

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 318 OF 2016

Syed Kadri Syed Shakur Quadri
Age : 43 years, Occu.: Service
R/o Sailu, Tq. Sailu,
Dist. Parbhani

.. Applicant

Vs.

1] The State of Maharashtra
Through Police Station Officer,
Police Station, Sailu,
Tq. Sailu, Dist. Parbhani

2] Ratilal Kishanlal Jaiswal
Age : 60, Occu.: Agri.,
R/o : Rajwadi, Tq. Sailu,
Dist. Parbhani

.. Respondents

AND

CRIMINAL APPLICATION NO. 320 OF 2016

Syed Kadri Syed Shakur Quadri
Age : 43 years, Occu.: Service
R/o Sailu, Tq. Sailu,
Dist. Parbhani

.. Applicant

Vs.

1] The State of Maharashtra
Through Police Station Officer,
Police Station, Sailu,
Tq. Sailu, Dist. Parbhani

2] Deepak Ratilal Jaiswal
Age : 60, Occu.: Agri.,
R/o : Rajwadi, Tq. Sailu,
Dist. Parbhani

.. Respondents

Mr. R.J. Nirmal, Advocate for the applicant in both applications
Mr. C.V. Dharurkar, A.P.P. for the respondent/State in both applications
Respondent no.2 in both applications – served – absent.

CORAM : N.W. SAMBRE, J.

DATE : 20/06/2016

ORAL ORDER :

Heard learned counsel for the applicant and the learned A.P.P. in both the applications.

2. Respondent no.2 in both the applications have refused to accept the notice. As such, by orders dated 30/3/2016 and 11/4/2016, this Court has noted that service on the respondent no. 2 in the respective applications, is complete.

3. Even before the revisional Court, the respondent no.2 i.e. original complainant in both the applications remained absent.

4. The facts as are necessary for deciding the present applications are as under :-

. Ratilal Kishanlal Jaiswal, complainant in complaint case being R.C.C. No. 83 of 2014 and Deepak

Ratilal Jaiswal, complainant in R.C.C. No. 84 of 2014 pending on the file of learned Judicial Magistrate First Class, Sailu, examined themselves, respectively, on 6/4/2014, alleging therein that the applicant in both these applications, who is a public servant posted in the Police Station, Sailu, alongwith the other staff of the Police Station, assaulted them at their house, in the lock-up and outside the lock-up. The learned Magistrate, as such issued process against the accused in R.C.C. No. 83 of 2014 and R.C.C. No. 84 of 2014 for the offences punishable under section 323, 324, 504 and 506 of the Indian Penal Code vide order dated April 21, 2014, which reads thus :-

“Perused statement of complainant on oath also perused the report of medical examination of the complainant. Prima facie it is seen that the allegations against the concerned PHC Quadri B.No.813 P.S. Sailu are genuine and reliable. Thus, the complaint be registered as warrant case for offence p/u/Sec 323, 324, 504 and 506 of IPC.

5. The said order of issuance of process against the public servant, was the subject matter of Criminal

Revision Nos. 49 of 2014 and 50 of 2014, which revisions came to be dismissed by the learned Additional Sessions Judge, Parbhani vide order dated 16/12/2015, respectively. As such, the present proceedings questioning the legality and validity of the proceeding for issuance of process against the applicant in both applications. Against the complainant – Ratilal Jaiswal, the following offences are already registered :-

Sr No	Crime No.	Under section	Registered at Police Station	Dated
1	6020 / 2014	65(e) of the Bombay Prohibition Act	Sailu Poilce Station	6/4/2014
2	6002 / 2014	65 (e) of Bombay Prohibition Act	Sailu Police Station	8/12/2014
3	6027/2010	65(e) of the Bombay Prohibition Act	Sailu Police Station	16/6/2010
4	42 / 2006	66(b) of Bombay Prohibition Act	Sailu Police Station, Dist. Parbhani	13/4/1996

Against complainant – Deepak Jaiswal, following offence is registered :

Sr No	Crime No.	Under section	Registered at Police Station	Dated
1	6019 / 2014	65(e) of the Bombay Prohibition Act	Sailu Poilce Station	11/4/2014

6. The sum and substance of the allegation against the complainant are that they have entered in the sale of illicit liquor in the absence of holding of any license under the Bombay Prohibition Act.

7. While questioning the legality and validity of the proceedings initiated against the applicant, learned counsel for the applicant has relied upon the provisions of section 197 of the Code of Criminal Procedure, so as to submit that the applicant, admittedly being a public servant cannot be proceeded against in absence of the proper sanction from the competent authority i.e. appointing authority of the present applicant. He would submit that the overall reading of the contents of the complaint's case and the verification would depict that the act attributed to the applicant is arising out of the official duty. In addition, according to him, there is a false implication of the applicant in the crime in question particularly, in the proceeding so as to pressurize the staff of the Police Department, not to initiate proceedings against him, as has been referred to hereinabove.

8. Learned counsel for the applicant then would submit that the law, as is laid down by the Division Bench of this Court in the matter of **State of Maharashtra vs. Shashikant Eknath Shinde** reported in **2013 ALL MR (Cri) 3060** has been ignored by the learned Court below while ordering issuance of process, as nothing has been considered by the Magistrate while satisfying itself regarding making out a case for issuance of process against a public servant by initiating proceedings against the applicant and by virtue of the order, the offence is registered against the public servant, which, in his respectful submission, is sufficient to deter the other members of the Police force from the same Police station from performing their official duties, so as to to prosecute the complainant for the alleged offences.

9. Learned A.P.P. opposed the prayer on the ground that the submissions as are canvassed, can be gone into at the stage of trial and not initially. Protection under section 197 of the Code of Criminal Procedure is not available to the applicant. In view thereof, he prays for dismissal of the application.

10. At the outset, it is required to be noted that the present non-applicant no.2 who has prayed before the learned Magistrate to take cognizance for the offences punishable under section 323, 324, 504 and 506 of the Indian Penal Code has not come out before the Court with clean hand, by pointing out the details of the pending cases against him registered with the Police Station in which, the present applicant is posted and working. Apart from above, the order dated 21/4/2014 passed by the learned Magistrate is cryptic one and lacks reasons. In ***Pepsi Foods Ltd. and another vs. Special Judicial Magistrate and others***, reported in (1998) 5 SCC 749, 35 Criminal Application No.258.13 (APL), the Apex Court has already observed that summoning of a person in a criminal proceeding be not taken recourse to by the criminal Courts casually. The learned Magistrate must be alive of the seriousness of the allegations made and it is only upon satisfaction thereof, he should proceed with the order of issuance of process or summoning a person in a criminal proceeding. The Magistrate is required to record his satisfaction as regards making out a prima facie case for taking cognizance and such

must reflect in the order, recording its satisfaction.

11. What is noticed from the observations made by the Magistrate's order of issuance of process is that, perusal of the statement of the complainant on oath prima facie discloses the offence and as such, he has ordered issuance of process. The order is as vague as it could be.

12. Apart from above, it is required to be taken note of the fact that the respondent/complainant remained absent before the learned Additional Sessions Judge in the Revision and also before this Court, the notices were tried to be served through the Registered Post, the same were refused by the respondent no.2 in both the applications. The intentional absence of respondent no.2/original complainant in the complaint case speaks voluminous about their ill-conduct, so as to infer that their object is to twist the arm of the public servant like the applicant, who prima facie, appears to be diligent in discharging his duties, as is apparent from the registration of the various offences

against the complainant with the Police Station for the offences punishable under section 65(e) of the Bombay Prohibition Act. It is then required to be noted that the present applicant has rightly placed reliance on the provisions of section 197 of the Code of Criminal Procedure and the law laid down by the Apex Court in the matter of ***State of U.P. Vs. Paras Nath Singh 2009 (6) SCC 372***, referring to paragraph no.4 of the said judgment, which reads thus:-

"4. The Section falls in the chapter dealing with conditions requisite for initiation of proceedings. That is if the conditions mentioned are not made out or are absent then no prosecution can be set into motion. For instance no prosecution can be initiated in a Court of Sessions under Section 193, as it cannot take cognizance, as a court of original jurisdiction, of any offence unless the case has been committed to it by a Magistrate or the Code expressly provides for it. And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than police officer, or upon his knowledge that such offence has been committed. So far as public

servants are concerned the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The Section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words, 'no' and 'shall' make it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. Very cognizance is barred. That is the complaint cannot be taken notice of. According to Black's law Dictionary the word 'cognizance' means 'Jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have committed during discharge of his official duty."

13. In the present case, what is apparent is on the very same day i.e. the date of alleged incident, as is claimed by the complainant, there is an offence registered against the complainant punishable under section 65(e) of the Bombay Prohibition Act and in which the present applicant is the complainant. It is then required to be noted that in the complaint, the respondent no.2 in both applications have claimed that they have suffered injuries, however, the medical reports, as are placed on record does not depict any injuries suffered by the complainant.

14. Prima facie, it could be made out from the above referred observations that the present applicant is falsely implicated in the proceedings, as are pending before the learned Judicial Magistrate First Class.

15. In view of above, the present Criminal Applications are allowed in terms of prayer clause (B), respectively.

[N.W. SAMBRE]
JUDGE

arp/