

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 296 OF 2015

Kartik Mahesh Sanghavi

...Applicant

Versus

Nirali Kartik Sanghvi @ Nirali Kiran
Parekh & Ors.

...Respondents

Mr. Anil G. Lalla a/w Ms Beereta Bajwa i/b Lalla &
Lalla for the Applicant.

Mr. V.B.K. Deshmukh, APP for Respondent No.5-
State.

CORAM:-M.L. TAHALIYANI, J.

DATED :8th JULY, 2015.

P.C.

Admit. Heard finally.

2. Heard learned Advocate Mr. Lalla for the Applicant and learned APP for Respondent No.5-State of Maharashtra. Respondent Nos.1 to 4 are absent though they are served.

3. The Applicant is aggrieved by the order passed by the Additional Sessions Judge in Criminal Revision Application No.1113 of 2014 thereby upsetting the order of the Magistrate issuing process against Respondent Nos.1 to 4 for the offences punishable under

section 420 r/w section 34 of the IPC. The grievance of the Applicant is that learned Additional Sessions Judge has travelled beyond his jurisdiction under section 399 of the Criminal Procedure Code while examining the order passed by the learned Magistrate. Learned Additional Sessions Judge has come to the conclusion that learned Magistrate could not have issued process without there being further enquiry under section 202 of the IPC with respect to the alleged mental disorder of one of the accused Smt. Nirali, who is wife of the Applicant. Learned Additional Sessions Judge was of the view that learned Metropolitan Magistrate should have taken steps to determine the exact mental illness of Smt. Nirali Sanghavi before issuing process.

4. Respondent No.1 is the wife of the Applicant and Respondent Nos.2 and 3 are brother-in-law and sister respectively of Respondent No.1. Respondent No.4 is the uncle of Respondent No.1. These four respondents were accused Nos.1, 7, 8 and 9 in the complaint filed by the Applicant before the Metropolitan Magistrate at Kurla, Mumbai. There were other five accused alongwith the present Respondents. As far as original accused No.6 Mr. Uday Gupta is concerned he was summoned to answer the charge under section 497 of the IPC.

5. Learned Magistrate after recording verification statement of the Applicant passed the following order, which is supported by reasons :

“Issue process against the accused Nos.1 to 9 for the offence p/u/s.420 r/w 34 of the IPC and against the accused No.6 for the offence p/u/s.497 of the IPC on PF.”

Present application is against the Respondent Nos.1 to 4 only.

6. The question which arose before the learned Additional Sessions Judge was as to whether the enquiry under section 202 of Criminal Procedure Code was necessary in the facts and circumstances of the case.

7. As already stated learned Additional Sessions Judge was of the view that it was imperative to hold enquiry under section 202 of Criminal Procedure Code. In my opinion this view expressed by learned Additional Sessions Judge is absolutely wrong and there was no necessity for the Magistrate to enter into further enquiry or direct the police to enquire into the matter once he was satisfied on the basis

of complaint and statement of the complainant on oath that the prima facie material existed to issue process. There was no necessity for the Additional Sessions Judge to upset the said order.

8. Hence, the present application is allowed. Order passed by the learned Additional Sessions Judge in Criminal Revision Application No.1113 of 2014 so far as Respondent Nos.1 to 4 are concerned is set aside. Order passed by the learned Magistrate in C.C. No.20/SW/2014 issuing process against Respondent Nos.1 to 4 to answer the charge u/s 420 r/w section 34 of the IPC is restored.

9. This application stands disposed of.

(JUDGE)