

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1990 OF 2007

1. Amit S/o Bhanudas Ujgare,
Age. 28 years, Occu. Business,
R/o. Wadwani, Tq. & Dist. Beed.
2. Gautam S/o Tatyaba Ujgare,
Age. 25 years, Occu. Labourer,
R/o. Wadwani, Tq. & Dist. Beed. ...Applicant

Versus

1. The State of Maharashtra.
2. Bhimrao S/o Yamaji Ujgare,
Age. 41 years, Occu. Business,
R/o. Wadwani, Tq. Wadwani,
Dist. Beed. ...Respondents

...
Advocate for Applicants : Mr. V.C. Patil h/f Mr. U B Bondar
APP for Respondent No.1: Mr. P.G. Borade
Advocate for respondent No.2: Mr. R.S. Shinde h/f Mr. Joydeep Chatterji
.....

CORAM : V. K. JADHAV, J.
DATED : 7th OCTOBER, 2016

ORAL JUDGMENT:-

1. The applicants original accused Nos.1 and 2 are seeking quashment and setting aside the order dated 17.5.2007 passed by the Judicial Magistrate, First Class, Majalgaon in R.C.C. No.99 of 2007 thereby issuing process for the offences punishable under Sections 171-G, 193, 196, 197 r.w. 34 of I.P.C.

2. Brief facts, giving rise to the present criminal application are as follows:-

The applicant No.1 and respondent No.2 contested the elections of Zilla Parishad, Beed from Wadwani constituency, which was reserved for Scheduled Caste (male) candidate. The applicant No.1 got elected from the said constituency by defeating respondent No.2 with considerable margin of votes. On 25.4.2007, respondent No.2 filed a private complaint in the court of J.M.F.C. Majalgaon against present applicants and two others alleging therein that applicant No.1 was disqualified for the said election, however, by submitting false information and affidavits, he has contested the election and as such committed offences punishable under Sections 171-G, 193, 196, 197 r.w. 34 of I.P.C. Learned J.M.F.C. by order dated 17.5.2007 issued process against the applicants and other two accused persons for the aforesaid offences. Hence, this application.

3. Learned counsel for the applicants submits that respondent No.2 has challenged the election results by filing election petition No. 4 of 2007 before the District Judge, Majalgaon. The learned District Judge-1, Majalgaon by judgment and order dated 16.4.2008 dismissed the said election petition. The learned District Judge has

recorded the finding while disposing of said election petition that the petitioner (respondent No.2 herein-original complainant) failed to prove that respondent No.1 (present applicant No.1) made false declaration and he is, therefore, disqualified to contest the election from Wadwani constituency. In the light of above observations made by learned District Judge, while disposing of election petition, the allegations made in the complaint, which is subject matter of the present criminal application, are not sustainable and on this ground alone the impugned order is liable to be quashed set aside. Learned counsel for the applicants submits that learned District Judge after conducting full-fledged trial of election petition, recorded the finding in negative and the said finding binds the parties. Criminal proceedings stand suspended in view finding recorded by the civil court and thereby the findings of the civil court get precedence over the criminal proceedings. Apart from the above legal position, the allegations made against present applicant No.2, though accepting as it is, prima facie, no offence is made out and thus, the impugned order is liable to be quashed and set aside to the extent of applicant No.2.

4. Learned counsel for respondent No.2-original complainant submits that if criminal case and the civil proceedings are for the same cause, the judgment of civil court would be relevant if any of

conditions of Sections 40 to 43 of Evidence Act are satisfied. It cannot be said that the same would be conclusive except, as provided under section 41 of the Evidence Act. Learned counsel submits that the criminal prosecution would not be required to be dropped alone on the ground that the civil suit, for the same cause, came to be dismissed. Learned counsel for the respondent-original complainant, in order to substantiate his submissions, places reliance on the judgment in the case of ***K.G. Premshankar vs. Inspector of Police and Anr, reported in 2002 Cri.L.J. 4343.***

5. Sections 40 to 43 of the Evidence Act provide which judgment of the Court of justice are relevant and to what extent. Sections 40 to 43 of the Evidence Act read as under:-

“40. Previous judgments relevant to bar a second suit or trial.—

The existence of any judgment, order or decree which by law prevents any Courts from taking cognizance of a suit or holding a trial is a relevant fact when the question is whether such Court ought to take cognizance of such suit, or to hold such trial.

41. Relevancy of certain judgments in probate, etc., jurisdiction.

—A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial admiralty or insolvency jurisdiction which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing,

is relevant. Such judgment, order or decree is conclusive proof—

that any legal character, which it confers accrued at the time when such judgment, order or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.

42. Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41.—Judgments, orders or decrees other than those mentioned in section 41, are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

43. Judgments, etc., other than those mentioned in sections 40 to 42, when relevant.—Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provisions of this Act.”

6. In the case of ***K.G. Premshankar vs. Inspector of Police and Anr, (supra)***, relied upon by learned counsel for the respondent original complainant, the Apex Court had an occasion to deal with the similar issue by making observations in para 31 to 33 of the

judgment. Paras 31 to 33 of the said judgment are reproduced as follows:-

“31. Further, the judgment, order or decree passed in a previous civil proceeding, if relevant, as provided under Sections 40 to 41 or other provisions of the Evidence Act then in each case, Court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. Take for illustration, in a case of alleged trespass by 'A' on 'B's property, 'B' filed a suit for declaration of its title and to recover possession from 'A' and suit is decreed. Thereafter, in a criminal prosecution by 'B' against 'A' for trespass, judgment passed between the parties in civil proceeding could be relevant and Court may hold that if conclusively establishes the title as well as possession of 'B' over the property. In such case, 'A' may be convicted for trespass. The illustration to Section 42 which is quoted above makes the position clear. Hence, in each and every case, first question which would require consideration is- whether judgment, order or decree is relevant? If relevant – its effect. It may be relevant for a limited purpose, such as, motive or as a fact in issue. This would depend upon facts of each case.

32. In the present case, the decision rendered by the Constitution Bench of M.S. Sheriff's case (supra) would be binding, wherein it has been specifically held that no hard and fast rule can be laid down and that possibility of conflicting decision in civil and criminal courts is not a relevant consideration. The law envisages “such an eventuality when it expressly refrains from making the decision of one Court binding on the other, or even relevant, except for limited purpose such as sentence or damages.”

33. Hence, the observation made by this Court in V.M. Shah's case (supra) that the finding recorded by the criminal Court stands superseded by the finding recorded by the Civil Court is not correct

enunciation of law. Further, the general observations made in Karam Chand's case are in context of the facts of the case stated above. The Court was not required to consider the earlier decision of the Constitution Bench in M.S. Sheriff's case as well as sections 40 to 43 of the Evidence Act."

7. So far as previous judgment rendered by the civil court, which has attained finality, is concerned, the same can be relied upon by taking recourse of provisions of Sections 40 to 43 of the Evidence Act. If the criminal case and civil proceedings are for the same cause, the judgment of Civil Court would be relevant, if any conditions of Sections 40 to 43 are satisfied. It cannot be said that the judgment rendered by the Civil Court would be conclusive and it terminates the criminal proceedings. An exception is carved out in Section 41 of Evidence Act. In the instant case, Section 41 has no application. Furthermore, the judgment and order or decree passed in the civil proceedings are relevant as provided under Sections 40 and 42 of the Evidence Act. Thus, in the instant case, the learned Magistrate would require to consider all evidence and to find out whether the judgment and order or decree passed in the said election petition is relevant and if relevant, what is effect of the same.

8. In view of the allegations made in the complaint, prima facie, case is made out for issuance of process against the present

applicant No.1-original accused No.1. Scope of enquiry under Section 202 of Cr.P.C. is extremely limited and thus, I do not find any fault in the impugned order passed by the learned Magistrate, thereby issuing process against applicant No.1 for having committed offences punishable under Sections 171-G, 193, 196, 197 r.w. 34 of I.P.C. So far as applicant No.2 (original accused No.4) is concerned, he is merely a proposer in the nomination form filled up by present applicant No.1 for contesting the said election and except that there is no other allegation made against him. In view of this, the order of issuance of process against applicant No.2 (original accused No.4) is thus liable to be quashed and set aside. Accordingly, I proceed to pass the following order:-

O R D E R

- I. Criminal application No. 1990 of 2007 is hereby partly allowed.
- II. The impugned order dated 17.05.2007 passed by learned J.M.F.C. Majalgaon in R.C.C. No. 99 of 2007 thereby issuing process as against applicant No.2 (original accused No.4) is quashed and set side.

III. The order passed by the learned Magistrate dated 17.5.2007 in R.C.C. No. 99 of 2007 thereby issuing process for the offences punishable under sections 171-G, 193, 196, 197 r.w.34 of I.P.C. against the present applicant No.1 (original accused No.1) stands confirmed.

IV. Criminal application is accordingly disposed of. Rule is made absolute in the above terms.

(V. K. JADHAV, J.)

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