

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.54 OF 2011

Santoshkumar Ghisulal Jaju,
Age-50 years, Occu:Business,
R/o-Juna Press, Shevgaon,
Tq-Shevgaon, Dist-Ahmednagar.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
- 2) Sanjay Janardan Khedkar,
Age-30 years, Occu:Business,
R/o-Marwadi Galli, Shevgaon,
Tq-Shevgaon, Dist-Ahmednagar.

...RESPONDENTS

...

Mr.A.D. Ostwal Advocate h/f. Mr. N.S. Jaju
Advocate for Petitioner.
Mr.P.S. Patil, A.P.P. for Respondent No.1.
Ms. Chinmayee Deshpande Advocate h/f.
Mr.S.V. Natu Advocate for Respondent No.2.

...

CORAM: A.I.S. CHEEMA, J.

DATE : 25TH JANUARY, 2016

ORAL JUDGMENT :

1. Heard. Rule. Rule made returnable forthwith. With the consent of learned counsel for the parties, the Petition is taken up for final disposal at admissions stage.

2. Petitioner - original complainant (hereafter referred as 'Complainant') in Misc. Application No.253 of 2008, has filed this Petition challenging the impugned order dated 24th November 2010 whereby his complaint came to be dismissed. It is stated that the Complainant went through a civil litigation against one Lahoti which was fought till the Hon'ble Supreme Court and the Complainant succeeded. At the time of execution of Darkhast for possession, Respondent No.2 - original accused objected, relying on electricity bill to claim that he was in adverse possession. Consequently the Complainant collected information and came to know that

Respondent No.2 got forged "*Hami Patra*" (i.e. consent letter) purporting it to be from his mother (though dead) consenting to pay charges for reconnection of electricity which had been disconnected. Respondent No.2 signed for his mother, and on the basis of such document, secured electricity bills from the electricity department and relying on such forgery, raised objections in the execution proceeding. It is stated that complaint was filed claiming that accused has forged *Hami Patra* and was liable to be prosecuted. It is stated that verification of the complainant was recorded and the Magistrate thereafter, instead of issuing process, adopted a wrong procedure by passing order dated 2nd September 2009 sending notice to the accused as to why he should not be prosecuted and according to the learned counsel, looking to the procedure as prescribed under Section 200 of the Code of Criminal Procedure, 1973 (Cr.P.C.) this could not have been done as it was not mandate of the law,

to hear the accused before issue of process. It is stated that Magistrate took on record the objections of the accused and later on wrongly dismissed the complaint ignoring the Judgment in the matter of **Iqbal Singh Marwah and another vs. Meenakshi Marwah and another, reported in 2005 CRI. L.J. 2161(1)**. It is claimed that the order passed by the Magistrate deserves to be set aside and the process should be issued.

3. Per contra, the learned counsel for Respondent No.2 submits that the alleged forged document was actually never produced in the Regular Darkhast and what was produced was electricity bill after consumption of electricity and present complaint is not maintainable. It is argued for Respondent No.2 – original complainant that the order passed by the Magistrate mentioning that no cognizance can be taken, is erroneous as the Magistrate had issued notice to the accused and after hearing the accused, the order was

passed. According to the learned counsel, it amounts to issue of process and the Magistrate has, after applying mind, invoked Section 195 of the Cr.P.C. to dismiss the complaint. According to the learned counsel, the accused has signed his own name in the *Hami Patra* and there was no forgery.

4. In reply, the learned counsel for original complainant submits that the accused had purchased the stamp in the name of dead person and then forged the document, as if it was for the dead person.

5. Going through the material available on record, it appears that the Magistrate committed an error when at the stage of considering the private complaint, under Section 200 of Cr.P.C., after recording verification instead of resorting to any of the options provided under Section 200 read with Section 202 of Cr.P.C., the Magistrate

issued notice calling upon the accused to say as to why he should not be prosecuted.

6. Now, it is admitted position in the course of submissions, that the concerned *Hami Patra* which is subject matter of the complaint alleging forgery and fabricated document, was not produced before the Executing Court. As such there was no question of invoking Section 195 of the Cr.P.C.

7. Apart from above, even if it was assumed that the *Hami Patra* was produced before the Executing Court, it is apparent from the record that the allegations were that the *Hami Patra* was prepared and on that basis electric consumption was claimed to subsequently put-up the claim of adverse possession. If the Judgment in the matter of **Iqbal Singh Marwah** (cited supra) is perused, the observations of the Hon'ble Supreme Court in Para 9 of the Judgment were as under:

"9. The scheme of the statutory provision may now be examined. Broadly, Section 195, Cr.P.C. Deals with three distinct categories of offences which have been described in clauses (a), (b) (I) and (b)(ii) and they relate to (1) contempt of lawful authority of public servants, (2) offences against public justice, and (3) offences relating to documents given in evidence. Clause (a) deals with offences punishable under Sections 172 to 188, IPC which occur in Chapter X of the IPC and the heading of the Chapter is – 'Of Contempts of The Lawful Authority of Public Servants'. These are offences which directly affect the functioning of or discharge of lawful duties of a public servant. Clause (b)(i) refers to offences in Chapter XI of IPC which is headed as – 'Of False Evidence And Offences Against Public Justice'. The offences mentioned in this clause clearly relate to giving or fabricating false evidence or making a false declaration in any judicial proceeding or before a Court of justice or before a public servant who is bound or authorized by law to receive such declaration, and also to some other offences which have a direct correlation with the proceedings in a Court of justice (Sections 205 and 211, IPC). This being the scheme of two provisions or clauses of Section

195, viz., that the offence should be such which has direct bearing or affects the functioning or discharge of lawful duties of a public servant or has a direct correlation with the proceedings in a court of justice, the expression "when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in a Court" occurring in clause (b)(ii) should normally mean commission of such an offence after the document has actually been produced or given in evidence in the Court. The situation or contingency where an offence as enumerated in this clause has already been committed earlier and later on the document is produced or is given in evidence in Court, does not appear to be in tune with clauses (1)(i) and (b)(i) and consequently with the scheme of Section 195, Cr.P.C. This indicates that clause (b)(ii) contemplates a situation where the offences enumerated therein are committed with respect to a document subsequent to its production or giving in evidence in a proceeding in any Court."

[Emphasis supplied]

. In Para 25 of the Judgment it was

observed:

"25. In view of the discussion made above, we are of the opinion that Sachida Nand Singh has been correctly decided and the view taken therein is the correct view. Section 195(1)(b) (ii), Cr.P.C. would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court i.e. during the time when the document was in custodia legis."

. Looking to the above observations of the Hon'ble Supreme Court, Section 195 of Cr.P.C. Could not be applied to a document which was earlier allegedly forged or fabricated and subsequently it was used in the Court or before the authority.

8. The trial Court referred to the various Rulings cited and in para 9 observed that:

"I have gone through the above decisions

minutely. In case No. 1 to 3 above, the facts that the document was in custody of Court. The document tendered in the evidence. In case No.4, the document was not come within purview of Section 195(1)(a) of Cr.P.C." (*whatever that means*).

. I have not been able to understand what the Magistrate wanted to say to discard the binding Rulings, specially of the Hon'ble Supreme Court.

9. For the above reasons, I do not find that the procedure adopted by the Magistrate while rejecting the complaint is maintainable or the reasons recorded for dismissal of the complaint can be upheld.

10. Consequently, the order dated 2nd September 2009 and the subsequent order dated 24th November 2010 passed by the Magistrate in Misc. Application No.253 of 2008, are quashed and set aside. Considering the contents of the complaint

and the verification below the complaint, process is issued under Sections 193, 199, 200 and 471 of the Indian Penal Code, 1860.

11. Rule is made absolute on the terms indicated above. The Criminal Writ Petition is allowed, accordingly, with costs to be paid by Respondent No.2.

[A.I.S. CHEEMA, J.]

asb/JAN16