

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2497 OF 2005

Satish s/o Jagannath Sadamate
Age 43 years, Occ. Government servant
Dy. Regional Transport Officer
At present Jalna, District Jalna ...Applicant

versus

1. Yousuf Ibrahim Balseria
Age 35 years, Occ. Poultry Farm
R/o. Bhagwatwadi, Navapur,
Tq. Navapur, District Nandurbar ...(Ori. complainant)
2. The State Government
(copy to be served on the
Government Pleader, High Court
of Judicature of Bombay,
Bench at Aurangabad) ...Respondents

...
Advocate for Applicant : Miss. S.V. Nyayadhis h/f Mrs. C.S. Deshmukh
Advocate for respondent No.1: Mr. Joydeep Chatterji
APP for Respondent No.2: Mr. M.B. Bharaswadkar
.....

CORAM : V. K. JADHAV, J.
DATED : 2nd DECEMBER, 2016

ORAL JUDGMENT:-

1. Being aggrieved by the order dated 1.8.2005, passed by the learned J.M.F.C. Nandurbar below Exh.1 in criminal case No. 266 of 2004, issuing thereby the process against the applicant and one more accused, for the offences punishable under Sections 420, 467, 468, 469, 470 r.w. 34 of I.P.C. the original accused No.3 has

preferred this criminal application.

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

a) The applicant accused is working as Deputy Regional Transport Officer and he was transferred the Transport Office Nandurbar. The respondent original complainant has filed a private complaint before the J.M.F.C. Nandurbar, alleging therein that his uncle, by name Mohd. Yousuf Balesariya, had purchased a truck bearing registration No. MH-18-7296, long back from one Ismail Miya Mohd. Malak. After purchasing the said truck, it was transferred in the name of his uncle by following due procedure, as laid down under the provisions of Motor Vehicles Act. It has further alleged in the complaint that the uncle of the complainant never sold the said truck to anybody nor given no objection certificate to that effect. However, original accused No.1, in collusion with the present applicant and another accused, who is R.T.O. agent, fraudulently got transferred the said vehicle in his name. It has alleged in the complaint that all accused in furtherance of their common unlawful object, have committed the offences punishable under Sections 420, 467, 468, 469, 470 r.w. 34 of I.P.C.

b) By order dated 16.8.2004, the learned Magistrate has directed the concerned police to carry out the investigation, as provided under Section 156(3) of Cr.P.C. Accordingly, the concerned police has submitted report on 22.12.2004 before the learned J.M.F.C. Nandurbar disclosing that after due investigation, no offence is made out against the present applicant and the R.T.O. agent. However, by order dated 24.2.2005, learned Magistrate further directed the concerned police for re-investigation into the matter. Learned Magistrate has also directed to conduct investigation through another investigating Officer. The concerned police, thereafter submitted a report. It has submitted that the charge sheet is filed against the original accused No.1, however, no case is made out against the present applicant accused and another accused, who happened to be the R.T.O. agent. The learned Magistrate, after giving an opportunity of being heard to the counsel for the complainant and on perusal of police report and after going through the allegations made in the complaint and the documents placed on record in support thereof, by impugned order dated 1.8.2005 issued process against the present applicant and the accused No.2 (R.T.O. agent) for the offences punishable under Sections 420, 467, 468, 469, 470 r.w. 34 of I.P.C. Hence, this criminal application.

3. Learned counsel for the applicant submits that the applicant

accused is working as Deputy Regional Transport Officer, at Nandurbar, at the relevant time. The said vehicle was registered at R.T.O. office at Dhule and since the uncle of the complainant sold the said vehicle to original accused No.1, on submission of relevant papers, the R.T.O. Office, Dhule has issued no objection certificate for transfer of the said vehicle in the name of original accused No.1. After considering the papers forwarded to the applicant accused alongwith no objection certificate, the applicant accused has passed an appropriate orders in terms of provisions of the Motor Vehicles Act. The act complained of is having reasonable nexus with the official duties performed by the applicant accused. The learned Magistrate has taken cognizance of the complaint against applicant accused without there being any sanction as provided under Section 197 of Cr.P.C. In view of this, the impugned order of issuance of process against the applicant accused is liable to be quashed and set aside on this ground alone. The uncle of the complainant had submitted all relevant documents before the R.T.O. Dhule and after verifying those documents, the R.T.O. Dhule has issued no objection certificate for transfer of the said vehicle in favour of original accused No.1. The uncle of the complainant has not approached the court and the complainant, who has no concern with the vehicle, has lodged the complaint.

4. Learned counsel for the respondent original complainant submits that the uncle of the complainant never sold the vehicle to any person, including original accused No.1 nor issued any no objection certificate in favour of original accused No.1, even though the original accused No.1 in collusion with the present applicant and accused No.2, who is R.T.O. agent, got transferred the said vehicle in his name by preparing false documents. Strong prima facie case is made out against the applicant. The applicant accused alongwith other accused persons committed offence for which sanction is not required. Learned Magistrate has therefore, correctly issued process against the applicant and other accused. No interference is required. Criminal application is liable to be dismissed.

5. I have also heard learned A.P.P. for the respondent-State.

6. I have carefully perused the allegations made in the complaint and report submitted by the police twice before the learned Magistrate. I have also perused the documents submitted alongwith the criminal application. It is true that the probable defence of the accused cannot be considered at the time of issuance of process nor the documents produced before the court for the first time when the order of issuance of process is challenged before the superior court. However, in the instant case, the applicant accused is public servant

and at the inception of the case, he may produce certain documents and those documents can be looked into by the court, to the extent of requirement of sanction, as provided under section 197 of Cr.P.C.

7. In view of the above discussion, a necessary reference can be given to the observations made by the Supreme Court in the case of ***D.T. Virupakshappa Vs. C. Subash, reported in (2015) 12 SCC 231***, relied upon by learned counsel for the applicant. The Supreme Court in para 8 and para 5 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, respectively, 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 he

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.”*

8. In the case in hand, there is official record, which unmistakably points out that the R.T.O. office Dhule, on verifying the record submitted by the owner of the said truck, issued no objection certificate in favour of original accused No.1 for transfer of the vehicle and on the basis of documents forwarded to the R.T.O. office

Nandurbar, alongwith the said no objection certificate, the applicant accused has passed necessary order effecting said transfer in favour of original accused No.1. Thus, there is reasonable nexus between the act complained and the official duty discharged by the applicant accused for which sanction, as provided under Section 197 of Cr.P.C. is required. Further, as rightly pointed out by the learned counsel for the applicant that owner of the truck has not filed any complaint and the respondent complainant, who has no concern with the truck, approached the court and made wild allegations against the present applicant, who is public servant. It is true that anybody can set the criminal law in motion by filing complaint, however, in the peculiar facts and circumstances of the present case, a note is required to be taken that the original owner of the truck has not approached the court to lodge the complaint. Apart from this, in view of above discussion, the ratio laid down by Supreme Court in the case of ***D.T. Virupakshappa Vs. C. Subash*** (supra), the order of issuance of process passed by learned Magistrate against the present applicant accused is liable to be quashed and set aside for want of sanction, as provided under Section 197 of Cr.P.C. Criminal application therefore, succeeds. Hence, I proceed to pass the following order:-

O R D E R

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

(V. K. JADHAV, J.)

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