

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.511 OF 1995

SHRI LAXMAN MAHADEV SARIPUTRA)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

Mr.Prakash Naik a/w. Mr.Pawan Mali, Advocate for the Appellant.

Mr.Deepak Thakre, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 11th JUNE 2015.

ORAL JUDGMENT :

1 The appellant is a Police Officer. At the material time, he was attached to Malwan Police Station, District Sindhudurg. The appellant was the Investigating Officer in a case registered vide C.R.No.89 of 1994 in respect of an offence punishable under Section 302 of the Indian Penal Code (IPC) read with Section 34

thereof. After investigation, a charge-sheet was filed against three persons by the appellant's successor – one Shri Kakade. The appellant appeared as a witness during the trial of the accused persons. The Additional Sessions Judge, Sawantwadi, who held the trial, found all the accused not guilty and passed an order of acquittal. The learned Additional Sessions Judge came to the conclusion that the appellant had fabricated false evidence in the course of investigation and had given false evidence during the trial. He, therefore, held an inquiry into the matter as contemplated under Section 340 of the Code of Criminal Procedure (Code), recorded a finding that the appellant had committed offences punishable under Sections 193 and 194 of the IPC, and decided to make a complaint in respect thereof as contemplated in clause (b) of sub-section (1) of Section 340 of the Code in respect of the offences. Accordingly, a complaint signed by the learned Additional Sessions Judge actually came to be lodged against the appellant in the court of the Chief Judicial Magistrate, Sindhudurg, Sawantwadi.

The appellant, being aggrieved by the action taken by the learned Additional Sessions Judge in accordance with the provisions of Section 340 of the Code, has filed the present appeal, as contemplated under Section 341 of the Code, praying that the impugned order be quashed and set aside.

2 I have heard Mr.Prakash Naik, the learned counsel for the appellant, and Mr.Deepak Thakre, the learned APP for the State. With the assistance of Mr.Naik, I have gone through the appeal memo and the relevant record.

3 Section 340 of the Code empowers and permits the court to hold an inquiry into an offence referred to in Clause (b) of sub-section (1) of Section 195, 'which appears to have been committed in or in relation to a proceeding in that court.' It is not – and not even contended – that there was no material before the court to make it *appear* that offences punishable under Section 193 and 194 of the IPC (which are referred to in clause (b) of sub-sec. (1) of Section 195 had been committed in the course of the trial of

the said sessions case. Thus, there was nothing improper in the learned Additional Sessions Judge holding the preliminary inquiry.

4 The question is, whether the finding recorded by the learned Additional Sessions Judge, to the effect that the appellant appears to have committed the offence of giving and fabricating false evidence punishable under Sections 193 and 194 of the IPC, is proper or legal, or whether the same is liable to be interfered with.

5 The finding that was arrived at, by the learned Additional Sessions Judge, was based on the entire evidence that was adduced before him during the trial of the accused persons, but mainly on the admissions given by the appellant himself in his evidence. The learned Additional Sessions Judge has meticulously noted, in paragraph 6 of the complaint, the various admissions given by the appellant to the effect that *he had fabricated false evidence and had given false evidence. It appears from the notes of evidence of the appellant, the relevant parts of which have been*

reproduced in paragraph six of the complaint lodged by the learned Additional Sessions Judge, that the appellant freely and fearlessly admitted of having fabricated false evidence and of having given false evidence. The appellant, infact, gave certain admissions indicating or suggesting that, this is generally done in the other cases also, which are investigated into by the police. The appellant, *inter alia*, gave admissions about the manipulation of dates and various happenings. The finding recorded by the Additional Sessions Judge that an offence, referred to in the aforesaid clause of the aforesaid sub-section, had been committed in relation to a proceeding in that court, appears to be unexceptionable.

6 Mr.Naik made an endeavour to explain the evidence of the appellant. He submitted that the appellant was confused as a result of cross-examination by a shrewd cross-examiner and wrongly gave certain admissions in his evidence. In my opinion, whether the appellant had any lawful excuse or justification for making such statements –, or, whether the admissions given by

him are a result of confusion, need not be decided at this stage. It is because, the question is, whether the Additional Sessions Judge was right in holding an inquiry under Section 340 of the Code, recording the finding aforesaid and directing the filing of a complaint against the appellant. Whatever defences the appellant has, or intends to put forth, would certainly be looked into during the trial. The guilt of the appellant is required to be proved during the trial, but that is totally different from saying that the appellant should not be tried at all.

7 In my opinion, if, inspite of the admissions given by the appellant as aforesaid, freely and audaciously, that *he had fabricated the evidence and had given false evidence*, the learned Additional Sessions Judge was not to decide to prosecute him with respect to the said offences, it would be a mockery of the legal process and justice. Infact, in my opinion, in the face of such admissions, given from the witness-box, which exhibit a defiant attitude, the learned Additional Sessions Judge had no other alternative, but to direct lodging of a complaint against the

appellant. Undoubtedly, the Additional Sessions Judge had a discretion in the matter, but, *had the discretion been exercised in the other way, namely, in deciding not filing of the complaint, the same would have been clearly perverse, contrary to the norms of propriety, and would have brought the administration of justice into ridicule and disrepute.*

8 The impugned order is absolutely proper and legal. There is no question of interfering therewith in the present appeal. It is rather unfortunate that inspite of there being absolutely no merit in the appeal, the appellant could successfully stall the proceedings against him for a period of twenty years, due to the pendency of this appeal.

9 The appeal is dismissed.

 The learned Magistrate shall now proceed with the complaint expeditiously and endeavour to dispose of the proceedings as early as possible.

(ABHAY M. THIPSAY, J.)