



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 498 OF 2025

Vaijayanta Ramling Kature And Others

VERSUS

The State Of Maharashtra And Another

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Mr. S. P. Salgar h/f Mr. A. R. Devakate, Advocate for the Petitioners

Mr. S. P. Joshi, APP for Respondent No.1

Ms. S. V. Salunke, Advocate for Respondent No. 2

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : 02nd APRIL, 2026.

P.C.:-

1. Heard learned Counsels for the respective parties.
2. The present Writ Petition is filed to quash and set aside the proceedings in RCC No. 422/2023 for offences punishable under Sections 498-A, 324, 504, 506 read with Section 34 of the Indian Penal Code pending before JMFC, Osmanabad arising out of the order issuing process in Criminal M.A. No. 554/2021 dated 12.10.2023 to the extent of Petitioners.
3. The record indicates that the Respondent No. 2 filed Criminal M. A. No. 554/2021 before CJM, Osmanabad seeking issuance of process for offences punishable under Sections 498-A, 324, 326, 504, 506 read with Section 34 of the Indian Penal Code. In nutshell, it is alleged that on 21.05.2017 the Respondent No. 2 married with Hanumant Kature – Accused No. 1. After marriage, she was ill-treated by her in-laws. They made allegations that she

is not mentally fit, she was teased on various reasons and she was pressurized to divorce her husband. Her verification statement was recorded below Exhibit 5. On 27.01.2023, learned Magistrate postponed the issuance of process and called report under Section 202 of the Code of Criminal Procedure. On 01.07.2023 concerned police station officer submitted report along with statement of witnesses. On 26.10.2023, learned Magistrate passed order, which reads thus: “issue process against accused under Section 204 of Code of Criminal Procedure”.

4. Learned Counsel appearing for the Petitioners submit that the impugned order shows utter non application of mind. It does not depict as to for which offences process has been issued. He relies upon the observations of the Supreme Court in case of ***Lalan Singh vs. State of Maharashtra***, reported in 2022 SCC OnLine SC 1383 to contend that if the Magistrate had formed the opinion that there is sufficient material for taking cognizance or there is *prima facie* case for proceeding against accused in respect of offences, a reasoned order ought to have been passed depicting application of mind.

5. Per contra, learned Counsels appearing for the Respondents support the order of issuance of process.

6. Having considered the submissions advanced by learned Counsels appearing for respective parties and on perusal of material tendered before this Court, it is evident that after recording verification statement of Respondent No.2, learned Magistrate was of the view that on the basis of contents of the FIR, process cannot be issued and, therefore, passed order under Section 202 of the Code of Criminal Procedure thereby calling police report. However, after receipt of the police report, learned Magistrate passed cryptic order thereby issuing process under Section 204 of the Code of Criminal Procedure. The text of order nowhere depicts that learned Magistrate has applied his mind to report called under Section 202 of the Code of Criminal Procedure or the material tendered along with such report.

7. It is trite that the order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding against accused exists in the facts of the case. The formation of the opinion as to existence of ingredients of offences must reflect in the order. If no reasons are given while coming to the conclusion that there is *prima facie* case against accused, the order cannot be countenanced under order. It is true that the Magistrate need not give elaborate reasons but the reasons must be sufficient to draw inference that Magistrate has applied his mind to material placed before him before forming

opinion as to existence of necessary ingredients to make out offences as alleged. In the present case, the impugned order of issuance of process dated 26.10.2023 sans reasons for such conclusion and even it is silent as to for which offences the process has been issued.

8. In that view of the matter, the order of issuance of process dated 26.10.2023 is quashed and set aside. The matter is relegated back to learned Magistrate who shall afresh apply his mind to the material on record and decide as to whether the case is made out for issuance of process for the offences as alleged.

(S. G. CHAPALGAONKAR)
JUDGE

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