

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2387 OF 2007

Imran s/o Inus Shaikh,
Age. 52 years, Occ. Service,
R/o. Karjat, Tq. Karjat,
District: Ahmednagar.

....Petitioner

versus

Rukmini w/o Dada Dhanwade,
Age. 42 years, Occ. Agril. & Household,
R/o. Kaparewadi, Tq. Karjat,
Dist. Ahmednagar.

....Respondent

.....
Advocate for Petitioner: Mr. N V Gaware
Advocate for Respondent : Mrs. M D Thube-Mhase
.....

CORAM : V. K. JADHAV, J.
DATED : 21st DECEMBER, 2016

ORAL JUDGMENT:-

1. The applicant original accused No.1, by this criminal application, seeks to quash and set aside the R.T.C. No. 41 of 2005 qua the applicant, pending on the file of learned Judicial Magistrate, First Class, Karjat.

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

a) The respondent original complainant has filed a complaint

bearing R.T.C. No. 41 of 2005, before the J.M.F.C. Karjat, against the present applicant and one more accused, for having committed offences punishable under Sections 166, 167, 193, 406, 420, 468 of I.P.C. It has alleged in the complaint that the applicant is village Talathi and another accused is Circle Officer. On 8.6.2000, the respondent complainant had purchased one agriculture land bearing Gat No. 56/2 and Gat No.54/1, situated at village Kaparewadi, from Shahabai Tukaram Wangade, Rahibai Pandharinath Sudrik and Lalabai Dasu Khondve, under registered sale deed for valuable consideration.

b) It has further alleged in the complaint that vide mutation entry No. 414 dated 26.2.2000, name of legal heirs of deceased Laxman Sahadu Dhanwade, who died on 3.4.1992, were mutated and the said mutation entry has been sanctioned on 18.3.2000. It has further alleged that as per the village revenue record, the mutation entry Nos. 401 to 403 were sanctioned on 06.01.2000, mutation entry Nos. 406 to 413, mutation entries No. 415 to 420 were sanctioned on 4.4.2000 and mutation entry No. 421 to 423 were sanctioned on 18.10.2000. In the month of March, 2000, no mutation entry was carried out but as per the revenue record, the mutation entry No. 414 was sanctioned on 18.3.2000. It has further alleged in the complaint that the said vendors Shahabai, Rahibai and Lalabai had never

executed the relinquishment deed in respect of the aforesaid lands, purchased by the respondent complainant and thus it appears that the mutation entry No.425 came to be effected in collusion with the present applicants and another accused. It has further alleged in the complaint that the applicant and the original accused No.2 in collusion with each other and with an intention to cause loss to the said Shahabai, Rahibai and Lalabai, tampered the Government record and carried out false and bogus mutation entry Nos. 425, 426 and 428, respectively.

c) On the basis of these allegations in the complaint, learned Magistrate, Karjat by order dated 26.4.2005, after hearing the counsel for the respondent complainant, on considering verification statement and the documents produced alongwith the complaint, issued process against the present applicant and another accused for the offence punishable under Sections 166, 167, 406 and 471 of I.P.C.

3. Learned counsel for the applicant-original accused submits that as per the allegations made in the complaint, the alleged offence shown to have occurred in the year 2000, however, the complaint in question came to be lodged in the year 2005. The respondent complainant has not bothered to explain the said delay to satisfy the

Magistrate. Even the learned Magistrate, *suo moto*, has not considered the aspect of inordinate delay caused in filing the complaint, while entertaining the said complaint. Learned counsel submits that learned Magistrate has taken cognizance of a time barred complaint and issued process against the applicant.

Learned counsel for the applicant submits that the applicant is a public servant and prior sanction, as provided under Section 197 of Cr.P.C. is precondition for prosecution of the applicant, who is working as a Talathi. Though, there are allegations about recording of false mutation entries, it is the job of the Circle Inspector to certify each and every mutation entries and the applicant, being a Talathi, has no concern with it. It has alleged in the complaint that vendors of the complainant viz. Shahabai, Rahibai and Lalabai had never executed the relinquishment deed in respect of their share in the ancestral property and even after the respondent complainant had searched about the said deed; it could not be traced out. The brother of said vendors Shahabai, Rahibai and Lalabai had preferred appeal before the Sub Divisional Officer, Karjat Division, Karjat against cancellation of certain mutation entries in respect of aforesaid land, wherein the said brother Ramdas has pointed out to the Court the relinquishment deed was executed by his sisters and the copy of said deed also produced before the Court. The learned Sub Divisional

Officer by its judgment and order dated 27.2.2004 allowed the appeal and restored the mutation entry No.425 with direction that if the sisters of the appellant Ramdas is having any grievance about execution of said relinquishment deed they can approach the civil as well as criminal court for Redressal of their grievance. It thus appears that the mutation entry No.425 came to be recorded as per the relinquishment deed produced by the parties. Thus, there is close nexus between the act complained and the official duties performed by the applicant.

Learned counsel for the applicant in order to substantiate his contentions, placed his reliance on the following cases:-

- i) D.T. Virupakshappa vs. C. Subash, reported in (2015) 12 SCC 231;
- ii) General Officer Commanding vs. C.B.I. and another reported in 2012 (2) B.C.R. (Cri.) 623.
- iii) State of Himachal Pradesh vs. M.P. Gupta reported in 2003 AIR SCW 6887
- iv) Anil Kumar and others vs. M.K. Aiyappa and another, reported in 2013 (10) SCC 705.

v) Zandu Pharmaceutical Works Limited and others vs. Mohd. Sharaful Haque and another, reported in 2005(1) Bom.C.R. (Cri.)620

(vi) Sarah Mathew vs. Institute of Cardio Vascular Diseases and others, reported in (2014) 2 SCC 62.

4. Learned counsel for the respondent complainant submits that in response to the process issued by the trial court, the applicant and accused No.1, appeared before the trial court and even the learned Magistrate has passed order of framing of charge against all of them. Even though mutation entry No.414 was certified in the month of October, 2000, the same has been scored and changed to the month of March, 2000. The said vendors, Shahabai, Rahibai and Lalabai never relinquished their rights in the aforesaid lands, however, only to help accused Nos. 3 and 4 and to facilitate the further mutation entry Nos. 426 and 428, the said mutation entry No.425 was effected without there being any relinquishment deed produced on record. Learned counsel submits that even the Tahsildar has directed enquiry into the allegations made in the complaint and *prima facie* found that there are deliberate changes in the original record with regard to mutation entry Nos. 414 and 425. The Tahsildar has recommended the action against the applicant. Learned counsel submits that even though the respondent complainant had submitted an application to the Collector, seeking sanction to prosecute the

applicant and other accused persons, the said application was submitted as a matter of abundant precaution and the acts alleged against the applicant cannot be said to be an acts done in the course of discharge of his official duty and therefore, sanction as contemplated under Section 197 of Cr.P.C. is not required. There is no reasonable connection between the act complained and discharge of the official duty.

5. It appears from the order passed by learned Magistrate, dated 26.4.2005, thereby learned Magistrate has issued process against the applicant and other accused persons for the offences punishable under Sections 166, 167, 406 and 471 of I.P.C. It is thus clear that the maximum punishment for the offences as aforesaid is three years imprisonment. In view of the provisions of Section 468 (2) clause (c), the period of limitation is of three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. In terms of provisions of Section 473 of Cr.P.C. the extension of period of limitation in certain cases is permissible. The court may take cognizance of an offence after expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary to do so in the interests of justice. In the instant case, the respondent complainant had not filed any

application alongwith the complaint to explain the inordinate delay occurred in filing the complaint. Even though the alleged offence shown to have been committed in the year 2000, the respondent complainant has approached the Court by filing private complaint on 20.4.2005 and the learned Magistrate, at the time of taking cognizance and even at the time of issuance of process, has not considered the point of limitation.

6. In the case of ***Sarah Mathew vs. Institute of Cardio Vascular Diseases (supra)***, relied upon by learned counsel for the applicant, in para 51 of the judgment, the Supreme court has made the following observations:-

"51. In view of the above, we hold that for the purpose of computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. We further hold that Bharat Kale which is followed in Japani Sahoo lays down the correct law. Krishna Pillai will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 CrPC."

7. It is thus clear that for the purpose of computing the period of limitation under Section 468 of Cr.P.C. the relevant date is the date

of filing of complaint. In the instant case, the complaint came to be filed before the Court beyond period of limitation.

8. In the case of ***Zandu Pharmaceutical Works Ltd and others vs. Mohd. Sharaful Haque and others (supra)***, relied upon by learned counsel for the applicant, in para 15 of the judgment, the Supreme Court has made following observations:-

“15. The learned Magistrate has issued process in respect of offence under section 418 I.P.C. The punishment provided for the said offence is imprisonment for three years. The period of limitation in terms of section 468(2)(c) is 3 years. That being so, the Court could not have taken cognizance of the offence. Section 473 of the Code provides for extension of period in certain cases. This power can be exercised only when the Court is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary to do so in the interest of justice. Order of learned Magistrate does not even refer to either section 468 or section 473 of the Code. The High Court clearly erred in holding that the complaint was not hit by limitation. As noted above, there was not even a reference that the letter dated 5-12-2001 was in response to the letter of the complainant dated 24-11-2001. The factual position clearly shows that the complaint was nothing but a sheer abuse of the process of law and this is a case where the power under section 482 should have been exercised. The High Court unfortunately did not take note of the guiding principles as laid down in Bhajan Lal case thereby rendering the judgment indefensible. The judgment of the High Court is set aside, the proceedings initiated by the complaint lodged are quashed. The appeal is allowed.”

9. In the instant case, the learned Magistrate has issued process in respect of the offences under sections 166, 167, 406 and 471 of I.P.C. and the maximum punishment provided for the said offences is imprisonment of three years. The period of limitation in terms of Section 468 (2) (c) is three years. Thus, learned Magistrate should not have taken cognizance of the offences. The said power can be exercised only when the Court is satisfied on the facts and in the circumstances of the case and the delay has been properly explained. However, in the instant case, the order of the Magistrate does not even refer either under Section 468 or 473 of the Code. It thus appears that the complaint against the present applicant is hit by limitation.

10. On careful perusal of the allegations made in the complaint, it appears that the real dispute amongst the legal heirs of Laxman Sahadu Dhanwade is of a civil nature. The said Laxman Dhanwade died on 3.4.1992 leaving behind him three married daughters viz. Shahabai, Rahibai and Lalabai and two sons viz. Ramdas and Dada. The respondent complainant on 8.6.2000, under a registered sale deed had purchased the share of those three daughters. However, in the meanwhile, on the basis of relinquishment deed produced before the revenue authorities, certain mutation entries came to be

sanctioned deleting thereby the names of those daughters in respect of the aforesaid land on the basis of the alleged relinquishment deed executed by them. The said daughters of deceased Laxman Dhanwade had obviously disputed the execution of said relinquishment deed.

11. As directed by this Court, the respondent complainant had produced before this court a copy of judgment and order dated 27.2.2004, passed by the Sub Divisional Officer, Karjat. One of the legal heirs of deceased Laxman i.e. his son Ramdas, had preferred an appeal before the Sub Divisional Officer against cancellation of mutation entry 425. The said mutation entry 425 came to be recorded and sanctioned on the basis of alleged relinquishment deed executed by married daughters of deceased Laxman. The Sub Divisional Officer, by its judgment and order, as aforesaid, allowed the appeal by considering a copy of relinquishment deed and further directed the married daughters of deceased Laxman to approach the civil or criminal court for redressal of their grievance, if at all, they dispute the authenticity of said relinquishment deed. The Sub Divisional Officer, by the said order has set aside the order passed by the Tahsildar about cancellation of mutation entry 425 and accordingly restored the said mutation entry 425. The respondent complainant has mainly alleged in the complaint that the mutation

entry 425 was recorded ante dated to facilitate the subsequent mutations in respect of the aforesaid land sold by said Ramdas to other persons, who are subsequently arrayed as accused Nos. 3 and 4 to the original complaint. However, it appears that the applicant being Talathi, is required to accept the application and documents submitted with a request to take an appropriate mutation entry. However, as per the provisions of Maharashtra Land Revenue Code, he is not appropriate authority to certify the said mutation entry however, he is bound to accept the application and the documents submitted alongwith the application and refer it to the Circle Officer for appropriate action. Even the Sub Divisional Officer, by his judgment and order dated 27.2.2004 has confirmed the certification of mutation entry 425.

12. In view of the aforesaid facts, it appears that there is reasonable nexus between the act complained and the performance of official duties by the applicant. In the case of ***D.T. Virupakshappa Vs. C. Subhash, (supra)***, the Supreme Court in para 6 of the said judgment has referred the case of ***Omprakash and others vs. State of Jharkhand, through the Secretary, Department of Home, Ranchi 1 and another*** and quoted paragraphs 32 and 41 of the said judgment, which read as under:-

“32. The true test as to whether a public servant was acting or purporting to act in discharge of his duties would be whether the act complained of was directly connected with his official duties or it was done in the discharge of his official duties or it was so integrally connected with or attached to his office as to be inseparable from it (K. Satwant Singh). The protection given under Section 197 of the Code has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection (Ganesh Chandra Jew). If the above tests are applied to the facts of the present case, the police must get protection given under Section 197 of the Code because the acts complained of are so integrally connected with or attached to their office as to be inseparable from it. It is not possible for us to come to a conclusion that the protection granted under Section 197 of the Code is used by the police personnel in this case as a cloak for killing the deceased in cold blood. (Emphasis supplied)

41. The upshot of this discussion is that whether sanction is necessary or not has to be decided from stage to stage. This question may arise at any stage of the proceeding. In a given case, it may arise at the inception. There may be unassailable and unimpeachable circumstances on record which may establish at the outset that the police officer or public servant was acting in performance of his official duty and is entitled to protection given under Section 197 of the Code. It is not possible for us to hold that in such a case, the court cannot look into any documents produced by the accused or the public servant concerned at the

inception. The nature of the complaint may have to be kept in mind. It must be remembered that previous sanction is a precondition for taking cognizance of the offence and therefore, there is no requirement that the accused must wait till the charges are framed to raise this plea. ...”

13. It is thus well settled that the question of sanction is a paramount importance for protecting the public servant who has acted in good faith while performing his duty. He may not be unnecessarily harassed on a complaint by unscrupulous person. There is reasonable connection between the act complained and the official duty performed by the applicant and the applicant is entitled to protection given under Section 197 of Cr.P.C. The respondent complainant also filed an application before the Collector seeking sanction to prosecute the present applicant, however, no such sanction was accorded and the complaint was filed without obtaining sanction before the court.

14. In view of the above discussion, the complaint as against the present applicant fails on both the counts. The learned Magistrate could not have taken cognizance of time barred complaint and also without sanction as required under Section 197 of Cr.P.C. Hence, I proceed to pass the following order:-

O R D E R

- I. Criminal application is hereby allowed in terms of prayer clause "B".
- II. Rule made absolute in the above terms.
- III. Criminal application is accordingly disposed of.

(V. K. JADHAV, J.)

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