The parties are litigating before the Civil Court. One of the complainants is married to the daughter of informant. It is alleged by the complainant that the present petitioner is not sending his daughter for co-habitation. The complainant and the petitioner happens to be real brothers. In the complaint, there is an allegation that because of the matrimonial dispute, the present petitioner assaulted the complainant. There is also an allegation that the father of the complainant and the accused had deposited an amount of Rs.1.30 crores in a Fixed Deposit in the bank. The said amount is withdrawn by the accused. On that also, complaint was made. Because of the said complaint, the accused also threatened the complainant with dire consequences. With this, the complainant tried to lodge the FIR with the Police Station. However, the police refused to register the complaint, and therefore, private complaint was filed. The learned Magistrate also recorded a statement under

Section 200 of Cr.P.C. of the complainant. On this, the learned Magistrate has passed an order.

4. Learned APP, on the other hand, submits that it is within the discretion of the learned Magistrate, on receipt of the complaint, as to whether to issue direction under Section 156(3) of Cr.P.C. or to call for police report before passing further orders. He submits that this is purely a discretion vested with the Magistrate and there is nothing on record to show that he has exceeded the jurisdiction or passed order with material irregularity. He thus prays for rejection of the writ petition.

5. After hearing the parties, this Court finds that there are allegations made in the private complaint. The Magistrate has recorded statement under Section 200 of Cr.P.C. On recording the statement, the impugned order is passed. It is trite law that on receipt of the complaint, it is for the Magistrate to take proper course and to deal with the complaint in following three manners. (i), he can issue direction to the Police Station under Section 156(3) of Cr.P.C. (ii) he himself can record verification, take cognizance and issue process, and (iii) he may call for the police

report and then to decide whether to issue process or not considering the report. In the present case, the Magistrate has adopted the course of directing the police to make an inquiry and to submit a report. The process would be issued only thereafter if the Magistrate is satisfied. This is not a stage where the accused comes into the picture. As rightly submitted by the learned APP, the accused has approached this Court at a very premature stage. Considering this aspect, this Court finds that no case is made out calling for interference in the impugned order. Criminal Application is totally devoid of merit and deserves to be dismissed. Hence, the following order:

ORDER

- (i) Criminal Application stands dismissed and disposed off.
- (ii) Needless to state that these observations are only for the purpose of deciding this application. The learned Magistrate shall pass appropriate orders without being influenced by any of the observation made by this Court.

[KISHORE C. SANT, J.]