
(2019) 07 BOM CK 0010
In the Bombay High Court
Case No : Writ Petition No. 1758 Of 2014

State Of Maharashtra

APPELLANT

Vs

Neeta Shrirang Kelkar And Ors

RESPONDENT

Date of Decision : 04-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 466, 468, 470, 471
Code Of Criminal Procedure, 1973 — Section 156(3)

Citation : (2019) 07 BOM CK 0010

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

Bench : Single Bench

Advocate : Rutuja Ambekar, Akansha Helaskar, A.M. Kulkarni

Final Decision : Dismissed

Judgement

1. Rule. Rule made returnable with the consent of learned Counsel appearing for the parties and heard finally.

2. This Petition takes an exception to the judgment and order dated 18th February, 2012 passed by the learned Additional Sessions Judge, Sangli

thereby setting aside the order of issuance of process passed by the learned Chief Judicial Magistrate, Sangli against the respondents in R.C.C. No.

318 of 2010 on 26th August, 2010.

3. It is the case of the petitioner that a private complaint was filed by Shri. Harish Narayan Jog before Chief Judicial Magistrate, Sangli against the

original accused persons i.e., respondents herein, contending that they have committed offence punishable under Sections 466, 468, 470, 471 r/w. 34 of

the Indian Penal Code (for short "I.P.C."). The Chief Judicial Magistrate, Sangli vide letter dated 4th April, 2009 directed the Police Inspector

attached to Sangli City Police Station to investigate the said complaint under

Section 156 (3) of the Code of Criminal Procedure (for short Cr.P.C.) and file chargesheet against the accused persons on or before 4th April, 2009. As per said direction of the Chief Judicial Magistrate, Sangli and on the basis of said complaint forwarded, a F.I.R. vide C.R. No. 53 of 2010 was registered at Sangli City Police Station under Sections 466, 468, 470, 471 r/w. 34 of the I.P.C. against the original accused persons.

4. It is the further the case of the petitioner that as per direction of the Magistrate Court, investigation was undertaken. During the course of investigation, the statements of witnesses have been recorded. The original accused had obtained anticipatory bail from the Court.

5. It is the further the case of the petitioner that after completion of investigation, chargesheet has been filed on 17th April, 2010 against all the accused persons, named in the original complaint in the Court of Chief Judicial Magistrate, Sangli vide R.C.C. No. 318 of 2010. The learned Chief Judicial Magistrate, Sangli vide order dated 26th August, 2010 in R.C.C. No. 318 of 2010, issued process against the accused persons under Sections 466, 468, 470 and 471 of the I.P.C.

6. Being aggrieved by the said order dated 26th August, 2010, the present respondents/ original accused Nos. 2,3,13,15 to 18 filed revision bearing Criminal Revision Application No. 229 of 2010 in the Sessions Court, Sangli. After hearing both the sides, the learned Additional Sessions Judge, Sangli, vide judgment and order dated 18th February, 2012, allowed the said Revision Application and set aside the order of issuance of process against the revision applicants/ orig. accused Nos. 2,3,13, 15 to 18 passed by the learned Chief Judicial Magistrate, Sangli in R.C.C. No. 318 of 2010 on 26th August, 2010. The learned Sessions Judge further discharged the presents respondents of the offences punishable under Sections 466, 468, 470, 471 r/w. 34 of the I.P.C. Hence, this Petition.

7. The learned APP appearing for the petitioner-State invites attention of this Court on the grounds taken in the Petition, and submits that the order of issuance of process passed by the learned Magistrate should not have been interfered with by the Sessions Court, Sangli and, therefore, prays that the Petition deserves to be allowed.

8. On the other hand, the learned Counsel appearing for respondent Nos. 1 to 7 relying upon the reasons assigned in the impugned judgment and order

passed by the learned Additional Sessions Judge, Sangli and subsequent event of regularizing the alleged encroachment by the Municipal Council,

Sangli, submits that the Petition deserves no consideration and the same may be rejected.

9. Upon appreciating the rival contentions and perusal of the reasons assigned in the impugned judgment and order, this Court is of the opinion that the

Petition deserves no consideration for the reasons set out herein below.

10. Firstly, the order of issuance of process was passed without application of mind by the learned Magistrate. It appears that the learned Magistrate

mechanically passed the order of issuance of process by using a rubber stamp. The learned Additional Sessions Judge has rightly observed that there

was no application of mind by the learned Magistrate before passing the order of issuance of process against respondents. The learned Additional

Sessions Judge has also observed that an ingredient of the alleged offences have not been attracted. The learned Additional Sessions Judge has

assigned detailed reasons for setting aside order of the learned Magistrate in paragraph Nos. 4 to 8 of the impugned judgment. The said reasons and

findings recorded by the learned Additional Sessions Judge appears to be inconsonance with the material placed on record.

11. Secondly, the learned Additional Sessions Judge has also observed that during the period of investigation under Section 156 (3) of the Cr.P.C., the

Investigating Officer did not seize the original documents or try to take the custody of those documents. The investigation was not complete and

before completion of investigation, the learned Magistrate ought not to have been proceeded to pass the order of issuance of process against the

respondents.

12. Thirdly, the learned Counsel appearing for respondent Nos. 1 to 7 has placed on record the decision taken by Division Bench of this Court in the

case of Prasad Raghunath Ukidawe & ors. Versus The Commissioner, Sangli-Miraj- Kupwad City Corpn. and Ors. Writ Petition No. 9780 of 2012

dated 15th October, 2012 It appears that pursuant to directions issued in the said Writ Petition, the Corporation has taken decision thereby regularizing

the construction, which was subject matter of the proceedings in aforesaid case decided by the Division Bench.

13. In that view of the matter, no case is made out to cause interference in the

impugned judgment and order passed by the learned Additional Sessions Judge, Sangli. Hence, the Writ Petition stands rejected. Rule stands discharged.