

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1130 OF 2013

Shri Mahadev Savla Patil

.. Appellant

*Versus*The Village Development Officer
and others

.. Respondents

Mr. Sagar Mane, Advocate for the appellant.

Mr. Prashant P. Jadhav, Advocate for respondent nos. 1 and 10.

Mr. Kalpesh U. Patil, Advocate for respondent no. 11

Ms. A. T. Javeri, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.**DATED : 1st DECEMBER 2015**

ORAL JUDGMENT :-

1 By consent, admitted and heard finally, as decided on 16th November 2015.

2 This is an Appeal filed by the appellant under the provisions of Section 341 of the Code of Criminal Procedure (for short 'the Code'). It is directed against the order dated 16th July 2013 passed by the Addl. Sessions Judge who thereby rejected the application made by the appellant, purportedly under the provisions of section 340 of the Code. When this Appeal was filed,

it was ordered that notice be issued to respondent nos.1, 10 and 11 only. It is because the other respondents were not thought to be necessary parties to this Appeal.

3 The facts giving rise to the Appeal are as follows :-

The respondent no.1 herein being one of the defendants in a Civil Suit decreed by the trial Court filed a Civil Appeal in the District Court at Karad, challenging the decree passed by the trial Court. There was a delay in filing the Appeal, and therefore, the respondent no.1 filed an application for Condonation of delay being Delay Condonation Application No.48/10. The present appellant who was the respondent no.1 in the said delay condonation application opposed the same. The matter came up before the Court for hearing on 23rd April 2011. The appellant herein, while opposing the said application for Condonation of delay, *inter alia*, submitted that the respondent no.1 – i.e. applicant in the application for condonation of delay – had not mentioned therein the precise delay i.e. as to how much delay was there in making of the said application. It was pointed out that a blank was kept at

the place in the application where the precise delay, was supposed to be mentioned. It appears that *after this contention was raised by the appellant* herein, the matter was adjourned by the trial Court to 30th June 2011. It transpired on that date that the blank in the application had been filled by writing and adding the words '*one year four months*'. According to the appellant, the same had been done by the respondent no.1 herein, and/or the respondent no.10 and/or respondent no.11 herein. He, therefore, made an application to the Court pointing out this alleged addition of matter in the application for Condonation of delay and submitted that an inquiry as contemplated under section 340 of the Code be made, and that a complaint be made as offences of fabricating false evidence, forgery, etc. had been committed. The respondent no.1 filed a reply to this application, stating, in substance, that the said application for holding an inquiry under section 340 of the Code had been made for the purpose of delaying the proceedings. It was submitted in the said reply, that the applicant had been wasting the time of the Court.

4 By an order dated 16th July 2013, the learned Judge rejected the application for holding an inquiry into the matter as contemplated under section 340 of the Code, and for making a

complaint in respect of the alleged offences. Being aggrieved by the said order, the present Appeal has been filed.

5 I have heard Mr.Sagar Mane, the learned counsel for the appellant. I have heard Mr.Prashant Jadhav, the learned counsel for the Respondent nos.1 and 10. I have heard Mr.Kalpesh Patil, learned counsel for respondent no.11.

6 In view of what transpired in the course of hearing, I do not propose to make any detailed observations about merits of the matter, *so far as the requirement to make a complaint after holding an inquiry into the matter as contemplated under section 340 of the Code of Criminal Procedure, is concerned. What, however, needs to be observed is that this was a case where the Court should have held an inquiry into the matter.*

7 The learned counsel for the respondent no.11 submitted that holding of such an inquiry is discretionary. While this submission is correct, it needs to be observed that the discretion, being judicial discretion has to be exercised judicially, and in accordance with the well settled parameters. In this case, the respondent no.1 herein had filed a reply to the application for

holding an inquiry, as contemplated under section 340 of the Code, as was filed by the present applicant, but in the reply, *he did not categorically state that the matter alleged to have been written subsequently was already there, and that it had not been written subsequently, as alleged.* The learned Judge has come to a conclusion that the matter i.e. the words '*one year four months*' were already there and had not been written subsequently. Admittedly, the learned Judge who had heard the application on 23rd April 2011 and the learned Judge who passed the order on 16th July 2013 were two different Judges. The learned Judge had no personal knowledge of the matter.

7 In my opinion, under these circumstances, when it was specifically alleged by the appellant that certain alterations and additions were made in the application for Condonation of delay, and when a contention that a portion in the application was blank, had already been taken by the appellant at the time of hearing of the application for Condonation of delay on 23rd April 2011, the learned Judge ought to have held an inquiry into the matter as contemplated under section 340 of the Code. The allegation was of such a nature that it could not have been ignored. Moreover, there was no basis for coming to a conclusion

that the said words were already there. No conclusion as to what was the correct position could have been arrived at without holding a preliminary inquiry as contemplated under section 340 of the Code of Criminal Procedure. *Whether to lodge a complaint, or whether any offences as spoken about in section 340 of the Code had, in fact, been committed, and further, whether it would be necessary to make a complaint in respect of any such offences, could have been determined by the learned Judge only after holding such an inquiry.*

8 To the extent the learned Judge refused to hold an inquiry into the matter, the impugned order is clearly erroneous and needs to be interfered with.

9 The Appeal is allowed.

10 The impugned order is set aside.

11 The learned Judge is directed to hold a preliminary inquiry, as contemplated under section 340 of the Code of Criminal Procedure, and take further action in the matter in accordance with law.

12 It is made clear that no opinion on the merits of the application made by the applicant has been expressed by this Court.

(ABHAY M. THIPSAY, J)

CERTIFICATE

***Certified to be true and correct copy of the original signed
Judgment/Order.***