



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

CRIMINAL APPLICATION [APL] NO. 1095 OF 2024

APPLICANT : Satish @ Munna S/o Gayacharan Trivedi,
Aged 63 years, Occupation : Business,
R/o Jatpura Ward No.2, Near Durga Mata
Mandir, Chandrapur.

VERSUS

NON-APPLICANTS : 1] The State of Maharashtra,
through its Station House Officer,
Police Station, Chandrapur City,
Tah. and Dist. Chandrapur, Maharashtra.

2] Abdul Wahab S/o Abdul Kadar,
Aged about 79 years, Occu. Retired,
R/o Arvind Nagar, Chandrapur,
through its Power of Attorney Holder,

Mr. Tejas Patil, Advocate h/f Mr. S.S. Ansari, Advocate for the
applicant.
Mr. M. J. Khan, A. P. P. for non-applicant no.1

CORAM : M. W. CHANDWANI, J.
DATED : APRIL 02, 2025

ORAL JUDGMENT

1. **RULE.** Rule made returnable forthwith. By the consent of the learned counsel for the applicant and the learned Additional Public Prosecutor for respondent no.1-State, the matter is taken up for final hearing. Non-applicant no.2 did not appear in spite of service.

2. The application challenges the order of issuance of process by the learned Joint Judicial Magistrate First Class, Chandrapur, dated 06.02.2024 for the offences punishable under Sections 406, 420 read with Section 34 of the Indian Penal Code, 1860 in Regular Criminal Complaint Case No. 665/2024.

3. It is not necessary to go into the matrix of the case in detail. Suffice to say that non-applicant no.2/original complainant has filed a complaint against the applicant and other four accused alleging that his father had given the shop block to deceased Satishkumar Sharma, the husband of accused no.2 and the father of accused nos.1 and 3. The father of the complainant asked deceased Satishkumar Sharma to vacate the premises, but he refused to do so. After the death of Satishkumar, accused nos.1 and 3 occupied the said shop block. They did not pay the rent and they sub-let the shop block to the present applicant/accused no.4 and accused no.5 to run the office of Jai Durga Maa Transport and Ganraj Transport without the consent of the complainant. Therefore, they committed the offence of criminal breach of trust and cheating.

4. Learned Magistrate directed the police to conduct enquiry under Section 202 of the Code of Criminal Procedure, 1973. Police Station, Chandrapur conducted the enquiry and submitted the report concluding that the applicant and other accused have committed the alleged offences.

Learned Magistrate after considering the report, passed the order of issuance of process dated 06.02.2024, which is under challenge in this application.

5. Bare perusal of the complaint as well as the inquiry report submitted by Police Station, Chandrapur show that deceased Satishkumar, the father of accused nos.1 and 3 and the husband of accused no.2, was a tenant of the father of the complainant on monthly tenancy of Rs.500/-. Only because accused nos.1 to 3, the legal representatives of deceased Satishkumar Sharma did not vacate the premises and created sub-tenancy, it cannot be said that they have committed the offence under Sections 406 and 420 r/w Section 34 of the IPC. Perusal of the complaint as well as inquiry report clearly demonstrates that the dispute amongst the parties is of civil nature. In spite of that, surprisingly, the learned Magistrate directed Police Station, Chandrapur to conduct inquiry under Section 202 of Cr.P.C. More surprisingly, even after having no material or no whisper of ingredients of any of the offences under Section 406 and 420 r/w 34 of the IPC in the inquiry report, Police Station, Chandrapur opined the commission of the offence by the applicant and other co-accused. Learned Jt.JMFC, Chandrapur, without applying his mind has blindly issued process against the applicant and other co-accused.

6. Needless to mention, issuance of process against a person is a

serious concern and while issuing process, learned Magistrate has to apply his mind and see whether the ingredients of the alleged offences are made out or not, which is completely absent in this case. This is nothing but an abuse of the process of law. The impugned order of the learned Jt.JMFC, Chandrapur does not sustain in the eyes of law and therefore, it is required to be quashed and set aside.

7. Resultantly, the criminal application is allowed.

The order dated 06.02.2024, passed by the learned Joint Judicial Magistrate First Class, Chandrapur, issuing process against the applicant is quashed and set aside. Applicant – Satish @ Munna S/o Gayacharan Trivedi is discharged from the case i.e. R.C.C. No. 665/2024.

8. The criminal application is disposed of in the above terms.

(M.W.Chandwani, J.)

Diwale