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**(2011) 12 BOM CK 0131**

**In the Bombay High Court**

**Case No : Criminal Application No. 1845 of 2007**

Sumitrabai Trimbak Khandaray and Trimbak Tukaramji  
Khandaray

APPELLANT

Vs

Dnyaneshwar Shalikram Bhore

RESPONDENT

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**Date of Decision : 05-12-2011**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 195, 200, 202, 203, 340  
Penal Code, 1860 (IPC) — Section 196, 463, 464, 465, 466

**Citation : (2012) BomCR(Cri) 663**

**Hon'ble Judges : A.P. Bhangale, J**

**Bench : Single Bench**

**Advocate : A K Choube, for the Appellant; P.S. Patil, for Respondent No.1 and  
Mr M K Pathan, APP, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

A.P. Bhangale, J.—By this application, the applicants prayed for to quash and set aside the judgment and order passed by the learned Adhoc Additional Sessions Judge, Akot in Criminal Revision Application No.45/ 2006 and to restore the order passed by the learned JMFC Akot in Criminal Compliant Case No.21/2006 on 16.9.2006.

2. The facts in brief, are as under : The complainant Shri Dnyaneshwar Shalikram More had lodged a complaint against one Shri Trimbak Tukaramji Khandaray and his wife Sumitrabai Khandaray. According to complainant in January 2004 Sanjay (late son of the accused persons) was in need of loan in the sum of Rs. 15,000/ which was given by the complainant. Late Sanjay repaid the handloan by cheque dated 28.2.2004 which complainant had encashed. Sanjay is no more living since he died as the result of accident on 11.3.2004. Further, according to the complainant, a false suit was filed by the accused persons against the complainant taking unfair advantage of the entry of the cheque in the passbook of late Sanjay. Accused wanted to recover Rs. 15,000/by filing a suit bearing No.

RCS No.127/ 2004 instituted in the Court of learned Civil Judge, JD, Akot. The complainant further stated that cock and bull story was made out by the accused. The accused had also produced and used in evidence document Exh.29 knowing that it is a forged and fabricated document but used it against the complainant in judicial proceedings. The learned Civil Judge, JD, Akot had dismissed that suit filed by the accused. According to the complainant the document( Exh.29 ) in that suit was a forged and fabricated document which accused had used in a judicial proceeding knowingly although it is a false and fabricated. Thus, it is alleged that the accused committed offence punishable u/s 196 IPC. Using the said forged document, they also committed offence punishable u/s 463, 464, 465, 466, 470 and 471 of the IPC. On this ground, the complaint was instituted for to take action and punish the accused for the aforesaid offences, It appears that verification of the complainant was also recorded in support of the complaint. The learned JMFC who perused the complaint and documents and also scrutinized the report of police u/s 202 Cr. P. C. prima facie observed that it was a civil dispute between both the parties in the Court and prima facie there was no evidence on record to show that the accused committed the alleged offence. Thus, the learned JMFC Akot expressed his opinion that he did not find any ground for further proceeding and decided to dismiss the complaint by order dated 16.9.2006 in Criminal Complaint Case No. 21/ 2006.

3. Aggrieved by this order, the Revision Application No.45/ 2006 was filed by the complainant challenging the validity, legality and correctness of the same. The learned Adhoc Additional Sessions Judge, Akot found that document labeled as "Akhiv Patrika" in the Regular Civil Suit No.127/2004 with a certificate issued by the Nazul Office, Akot, made it clear that the accused had produced disputed document Akhiv Patrika in the suit. According to the complainant, there was no such plot standing in his name and no such record in the Nazul Office to show that complainant owned plot No. 370 from Akot town. According to the complainant, the disputed document Akhiv Patrika had no basis on the Nazul record of Akot town and, therefore, the accused had prima facie produced a false document using it against the complainant in the suit. The complainant made a grievance that no opportunity was given to the complainant to lead evidence at all in respect of the accusation.

4. The Revisional Court considered the relevant provisions of law including Section 195 of Cr.P.C. and Section 340 of the Cr.P.C. and leading case on the subject,namely, Iqbal Singh Marwah vs. Meenakshi Marwah reported in 2005 All MR (Cri) 1326 (S.C.) in which the legal position regarding cognizance of the complaint of like offences is considered and explained with reference to earlier rulings. In Paragraph 17, the Apex Court observed that any interpretation which leads to a situation where the victim of a crime is rendered remediless has to be discarded while interpreting Section 340 Cr.P.C. Judicial notice was taken of the fact that the courts are reluctant to direct filing of criminal complaint and such a course is rarely adopted. Thus, it was observed it will not be fair and proper to

give an interpretation which leads to a situation where a person alleged to have committed an offence of the type enumerated in clause (b) (ii) is either not placed for trial on account of nonfiling of a complaint or if a complaint is filed, the same does not come to its logical end. Learned Advocate for the revision applicant placed reliance upon the ruling in *All Cargo Movers (India) Pvt. Ltd. vs. Dhanesh Jain* : (2007 ) 14 SCC 776 in order to submit that whether a civil suit is pending and complaint is filed one year after filing of that civil suit, the Court can for the purpose of finding out as to whether the allegations are prima facie correct, take into consideration the correspondences exchanged by the parties and other admitted documents. It is further submitted that criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the Court. While, on the other hand, the learned Advocate for the respondent placed reliance upon the ruling in *Natural Sugar and Allied Industries Limited vs. Razzak Hazi Gaffar and others* reported in 2006 ALL MR (Cri) 2822, in order to submit that judicial Magistrate First Class has power to take cognizance of the offence irrespective as to whether the offence was committed within his jurisdiction or not and at the stage of taking cognizance the allegations made in the complaint and the verification are relevant. Reference is also made to *Anand Vaidya vs. State of Maharashtra* : 2008 All MR (Cri.) 204 which relates to exercise of jurisdiction u/s 482 of Cr.P.C. for to quash the proceedings. The ruling in *Nandkishor Mundhada vs. Dwarkadas Mundhada* : 2008 All MR ( Cri) 224 was cited to submit that complaint if prima facie discloses allegation that the document was forged complaint, cannot be quashed. Reliance is also placed on ruling in *A.S. Krishnan and Another Vs. State of Kerala*, and ruling in *M/s Sri Krishna Agencies vs. State of A.P. And another* : 2009 All MR Crime 266 (SC) in which there can be no bar to the simultaneous continuance of criminal proceedings and civil proceedings if the two arise from separate cause of action.

5. Prima facie, looking to the leading case of *Iqbalsingh Marwah* (supra) as referred by the revisional Court and interpretation given to Section 340 read with section 195 Cr.P.C. by the Apex Court in the light of Section 203 Cr.P.C., I think the learned JMFC had passed an order in unholy haste without considering the statement on oath of the complainant in the form of verification. At the stage when cognizance was taken as understood in Chapter XV : {Complaints to Magistrate} it is mandatory for the Magistrate who is taking cognizance of the complaint to examine the complainant and the witnesses present if any and to note the substance of their examination in writing which is required to be signed by the complainant and/ or witnesses and the Magistrate concerned. The Magistrate concerned, would therefore, require to take precaution to comply with section 200 Cr.P.C.; while taking cognizance of the complaint if he decide to postpone the issue of process he may direct enquiry as contemplated u/s 202(2) Cr.P.C. Thus, before dismissal of the complaint u/s 203 Cr.P.C if Magistrate is required to consider the statement on oath if any by the complainant and all the witnesses examined and also after perusal of the result of the enquiry or

investigation ordered u/s 202 (if any), the Magistrate has to form his opinion as to whether there is sufficient ground to proceed further and then pass an reasoned order if he decides to dismiss the complaint. The order which was passed by the learned JMFC Akot on 16.9.2006 as mentioned below, the aforesaid order would not indicate that the abovementioned procedure was followed. Procedure as contemplated in Chapter XV: Complaints to Magistrate shall be followed as mentioned according to law. The impugned order reads thus :

Perused complaint and documents. I carefully scrutinized the report of police u/s 202 of Cr.P.C. and heard the submissions of the learned counsel for complainant. Prima facie, it appears that there was a civil dispute in between both the parties in court and prima facie there is no evidence on record to show that accused has committed an alleged offence. I do not find any ground for further proceeding. Hence complaint is dismissed.

Learned Magistrate appears to have ignored essential procedure mentioned in Chapter XV of the Cr.P.C. Under these circumstances, the learned Adhoc Additional Sessions Judge who took into consideration the ruling in Iqbal singh's case referred to above, rightly allowed the Revision Application by the reasoned judgment. The learned Magistrate is expected to deal with the complaint filed before it in accordance with law and precautions will have to be taken as mentioned in Chapter XV of Cr.P.C. read further with section 195 and 340 Cr.P.C. the procedure as contemplated in accordance with law in the light of interpretation as observed by the Apex Court in Iqbal singh's case.

6. For all the above reasons, no ground whatsoever is made out to interfere with the impugned judgment and order in exercise of inherent powers by this Court. The Application is dismissed.