

(1982) 03 BOM CK 0056

In the Bombay High Court

Case No : Criminal Application No. 2203 of 1981

Shrikant Pandurang Lele and Others

APPELLANT

Vs

Rajaninath Govind Pataskar and Another

RESPONDENT

Date of Decision : 19-03-1982

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 204, 482
Penal Code, 1860 (IPC) — Section 341, 504, 506(1)

Citation : (1983) 1 BomCR 310

Hon'ble Judges : S.J. Deshpande, J

Bench : Single Bench

Advocate : M.M. Sakhardande, for N.G. Chhatre, S.B. Patil, P.P, for the Appellant; V.P. Tipnis, for the Respondent

Judgement

S.J. Deshpande, J.—The petitioners are the original accused in a criminal case arising out of a complaint filed by respondent No. 1 in the Court No. 2 of the Judicial Magistrate, First Class at Thane. This is an application by the petitioners original accused filed in this Court to exercise its powers u/s 482 of the Criminal Procedure Code. This application is directed against an order of issue of process dated 22-9-1981 passed by the learned Magistrate, II Court at Thane in Criminal Case No. 5466 of 1981.

2. It is not necessary to give all detailed facts. The respondent complaint is the landlord and petitioners are the tenants. There is a civil suit pending between and the parties in the Court of the Civil Judge, (Senior Division), Thane in which a question of eviction of the tenant is involved.

3. On 25-9-1981 the complainant has filed a complaint before the Magistrate narrating the allegations which are attracted by provisions 341, 504 and 506(1) of the Indian Penal Code. The allegation of the complainant is that the petitioners are creating nuisance to the complainant and his wife. They are obstructing and restraining the complainant and his family from going by way. They are behaving in such a manner to outrage their modesty when they pass through the staircase

of the house. The complainant has also referred to certain police complaints made against the petitioners. The complaint has also given a reference to the civil suit. On the basis of this complaint, the learned Magistrate examined the complaint on oath and after verification he was satisfied and issued the process as stated above. It is this order which is challenged in this petition.

4. It is not necessary to burden the judgment with detailed facts of this case. The learned Advocate for the petitioner had to concede that the allegations as disclosed in the complaint cannot be said to be absurd so as to give rise to any action for the complainant to move the Court. No inherent probability or illegal defect could be pointed out by the Advocate for the petitioner. The learned Advocate only referred to the civil suit and there was correspondence and that correspondence discloses certain omissions and the matter is of pure civil nature and for that proceedings are actually filed in the Court. Therefore, the complaint filed is certainly not an abuse of process. It is obvious that the contention must be rejected on the face of it. In view of the limited scope of the section 204 of the Criminal Procedure Code, it is not open to ask for the hearing at this stage. The abuse of process is a very strong word and unless the complaint which contains the material defect, it is impossible to base any attack on the basis that the proceedings started by the complaint are an abuse of process.

5. The learned Advocate for the respondent Shri V.P. Tipnis has invited my attention to a Supreme Court judgment reported in (S.C. Cases 1976, page 736), which lays down the law in such cases. In this case there are some reasons given. At the initial stage the Magistrate has to see whether the allegations made in the complaint disclose the offence or not. The fact that the learned Advocate for the petitioner could not find fault with the allegations in the complaint, it is sufficient to hold that the process issued by the Magistrate was quite right in view of the allegations made in the complaint.

6. There is no justification for this Court to exercise its powers u/s 482 which are only reserved to do substantial justice or to avoid abuse of the process of the Court. Both these grounds of expressions as such are absent in the present case. As held by the Supreme Court in the above case that the jurisdiction of the Magistrate u/s 202 of the Criminal Procedure Code is very limited and the enquiry is directed only to find out the truth of the allegations in the complaint, it is not necessary at this stage to find out whether any evidence also is there in support of the case. The only question is whether the person concerned is legally called upon to answer the allegations in the complaint or not. As pointed out by the learned Advocate for the respondent, it is obvious that after accepting the process the petitioners could immediately go to the Magistrate and disclose all the material facts before him and the Magistrate can be invited to pass the appropriate orders.

7. The learned Advocate for the petitioner relied on the series of correspondence from the record which contains all the notices and replies of all statutory allegations related to the complaint which entitled the landlord to get a decree of

eviction. I do not think that there is any justification to consider all this material at the stage when the process is issued. Moreover, in this particular case this material was not before the Magistrate at all. In fact, it is not necessary for the Magistrate to see such material at this stage because the law only requires to consider the complaint and examination on oath of the complaint. On the basis of these two documents i.e. the statement in the complaint and the verification on oath, if the Magistrate is satisfied with the allegations made in the complaint that it discloses the offence, he is empowered to issue process which cannot be hampered by any Court.

8. In the result, since I see no justification to interfere with the process issued by the Magistrate, the process stands and rule is discharged.