

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 1152 OF 2015

Chandrakant Dagade

.....Petitioner

V/s.

Sanjeev Chamanlal Arora and others

....Respondents

Mr. Sachindra B. Shetye for Petitioner

Mr. Sanjiv Gorwadkar Senior counsel for respondent nos. 1 & 2

Mr. Sudhir Hardikar for respondent nos. 6 & 7

Mrs. A. A. Mane APP for the State

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : SEPTEMBER 3, 2015.

PC :

Heard respective counsel.

- 2) Rule. Rule made returnable forthwith with the consent of the parties.
- 3) Petitioner herein questions the correctness and the validity of the order dated 07/01/2015 passed by Additional Sessions Judge, Pune. The facts leading to the filing of present petition are as follows.
- 4) Present petitioner happens to be original complainant in R.C.C. No. 5000 of 2013. Petitioner filed a complaint against 9 persons alleging therein that they had committed offence under section 406, 420 r/w 34 of Indian Penal Code. Upon perusal of the complaint, learned Magistrate had passed an order dated 02/12/2013 as follows:

ism

“Read complaint and perused documents. Considering non dispute of power of attorney, it is not proper to send the matter for investigation. Hence, order

ORDER

R.C.C. be registered. Complainant to adduce evidence, verification.”

- 5) On 09/01/2014, verification statement of the complainant was recorded. By an order dated 23/01/2014, learned Magistrate was pleased to issue process against accused for having committed offence under section 420 of Indian Penal Code. Learned Magistrate had not issued process under section 406 of Indian Penal Code.
- 6) It is a matter of record that original accused nos. 1 & 2, being aggrieved by the order of issuance of process, filed Criminal Revision Application No. 258 of 2014 before Additional Sessions Judge at Pune. By an order dated 12/06/2014, learned Sessions Judge was pleased to allow the Revision Application and the order of issuance of process passed by learned Magistrate was quashed and set aside. Learned Revisional Court was further pleased to remand the matter to the Court of learned Magistrate with a direction to make further enquiry as to whether an offence of cheating is made out against the applicants and to reconsider as to whether process should be issued or not.
- 7) After remand of the matter, learned Magistrate was of the opinion that

since Revisional Court had quashed the process against accused nos. 1 & 2, in view of the observations made by learned Revisional Court, learned Magistrate had sought clarification of the order as to whether the same would apply against other accused. Petitioner had filed an application before learned Sessions Judge on 04/09/2014 that relief granted in revision application is restricted qua the applicants in revision application.

8) Learned Sessions Judge has passed an order which reads thus:

“3) Heard advocates for applicant and respondents as well as APP. Perused the copy of judgment in Cri. Revision application no. 258/2014. After going through the entire judgment it appears that in para no.5 of the judgment it is observed in respect of accused nos. 3 to 6 that “process is issued under section 420 of the Indian Penal Code alleging that accused nos. 3 to 6 would have claimed their share in the share of accused no. 7 and not from share of complainant. This essentially requires findings of fact by civil court as to who is entitled to which share. Therefore, in the present facts, predominant question is of civil nature. Considering this aspect, order is issue process appears to be improper and incorrect.

4) Considering this observation, it is clear that order of issue process is set aside in respect of accused nos. 3 to 6 also, and not only for respondent nos. 2 and 3 who have preferred the revision-petition. As there is no finding of civil court in respect of alleged offence committed

by accused nos. 3 to 6, no separate enquiry in respect of accused nos. 3 to 6 is directed while passing the final order. Hence, this is the situation and trial court should take note of it.”

Hence, this writ petition.

9) Learned counsel for the petitioner rightly submits that in fact, original accused nos. 3 to 6 had not challenged the order of issuance of process. They were not before the Court and hence, there was no occasion to quash the proceedings against original accused nos. 3 to 6. Moreover, it is pertinent to note that in Cri. Revision Application No. 258 of 2014 filed by original accused nos. 1 & 2, rest of the accused were shown as respondents. That no notice was issued to the respondent nos. 3 to 6 in Cri. Revision Application No. 258 of 2014 and therefore, learned Revisional Court has committed a grave error in quashing the process against original accused nos. 3 to 6.

10) Section 401 (2) of Code of Criminal Procedure, 1973 contemplates:

“No order under this section shall be made to the prejudice, of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.”

11) In the present case, original accused nos. 3 to 6 were arraigned as respondents. There is every likelihood that they may have some say in the

case, however, without issuing any notice to them revision petition as far as original accused nos. 1 & 2 were concerned were allowed and in this circumstance it was not proper on the part of Additional Sessions Judge to quash the proceedings against the persons who had not prayed for quashing of proceedings either by filing revision application or by filing petition under section 482 of Code of Criminal Procedure, 1973 before the High Court. In any case, original accused nos. 3 to 6 had not challenged the issuance of process and therefore, it was not proper on the part of Revisional Court to quash the proceedings against them in the application seeking clarification filed by the complainant. In fact, no clarification was warranted. Proceedings against accused nos. 3 to 6 have been quashed at a premature stage. In the order dated 12/06/2014, learned Sessions Judge had remanded the matter for further enquiry so far as cheating by applicant nos. 1 & 2 therein were concerned and had directed learned Magistrate to reconsider as to whether to issue process or not after requisite enquiry and therefore, order dated 07/01/2015 would be in nullity as even according to Sessions Judge, proceedings were kept pending before Magistrate and learned Magistrate was directed to hold further enquiry. Application filed by present petitioner may

not have been maintainable, however, by way of clarification, Revisional Court could not have reviewed the order dated 12/06/2014.

12) Learned senior counsel appearing for the respondent submits that in fact, Misc. Cri. Application No. 332 of 2014 was not maintainable as there was no occasion for seeking clarification and therefore, petitioner who happens to be original complainant and applicant in Misc. Application No. 332 of 2014 has no locus to challenge the order seeking clarification. Learned senior counsel further submits that learned Sessions Judge, in the order dated 12/06/2014 has issued process against accused nos. 1 to 5 and 8 & 9 for offence under section 420 r/w 34 of Indian Penal Code. No process was issued under section 406 of Indian Penal Code. It is apparent on the face of record that Revisional Court has exceeded its powers and quashed the proceedings against the persons who had not filed any application seeking quashing of proceedings.

13) Order dated 07/01/2015 is almost an order reviewing the order dated 12/06/2014, and hence, the same deserves to be quashed. However, order dated 12/06/2014 is maintained.

ORDER

- (i) Writ petition is partly allowed.
- (ii) Order dated 07/01/2015 passed by Additional Sessions Judge, Pune, below Exh. 1 in Cri. Misc. Application No. 332 of 2014 is hereby quashed and set aside.
- (iii) Order dated 12/06/2014 passed by Additional Sessions Judge, Pune in Cri. Revision Application No. 258 of 2014 is maintained.
- (iv) R.C.C. No. 5000 of 2013 is restored to Court of Judicial Magistrate First Class, Pune to comply with order dated 12/06/2014.
- (v) Rule is made absolute in the above terms.

(SMT. SADHANA S. JADHAV, J.)