



IN THE HIGH COURT OF JUDICATURE AT BOMBAY :  
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO. 516 OF 2025

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- 1] Ragunath s/o Jagganath Kaulkar,  
Age: 53 years, Occ.: Service,  
R/o: Behind Bus Stand, Jalgaon Jamod,  
Tah.: Jalgaon Jamod, Dist.: Buldhana.
- 2] Nana s/o Shripat Dhandar,  
Age: 53 years, Occ.: Service,  
R/o: Uday Colony, Jalgaon Jamod,  
Tah.: Jalgaon Jamod, Dist.: Buldhana.
- 3] Valmik s/o Shankar Thakre,  
Age: 55 years, Occ.: Service,  
R/o: Prabhakar Nagar, Jalgaon Jamod,  
Tah.: Jalgaon Jamod, Dist.: Buldhana.
- 4] Bhagwan s/o Rajaram Devache,  
Age: 48 years, Occ.: Agriculturist,  
R/o: Wadshingi, Tah.: Jalgaon Jamod,  
Dist.:Buldhana
- 5] Nandkishor s/o Rameshwar Nimkarde,  
Age: 53 years, Occ.: Service,  
R/o: Behind Petrol Pump, Jalgaon Jamod,  
Tah.: Jalgaon Jamod, Dist.:Buldhana.

... **PETITIONERS**

- - V E R S U S - -

- 1] Puspa w/o Sahebrao Wagh,  
Age: 53 years, Occ.: Service,  
R/o: Behind Bus Stand, Jalgaon Jamod,  
Tah.: Jalgaon Jamod, Dist.:Buldhana.
- 2] The State of Maharashtra,  
Through Police Station Officer,  
P.S. Jalgaon Jamod.

... **RESPONDENTS**

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Mr. A.A. Naik, Senior Advocate for the Petitioners.

Mr. H.R. Gadhia with Mr. Aniket Sawal, Advocate for the  
Respondent No.1.

Mr. Bhagwan M. Lonare, A.P.P. for the Respondent No.2/State.

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**CORAM : M.M. NERLIKAR, J.**

**DATE : NOVEMBER 11, 2025.**

**Rule.** Rule made returnable forthwith. Heard finally  
with the consent of learned counsel for the parties.

2. The petition under Articles 226 and 227 of the

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Constitution of India, challenging the order dated 09/05/2022 passed by the learned Judicial Magistrate, Jalgaon Jamod, in Miscellaneous Criminal Case No. 73/2019 wherein issue process order was passed and the order dated 23/04/2025 passed by the learned Additional Sessions Judge, Khamgaon, in Criminal Revision Application No. 28/2022 whereby the Revisional Court dismissed the revision petition filed against the aforesaid order.

3. The respondent no. 1 initially lodged a complaint on 18/03/2019 with the Police Station, Jalgaon Jamod. As no action was taken on the aforesaid complaint, respondent No. 1 herein filed Criminal Miscellaneous Application No. 73/2019 before the learned Judicial Magistrate, Jalgaon Jamod alleging that petitioners operate 'Shri. Sant Tukaram Nagari Sahakari Path Sanstha' on the ground floor of J.T. Patil Complex which is situated in front of Bus Stand in Jalgaon Jamod. On 16/03/2019 between 8:30 p.m. to 9:00 p.m, the petitioners

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came to the house of respondent no.1. As no male member of the family was present at the relevant time, respondent no. 1 requested petitioners to come back. However, taking advantage of absence of male members, petitioners forcefully entered her house by pushing her and in threatening tone demanded that they be permitted to put the board of their society in front of her complex. They also stated that they have earlier made a complaint to the Nagar Parishad to demolish the illegal construction of respondent no. 1 and if respondent no. 1 pays Rs. 5,00,000/- to them then no action on the said complaint will be taken by the Nagar Parishad as the wife of accused no. 2 is a Councillor in Nagar Parishad belonging to Bhartiya Janta Party (BJP). It has also been claimed that petitioners along with pushing and threatening respondent no. 1 also used abusive language against her and threatened to kill her if she refuses to pay Rs. 5,00,000/-.

**4.** After recording the verification under Section 200 of

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the Code of Criminal Procedure, 1973, the learned Magistrate, by order below Exhibit No. 01 dated 25/08/2020, directed the Police Station, Jalgaon Jamod, to submit a report under Section 202 of the said Code. Pursuant to the said direction, the Police Inspector submitted a report dated 22/12/2020. Thereafter, upon perusal of the record and the report submitted by the Police Inspector, the learned Judicial Magistrate First Class, Jalgaon Jamod, by order dated 09/05/2022, was pleased to issue process against the present petitioners for offences punishable under Sections 384, 448, 323, 294, and 506 read with Section 34 of the Indian Penal Code, 1860, in accordance with Section 204 of the Code of Criminal Procedure, 1973. Being aggrieved by the said order, the petitioners preferred Criminal Revision No. 28/2022 before the learned Additional Sessions Judge, Khamgaon. By order dated 23/04/2025, the learned Additional Sessions Judge was pleased to dismiss the said revision petition. The present petition is filed against both these orders.

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5. Mr. Naik, learned Senior Counsel appearing on behalf of the petitioners, submits that even if the allegations made in the complaint are taken as it is, the essential ingredients of Sections 384, 448, 323, 294, and 506 of the Indian Penal Code, 1860, are not made out. He has invited my attention to the complaint filed by the respondent. He further submits that as the learned Magistrate was not satisfied on the basis of the allegations made in the complaint, therefore, directed the Police Station, Jalgaon Jamod, to submit a report under Section 202 of the Code of Criminal Procedure, 1973. Even the police report after investigation / enquiry filed pursuant to the Magistrate's direction does not disclose the ingredients of the said offences. Therefore, the learned Magistrate ought to have considered that there was no material against the present petitioners for issuance of process, and in the absence of such ingredients, the Magistrate ought not to have issued the process. He has also invited my attention to the judgment of the Revisional Court and submits that even the Revisional Court

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has failed to take into consideration that there are no ingredients in order to satisfy the alleged offences. Accordingly, he prays that the order issuing process, as well as the order passed by the Revisional Court, be quashed and set aside. In support of his submissions, Mr. Naik relied on the judgment in the case of *Shaikh Mujib and Others VS State of Maharashtra*, 2017 SCC OnLine Bom 414 and the judgment of this Court in the case of *Amit Ashok Jagdale VS State of Maharashtra*, (Criminal Writ Petition No.240/2025).

6. On the other hand, the learned counsel appearing for respondent No. 1 submits that, insofar as the order issuing process is concerned, it is not necessary for the Magistrate to consider the entire material placed on record. It is for the Magistrate to *prima facie* satisfy himself whether there are adequate grounds to proceed against the accused. In this regard, he has invited my attention to the allegations made in the complaint. He submits that if the allegations in the

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complaint are taken in its entirety, the offences alleged are clearly made out. He further submits that the learned Magistrate, after following the due process of law and after recording verification and calling for a report under Section 202 of the Code of Criminal Procedure, 1973, has rightly issued process. There is no perversity or illegality in the order passed by the learned Magistrate. He has relied upon the judgment of the Supreme Court in *Delhi Race Club Limited and Others VS State of Uttar Pradesh and Another*, (2024) 10 SCC 690, in order to buttress his submissions.

7. Upon hearing both sides, the undisputed facts are that the respondent initially lodged a complaint with the Police Station on 18/03/2019. However, it appears that the police did not take cognizance of the said complaint, and therefore, respondent No. 1 was constrained to file a private complaint before the learned Magistrate. After filing the complaint, verification of the complainant and witnesses were recorded

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under Section 200 of the Code of Criminal Procedure, 1973. It appears, however, that the learned Magistrate was not satisfied with the material placed on record and accordingly directed the Police Inspector, Police Station Jalgaon Jamod, to submit a report under Section 202 of the Cr.P.C. Accordingly, the Police Inspector submitted a report dated 22/12/2020, and thereafter, the order of issuing process came to be passed. As per the allegations in the complaint, the petitioners demanded an amount of Rs.5,00,000/- from respondent No. 1 in order to prevent demolition of the alleged illegal construction of his house. On 16/03/2019, at about 8:30 to 9:00 p.m., the petitioners entered the house of the respondent, used filthy language, and pushed the respondent by taking advantage of the fact that there was no male member in the house. The petitioners stated that they will insist the Nagar Parishad to demolish the illegal construction of the complainant, as the wife of accused No.2 is the Councillor in the Nagar Parishad and belongs to the Bharatiya Janata Party (BJP), who is the

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ruling party in the Nagar Parishad if the amount of Rs.5,00,000/- was not paid. The petitioners assaulted the respondent and also used abusive language. Based on these allegations, the present complaint was filed.

8. After perusal of the complaint as well as the verification statements of the complainant and the witnesses, it is abundantly clear that the ingredients of Section 384 cannot be said to be satisfied. In order to satisfy Section 384, it would be useful to refer to the judgment in the case of *Shaikh Mujib (supra)*, wherein the Division Bench of this Court, in paragraph Nos.8, 9, 10, and 11, has held as under:-

*“8. Perusal of aforesaid definition of extortion as envisaged under section 383 of the IPC adumbrates that following ingredients are required to be established to constitute an offence under section 384 of the IPC and same are also reproduced by the Hon'ble Supreme Court in paragraph No. 6 of the Judgment in the case of Dhananjay [2007 ALL MR (Cri) 1406 (S.C.)] supra, which read thus:*

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*(i) The accused must put any person in fear of injury to that person or any other person.*

*(ii) The putting of a person in such fear must be intentional.*

*(iii) The accused must thereby induce the person so put in fear to deliver to any person any property, valuable security or anything signed.*

*(iv) Such inducement must be done dishonestly.*

9. In the matter in hand, it reveals that applicants on the day of incident visited to the Godown of first informant - Parvaz Nazer Hussain Jaffery i.e. respondent No. 2 herein and they placed demand of Rs. 10,00,000/- (Rupees Ten Lakhs) to get premises vacated occupied by them. The applicants have also given threats of dire consequences if money is not paid to them. They have also exhorted that they will not deliver the possession of the premises in favour of respondent No. 2 - first informant without money. These circumstances reflect from the recitals of the FIR, categorically demonstrate that there was no delivery of the property or valuable security in favour of applicants - accused on the part of first informant after putting him under fear.

10. We reiterate that, in order to constitute an offence of extortion, it is essential to establish that

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*accused must put the victim in fear of injury to him or any other person and thereby induces him dishonestly to deliver any property or valuable security. As referred supra the impugned FIR does not disclose all these ingredients to constitute the cognizable offence under section 384 of the IPC.*

*11. The Hon'ble Supreme Court in the case of Isaac Isanga Musumba and others Vs. State of Maharashtra and others [2015 ALL SCR 3483] referred supra held that unless property is delivered to the accused persons pursuant to the threat, no offence of extortion is made out and the FIR for the offence of extortion under section 384 could not have been registered by the Police. In the case of Dhananjay alias Dhananjay Kumar Singh Vs. State of Bihar and another [2007 ALL MR (Cri) 1406 (S.C.)] referred supra, the Hon'ble Apex Court after appreciating the requirement of section 384 of the IPC observed in paragraphs No. 10 to 13 as under:*

*"10. No allegations was made that the money was paid by the informant having been put in fear of injury or putting him such fear by the appellant was intentional.*

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11. *The first informant, admittedly, has also not delivered any property or valuable security to the appellant.*

12. *A distinction between theft and extortion is well known. Whereas offence of extortion is carried out by overpowering the will of the owner; in commission of an offence of theft the offender's intention is always to take without that persons' consent.*

13. *We, therefore, are of the opinion that having regard to the facts and circumstances of the case, no case under section 384 of the Penal Code was made out in the first information report.”*

9. The Division Bench of the High Court has categorically observed that in order to attract Section 384 of the Indian Penal Code, unless and until there is no delivery of the property or valuable security in favour of the accused, the offence under Section 384 cannot be said to be complete. While dealing with the said section, the High Court has referred the Judgment of *Isaac Isanga Musumba and others Vs. State of*

*Maharashtra and others* [2015 ALL SCR 3483], wherein the Supreme Court has held that “*unless property is delivered to the accused persons pursuant to the threat, no offence of extortion is made out and the FIR for the offence of extortion under section 384 could not have been registered by the Police.*” Considering the exposition of law laid down by the Supreme Court as well as the High Court, I am of the considered view that the offence under Section 384 of the IPC cannot be said to be made out even if the allegations in the complaint are taken at their face value.

10. It is further to be noted that, insofar as Section 294 is concerned, this Court in the case of *Amit Ashok Jagdale (supra)* has held that mere use of abusive, filthy or unparliamentary language is not sufficient in itself to attract the provisions of Section 294 IPC, but there must be a further proof to establish that it was to the annoyance of others and the words used must satisfy the test of obscenity. While arriving at the aforesaid

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conclusion, this Court has elaborately dealt and placed reliance on the law laid down by the Apex Court and High Court. The observations of this Court in paragraph nos. 9 and 13 are relevant which read as under-

9. *Under these circumstances, it would be useful to refer to the Judgment of the Supreme Court in N.S. Madhanagopal & Anr. VS. K. Lalitha (supra). While considering the scope of Section 294, the Supreme Court has observed as under:*

*“ It is to be noted that the test of obscenity under Section 294(b) of the I.P.C. is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences.*

*It has to be noted that in the instance case, the absence of words which will involve some lascivious elements arousing sexual thoughts or feelings or words cannot attract the offence under Section 294(b). None of the records disclose the alleged words used by the accused. It may not be the requirement of law to reproduce in all cases the entire obscene words if it is lengthy, but in the instant case, there is hardly anything on record. Mere abusive, humiliating or defamative words by itself cannot attract an offence under Section 294(b) IPC. To prove the offence under Section 294*

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*of IPC mere utterance of obscene words are not sufficient but there must be a further proof to establish that it was to the annoyance of others, which is lacking in the case. No one has spoken about the obscene words, they felt annoyed and in the absence of legal evidence to show that the words uttered by the appellants accused annoyed others, it can not be said that the ingredients of the offence under Section 294 (b) of IPC is made out.*

13. *Therefore, after considering the law laid down by the Hon'ble Supreme Court with respect to Section 294 of the Indian Penal Code, it is evident that the mere use of abusive, filthy, or unparliamentary language including the utterance of the words referred to above (in the Marathi language) is not sufficient, in itself, to attract the provisions of Section 294 IPC.....”*

Similarly, upon perusal of the complaint it is evident that what obscene words are used have not been mentioned and as there is absence of obscene words causing annoyance to others therefore, even the ingredients of Section 294 are also not fulfilled.

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11. Therefore, both the Courts have failed to take into consideration the basic ingredients of the offences punishable under Sections 384 and 294 of the Indian Penal Code, and therefore, committed grave error. It is to be borne in mind that before issuing process by the Magistrate, it is expected to see the contents of the complaint and after perusal of the contents of the complaint, the Magistrate shall satisfy himself that whether the ingredients of Section alleged against the accused are made out or not. Merely reproducing the contents in gist without application of mind would be of no use, and therefore, the order of issuing process by the Magistrate is bad in law, and the finding even arrived by the Revisional Court are perverse and against the law.

12. As far as Sections 323 and 448 of the IPC are concerned, there are *prima facie* allegations in the complaint, and therefore, issue process order to that extent is proper. Hence, the following order:-

**18****O R D E R**

- (i) The Writ Petition is **partly allowed**;
- (ii) The order dated 09/05/2022 passed below Exh.1 by the learned Judicial Magistrate First Class, Jalgaon Jamod, in Miscellaneous Criminal Case No. 73/2019 and the order dated 23/04/2025 passed by the learned Additional Sessions Judge, Khamgaon, District Buldana, in Criminal Revision Application No.28/2022 is hereby quashed and set aside only to the extent of issuing process under Sections 384 and 294 IPC;
- (iii) Rule is made absolute in above terms.

**[ M. M. NERLIKAR, J ]**