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**(2015) 03 BOM CK 0178**

**In the Bombay High Court**

**Case No : Criminal Writ Petition No. 727 of 2013**

Kishan and Others

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

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**Date of Decision : 11-03-2015**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 202  
Penal Code, 1860 (IPC) — Section 141, 147, 148, 149, 323

**Citation : (2015) ALLMR(Cri) 2220**

**Hon'ble Judges : V.M. Deshpande, J**

**Bench : Single Bench**

**Advocate : G.N. Chincholkar, for the Appellant; V.D. Godbharle, APP, Advocates for the Respondent**

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## **Judgement**

V.M. Deshpande, J.

1. Heard Mr. G.N. Chincholkar, the learned counsel for the petitioners, Mr. V.D. Godbharle, the learned A.P.P. for Respondent No. 1 - State and Mr. S.B. Chavan, the learned counsel for respondent No. 2. The petitioners, who were arrayed as accused in private complaint bearing R.C.C. No. 124/2009 in the Court of the Judicial Magistrate First Class, Hadgaon for the offence punishable u/s. 323, 324, 504, 506 (2), 141, 147, 148, 149 read with 34 of the Indian Penal Code is questioning the correctness of the Judgment and Order dated 13/06/2013 passed by the learned Sessions Judge, Nanded in Criminal Revision No. 28/2012, by which the learned Sessions Judge set aside the Order dated 21/04/2012 passed by the learned Magistrate, Hadgaon and set aside the order of dismissal of the Complaint.

2. According to the Complaint, on 16/04/2009 in front of the house of respondent No. 2/complainant at Mauje Unchada. Tq. Hadgaon, Dist. Nanded at 5.30 p.m. he was assaulted by the petitioners resulting into injuries to him. According to him, he proceeded to police station Manatha along with witnesses and submitted report at the said police station. The said was registered as non

cognizable offence and he was referred to the hospital at Hadgaon, wherein he was examined by Dr. A.N. Kamble. Thereafter, he filed the said complaint.

3. After considering the verification statement of the complainant/respondent No. 2, the learned Magistrate found that the complainant has not made out case for issuance of process and passed order dated 18/09/2010 and made over the same to the police authorities for the enquiry u/s. 202 of the Code of Criminal Procedure. In pursuance to the same, negative report was filed by the police authorities in the Court of the learned Magistrate. Though the negative report was filed, from the order passed by the learned Magistrate dated 24/01/2012, it appears that the learned Magistrate has not blindly accepted the said report. The learned Magistrate in addition to the said report and after hearing the learned counsel appearing for the original complainant, found that admittedly there exists a civil dispute between the parties and though the name of the Medical Officer is mentioned in the complaint, there is no reference of the medical examination by the Doctor in the police report and, therefore, he has dismissed the said complaint.

4. According to the learned counsel for respondent No. 2, the learned revisional Court has rightly exercised the discretion in favour of respondent No. 2 and set aside the order passed by the learned Magistrate. He submitted that merely because negative report of the police is available on record, that by itself can not be a ground for dismissal of the complaint.

5. Merely because the negative report is filed by the police, that does not disentitle the learned Magistrate to take contrary view. However, the learned Magistrate has to consider the case in the light of the allegations and at the same time has to keep in mind and consider the police report. In the present case, admittedly, there exists civil dispute between the parties. Further, no steps are taken by respondent No. 2 for making available his so called medical examination by the Medical Officer. Merely because he was referred to the Medical Officer, that by itself does not mean that the Doctor must have found any injury on his person. Worth to note, in the present proceeding, respondent No. 2 has filed detailed affidavit. His affidavit is completely silent about the nature of injuries, which he has suffered on his body in the alleged incident.

6. In that view of the matter, I see no reason to take different view which was taken by the learned Magistrate. The learned revisional Court has not considered this aspect in its proper perspective resulting into the miscarriage of justice. Hence, I pass the following order:

(1) The Order dated 13/06/2013 passed by the learned Sessions Judge, Nanded in Criminal Revision No. 28/2012 is hereby quashed and set aside and the Order dated 21/04/2012 passed by the learned Judicial Magistrate First Class, Hadgaon in R.C.C. No. 124/2009 is revived and stands confirmed.

(2) Rule is made absolute in the above terms.