



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (APL) NO. 1529 OF 2022

1. Shri Shankar Maharaj,
Aged 76 years, Occu. : Priest,
R/o. Pimpalkhuta, Dhamangaon
Railway, Distt. Amravati.
2. Nanduseth Banduji Chauhan,
Aged 63 years, Occu. : Agriculturist,
R/o. Dhayari.
3. Rajendra Devidasji Lunge,
Aged 55 years, Occu. : Service,
R/o. Wardha.
4. Bhaskar Rangraoji Mohad,
Aged 68 years, Occu. : Retired,
R/o. Amravati.
5. Devendra Panditrao Walhekar,
Aged 63 years, Occu. : Business,
R/o. Narhe.
6. Sudam Budhaji Nagpure,
Aged 64 years, Occu. : Agriculturist,
R/o. Pimpalkhuta.
7. Sudhakar Dudharamji Bante,
Aged 65 years, Occu. : Contractor,
R/o. Nagpur.
8. Sharadrao Shriramji Ingle,
Aged 72 years, Occu. : Retired,
R/o. Amravati.
9. Rajesh Babanrao Minde,
Aged 51 years, Occu. : Advocate,
R/o. Narhe, District : Pune.
10. Ramdasji Popatrao Dangat,
Aged 55 years, Occu. : Business,
R/o. Narhe, District : Pune.

11. Prashant Purushottam Shelokar,
Aged 53 years, Occu. : Service,
R/o. Nagpur.
12. Santosh Wasantrao Pokale,
Aged 55 years, Occu. : Business,
R/o. Yewalewadi, District : Pune.
13. Nitin Wasudeorao Raut,
Aged 60 years, Occu. : Service,
R/o. Akola.
14. Shirish Chandrakant Chaudhary,
Aged 53 years, Occu. : Contractor,
R/o. Nagpur.

.... APPLICANTS.

// VERSUS //

1. The State of Maharashtra,
Through Government Pleader,
High Court, Nagpur Bench.
2. Sanjay Raghunath Wankhade,
Aged 46 years, Occu. Advocate,
(Practicing at District Court, Amravati)
R/o. Kusram Plot, Vrindawan Colony,
Sant Gadge Baba Amravati University
Road, Amravati.

.... RESPONDENTS.

Shri Anil S. Mardikar, Sr. Advocate a/b Shri V.R.Deshpande, Adv. for Applicants.
Ms Soniya Thakur, A.P.P. for Respondent No.1/State.
Shri Sanjay R. Wankhade, Respondent No.2 in Person.

CORAM : ANIL S. KILOR, J.

DATE OF RESERVING THE JUDGMENT : 14/02/2025.

DATE OF PRONOUNCING THE JUDGMENT : 10/06/2025.

JUDGMENT :

1. Heard.

2. **RULE.** Rule made returnable forthwith. Heard by consent of the learned counsel for the parties.

3. This is an application filed under Section 482 of the Code of Criminal Procedure (Cr.P.C. for short) whereby a challenge is raised to the order dated 18/10/2022 passed by the Additional Sessions Judge, Amravati in Criminal Revision No. 07 of 2022 dismissing the revision preferred by the applicants challenging the order dated 22/12/2021 passed by the learned Judicial Magistrate First Class Court No.2, Dhamangaon Railway in Regular Criminal Case No. 49 of 2018 issuing process against the applicants.

4. The applicant No.1 is the founder President, applicant No.2 was a Vice President, applicant Nos.3 and 4 were the Secretaries, applicant No.5 was the Treasurer and applicant Nos. 6 to 14 were the Members/ Trustees of "Shri Sant Shankar Maharaj Ashram Trust."

5. The respondent No.2 filed Misc. Criminal Application No. 83 of 2016 in the Court of learned Magistrate, Dhamangaon on 14/09/2016 under Section 156(3) and Section 190 of the Cr.P.C. requesting to register First Information Report (FIR). It is alleged in the complaint that Shri Sant Shankar Maharaj Ashram Trust, Pimpalkhuta and its office bearers are indulging in the

acts of human sacrifice and other inhuman, evil and *aghor*i practices and black magic.

6. The learned Magistrate rejected the said prayer and kept the matter for verification. Thereafter, statements of certain witnesses were recorded and on 24/02/2017 the learned Magistrate, upon observing that there is no direct evidence, an inquiry was conducted under Section 202 of the Cr.P.C.

7. The concerned Police Station submitted negative report on 08/06/2017.

8. On 29/08/2017 the learned Magistrate directed the Deputy Superintendent of Police, Amravati to investigate the matter under Section 202 of the Cr.P.C. by himself or by his competent subordinate and to record statements of witnesses having personal knowledge.

9. Thereupon, the matter was re-inquired by the Sub-Divisional Police Officer (SDPO) concluding that no offence of any kind was committed by any of the applicants.

10. However, the learned Magistrate took cognizance after the

evidence of a witness-Shyam Manav on 04/05/2018 and issued process. The same was challenged in Criminal Revision Application No.36 of 2018, wherein the order of issuance of process was set aside and the matter was remitted back to the learned Magistrate for passing appropriate order considering the locus and other points raised by the applicants.

11. Thereafter, the respondent No.2 examined two more witnesses with the permission of the learned Magistrate and after considering the material available on record the learned Magistrate passed the order dated 22/12/2021 issuing process against the applicant.

12. The same was the subject matter of challenge before the Additional Sessions Judge, Amravati in Criminal Revision No.7 of 2022. The learned Additional Sessions Judge, Amravati vide its judgment and order dated 18/10/2022 dismissed the revision petition holding that no patent illegality found for interference.

13. Hence, this application, raising a challenge to the order of issuance of process dated 22/12/2021 and to the order dismissing the revision petition filed against the order of issuance of process, vide judgment and order dated 18/10/2022.

14. I have heard the learned counsel for the respective parties.

15. The learned counsel for the applicants submits that both the reports of Police, including the report of SDPO, suggest that no offence is committed by the applicants. However, ignoring the said reports the learned trial Court issued process and the same has illegally been upheld by the revisional Court.

16. It is submitted that the book in question was published in the year 1996, whereas, the Maharashtra Prevention and Eradication of Human Sacrifice and Other Inhuman, Evil and *Aghori* Practices and Black Magic Act came into force in the year 2013 (hereinafter referred to as “the Act of 2013”). Therefore, since this Act has no retrospective effect, publication of the book in the year 1996 will not constitute any offence, as alleged.

17. It is submitted that respondent No.2 is noway connected with the family of a boy who alleged to have murdered (human sacrificed) by the applicant No.1. It is further argued that there is no affidavit filed by the respondent No.2 stating his own personal knowledge as regards commission of the offence. It is further argued that separate offence has already been registered in the case of the alleged murder (human sacrifice) of the boy Prathmesh Sagne.

18. On the other hand, the learned APP strongly opposed the application and supports the revisional order as well as the order of issuance of

the process by the Magistrate. It is argued that the contents of the complaint as well as the statements of the witnesses recorded by the learned Magistrate, *prima-facie* constitute the offence and therefore, no illegality has been committed by both the Courts below in issuing the process against the applicants.

19. It is argued that the Court cannot conduct mini trial at the time of issuance of process to find out whether there is any sufficient evidence to constitute an offence. It is submitted that to issue process it is sufficient to have *prima facie* material to constitute the offence. It is submitted that 10 witnesses have been examined in support of the complaint and once the trial Court has reached to a conclusion that there is sufficient material to *prima facie* show that the offence is committed, this Court may not interfere with the same.

20. The learned counsel for the respondent No.2 reiterates the submissions of the learned APP and prays for dismissal of the application. He further argues that the application under Section 482 of the Cr.P.C. is not maintainable as no prayer for quashing of the proceedings is made-out.

21. In answer, the learned Senior Advocate Shri Mardikar argues that an order of issuance of process is under challenge and if the order of issuance of process goes the complete proceedings will automatically go. He, therefore, submits that the application raising challenge to the order of issuance of

process, under Section 482 of the Cr.P.C. is maintainable.

22. In light of the rival contentions, I have perused the record and the impugned order issuing process and the judgment and order dismissing the revision petition filed by the applicants. It is evident from the record that the primary allegations are in respect of the book “*Anubhav Bramha*” written by applicant No.1 Shri Shankar Maharaj.

23. The learned trial Court before issuing the process, vide order dated 04/05/2018 discussed the contents of the said book, which according to the learned trial Court, *prima-facie* attract the alleged offence. However, the learned revisional Court by setting aside the said order remitted the matter back to find out whether any sufficient material is available to proceed against the applicants after taking into consideration the provisions of Section 5(2) of the Act of 2013 and also on the point of *locus standi* of the respondent No.2 in filing the complaint.

24. Thereafter, with the permission of the Court two witnesses, namely parents of the deceased Prathmesh Awadhut Sagne were examined by the respondent No.2 and after considering the evidence of witnesses and after finding that *prima-facie* case is made out for issuance of process, the process was issued vide impugned order dated 22/12/2021.

25. As regards *locus standi*, if the complaint is perused, it can be seen that in the complaint the contents of the above referred book are referred, which prima facie establish that the alleged offence constitutes.

26. The definition of 'propagate' makes it clear that issuance or publication of advertisement, literature, article or book relating to or about human sacrifice and other inhuman, evil and *aghori* practices and black magic and includes any form of direct or indirect help, abatement, participation or co-operation with regard to human sacrifice and other inhuman, evil and *aghori* practices and black magic.

27. Thus, it is clear that the book is covered by the definition 'propagate'. In the present matter also the whole controversy as I have observed, is relating with the book 'Anubhav Bramha' written by the applicant No.1.

28. The objection as regards the locus of the respondent No.2 on the ground that he is not a member of the family of deceased Prathmesh Sagne, is concerned, the parents of deceased Prathmesh entered into the witness box and they stated on oath that the respondent No.2 is their relative. Hence, the said objection, at this stage, does not survive.

29. Further the objection about Vigilance Officer is concerned, Section 5(2) makes it clear that it shall be the duty of the Vigilance Officer to detect and prevent the contravention or violation of the provisions of this Act and the rules made thereunder and report such cases to the nearest police station. It further says that upon filing of complaint to the police station by any victim or any member of his family, the Vigilance Officer shall ensure due and speedy action thereon and to give necessary advice, guidance and help to the concerned police station. Thus, the complaint can be filed either at the instance of the Vigilance Officer, victim or any member of his family. In the present matter, parents of the deceased-Prathmesh have stated on oath that the respondent No.2 is their relative.

30. Thus, the primary grievance of the respondent No.2 is about publication of the said book and circulation of the same even after coming into force the Act of 2013 and as it is stated that the respondent No.2 received the book from his friend who purchased it from the Ashram, he has personal knowledge about the contents of the book and has therefore locus to file complaint on finding that the contents of the book constitute an offence under the provisions of the Act of 2013.

31. The Hon'ble Supreme Court of India in the case of *Nagawwa ..vs.. V.S. Konjalgi*, reported in **(1976) 3 SCC 736** has observed

thus :

“2. In support of the appeal Mr. H. B. Datar submitted that the magistrate had given cogent reasons for holding that there were sufficient grounds for proceeding against respondent Nos. 1 and 2 and the High Court was in error in interfering with the order of the magistrate by examining the merits of the case after taking into consideration the documents filed by the respondents which could not be looked into by the magistrate as they did not form part of the complaint or the evidence recorded in support thereof. In our opinion the contention raised by the learned Counsel for the appellant is well founded and must prevail. Mr. M. C. Bhandare sought to repel the argument of the appellant on the ground that the order of the magistrate was perverse and as the case was full of patent absurdities and was politically motivated the prosecution of respondent Nos, 1 and 2 would amount to unnecessary harassment resulting in abuse of the process of the court. In the view we take in the instant case it is not necessary for us to enter into the merits of the case at this stage. It is well settled by a long catena of decisions of this Court that at the stage of issuing process the magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused. It is not the province of the magistrate to enter into a detailed discussion of the merits or demerits of the case nor can the High Court go into this matter in its revisional jurisdiction which is a very limited one.

3. In Chandra Deo Singh v. Prokash Chandra Bose this Court had after fully considering the matter observed as follows:

The courts have also pointed out in these cases that what the magistrate has to see is whether there is evidence in support of the allegations of the complainant and not whether the evidence is sufficient to warrant a conviction. The learned Judges in some of these cases have been at pains to observe that an enquiry under Section 202 is not to be likened to a trial which can only take place after process is issued, and that there can be only one trial. No doubt, as stated in sub-section (1) of Section 202 itself, the object of the enquiry is to ascertain the truth or false-hood of the complaint, but the magistrate making the enquiry has to do this only with reference to the intrinsic quality of the statements made before him at the enquiry which would naturally mean the

complaint itself, the statement on oath made by the complainant and the statements made before him by persons examined at the instance of the complainant.

Indicating the scope, ambit of Section 202 of the Code of Criminal Procedure this Court in Vadilal Panchal v. Dattatraya Dulaji Ghadigaonker observed as follows:

Section 202 says that the magistrate may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against and direct an inquiry for the purpose of ascertaining the truth or falsehood of the complaint in other words, the scope of an inquiry under the section is limited to finding out the truth or falsehood of the complaint in order to determine the question of the issue of process. The inquiry is for the purpose of ascertaining the truth or falsehood of the complaint that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process and commencement of proceedings against the person concerned. The section does not say that a regular trial for adjudging the guilt or otherwise of the person complained against should take place at that stage for the person complained against can be legally called upon to answer the accusation made against him only when a process has issued and he is put on trial.

4. It would thus be clear from the two decisions of this Court that the scope of the inquiry under Section 202 of the Code of Criminal Procedure is extremely limited limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint (i) on the materials placed by the complainant before the court (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have. In fact it is well settled that in proceedings under Section 202 the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not.

5. Mr. Bhandare laid great stress on the words "the truth or falsehood of the complaint" and contended that in determining whether the complaint is false the court can go into the question of the broad probabilities of the case or intrinsic infirmities

appearing in the evidence. It is true that in coming to a decision as to whether a process should be issued the magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him. The magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the magistrate has exercised his discretion it is not for the High Court, or even this Court, to substitute its own discretion for that of the magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations, in our opinion, are totally foreign to the scope and ambit of an inquiry under Section 202 of the Code of Criminal Procedure which culminates into an order under Section 204 of the Code. Thus it may be safely held that in the following cases an order of the magistrate issuing process against the accused can be quashed or set aside:

- (1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;
- (2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;
- (3) where the discretion exercised by the magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and
- (4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings.” (Emphasis supplied)

32. Similarly, it would be beneficial to refer to the judgment in the case of *Bhushan Kumar ..vs.. State (NCT of Delhi)*, reported in **(2012)5 SCC 424**, while dealing with the provisions of Section 204 of Cr.P.C., the Hon'ble Supreme Court of India has observed thus :

“13. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a prerequisite for deciding the validity of the summons issued.”
(Emphasis supplied)

33. In the teeth of the above referred observations of the Hon'ble Supreme Court, I revert back to the facts of the present case. In the present matter, after considering the evidence of about 10 witnesses and the material placed by the complainant before the learned Magistrate, the Magistrate issued process on finding that a *prima-facie* case is made out. It is a settled law that for finding out whether a *prima facie* case for issuance of process, the Court has to consider the material placed by the complainant before the Court and not the defence that the accused may have. The Magistrate has been given an undoubted discretion in the matter and in the present matter the Magistrate has judiciously exercised it and therefore, this Court cannot examine the case

on merits with a view to find out whether or not any allegation in the complaint, if proved, would ultimately end in conviction of the accused.

34. Furthermore, though Section 204 of the Cr.P.C. does not mandate the Magistrate to explicitly state the reasons for issuance of summons, in the present matter, the Magistrate on both occasions passed detailed orders recording reasons.

35. Thus, considering the scope of interference in the matter of issuance of process, where the Magistrate has got satisfied of having *prima facie* case, I do not find any merit in the present application.

36. In the circumstances, as there is no perversity or illegality pointed out, the Criminal Application is **rejected**.

37. At this stage, the learned counsel for the applicants prays for continuation of the interim order dated 17/11/2022 for eight weeks so as to enable them to approach the Hon'ble Apex Court.

The respondents strongly opposed the request.

Since the interim order dated 17/11/2022 is in operation till date, no prejudice will be caused to any of the respondents if it is continued for another eight weeks.

Hence, the interim order dated 17/11/2022 shall continue to operate for eight weeks from today. However, it is made clear that on lapse of period of eight weeks, the interim order shall stand vacated automatically.

(ANIL S. KILOR, J)

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