

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1553 OF 2003

Sushilkumar Rajesingh Suryanvanshi & Ors. ... Applicants
Vs.
Sadashiv Daji Aradhi & Anr. ... Respondents

**WITH
CRIMINAL APPLICATION NO.2199 OF 2003**

Sushil Rajesingh Suryavanshi & Ors. ... Applicants
Vs.
Shri Vadiraj Laxmikant Kalgi & Anr. ... Respondents

Mr. Shirish Gupte, Sr. Adv. a/w. Mr. M.S. Mohite, Adv. for the Applicants.
Mr. Girish Kulkarni, Adv. for the respondent No.1 in Appln/1553/2003.
Mr. Y.M. Nakhawa, APP for Respondent No.2-State.

CORAM : SMT ANUJA PRABHUDESSAI, J.
DATE : 23rd February, 2016.

P.C. :

By these applications filed under Section 482 of the Cr.P.C. the Applicants have challenged the orders of issuance of process dated 17th March, 2003 and 23rd April, 2003, passed by the learned Chief Judicial Magistrate, Nashik, in Regular Criminal Case No.897 of 2002 and Regular Criminal Case No.101 of 2003 respectively, for offences punishable under Sections 109, 112, 119, 120-B, 465 and 500 r/w. 34 of the IPC.

2. The brief facts leading to filing of criminal application No.1553 of 2003 are as under:

The respondent No.1 was working as the Assistant Traffic Superintendent in Maharashtra State Road Transport Corporation (in short

MSRTC) at Nashik. The MSRTC had acquired land about 5.74 hectares from one Balasaheb Deshmukh. The said land was a fruit orchard having about 200 Guava trees. The Respondent No.1 was working as a Planning Inspector and was responsible for taking possession of the said property from the original owners. The respondent No.1 took possession of the land and put one Haribhau Satale and his family in charge of the said orchard land. The Applicant No.1, who was the Senior Security & Vigilance Officer of MSRTC conducted an enquiry and found certain irregularities which led to registration of crime No.473 of 2002 under Sections 406, 408, 477 and 426 r/w. 34 of the IPC against the Respondent No.1 and said Haribhau Satale for misappropriating the earnings out of the orchard land for a period of about 8 to 9 years.

3. The allegations against the Respondent No.1 were that he had forged receipts and had caused financial loss to MSRTC to the tune of Rs.48,80,726/-. Hence, pursuant to the FIR lodged by Shri Nawale, Divisional Personnel Officer, Nashik, Crime No.62 of 2002 was registered against the Respondent No.1 for offences punishable under sections 420, 465, and 468 r/w. 34 of the IPC.

4. Pursuant to the complaint lodged by the Applicant No.1, another Crime No.231 of 2002 for offences punishable under Sections 420 and 201 r/w. 34 of the IPC was registered against the Respondent No.1 at

Sarkarwada Police Station and another crime No.473 of 2002 has been registered at Nashik Road Police Station for offences under sections 406, 408, 477 and 426 r/w. 34 of the IPC. The departmental proceedings were also initiated against the Respondent No.1 and after conducting departmental enquiry the Respondent No.1 was dismissed from services on 21st September, 2002.

5. On 31st December, 2012, the Respondent No.1 filed a private complaint bearing RCC No.897 of 2002 before the learned CJM, Nashik alleging that in the year 1992, the MSRTC had acquired land ad-measuring 5.70 hectares and that the possession of the said land was taken by him on behalf of the MSRTC. The complainant had alleged that there were 200 guava trees but the same were not bearing any fruit and were destroyed after the land was acquired. It was alleged that the Applicant No.6 who was the Union Leader had made a complaint alleging that one Kailash Satale, who was a care taker of the said land had deposited sum of Rs.5,000/- per annum, since last 9 years with the complainant towards the sale proceeds of the fruits grown in the said land however the said amount was not deposited with the MSRTC and that he had misappropriated the same. The complainant further alleged that the said allegations were enquired into by the Vigilance Officer and that in the enquiry the said Mr. Satale could not name or identify the person to whom the money was paid.

6. The complainant further alleged that in the year 2001 the Applicant No.6 once again raised the said issue which was again enquired into. Even in this enquiry Shri Satale was unable to identify the person to whom he had paid the money.

7. The complainant had further alleged that one Mr. Gaul, Tracer working with MSRTC had given a complaint to Vice Chairman and MD against certain officers, alleging that they were interfering with his work. Said Mr. Gaul had further alleged that when he had gone to take measurements of the land, the Applicant Nos.3 and 4 had forcibly obtained writing from Satale and his son Kailash stating that, they had paid Rs.5000/- p.a. to the complainant. The complainant has alleged that he was due for promotion as the Depot Manager in July, 2002 and that the Applicants had entered into a conspiracy and on the basis of forged document which was obtained from Satale initiated departmental enquiry as well as criminal proceedings against him as a result of which he was defamed. The statements of the Respondent No.1 and two witnesses were recorded and by order dated 14th January 2013 directed the Police Inspector, Nashik Road Police Station to conduct an enquiry under Section 202 of Cr.P.C. The police registered offence under C.R. No.2 of 2003 for offences under Sections 465, 109, 112, 119, 120B and 500 r/w. 34 of the IPC. The investigating agency registered the crime and submitted the report dated 10th March, 2003 opining that the complaint was false and was filed only to

harass and coerce the applicants. The learned Magistrate did not accept the report and by order dated 17th March 2003, issued process against the Applicants herein for the offences punishable under Sections 465, 109, 112, 119, 120-B & 500 r/w.34 of the IPC.

8. The facts necessary to decide Criminal Application no.2199 of 2003 are as under:

During the period from 3.4.1992 to 1993 the Respondent No.1 was working as the Divisional Engineer (Sinhast) at Nashik. During that period plot of land was acquired by MSRTC at Motkarwadi for Sinhashta project. The Respondent No.1 took possession of the said land on behalf of MSRTC and signed the possession receipt. The work of construction of compound commenced on 14.5.1992 under the supervision of Respondent No.1 and the same was completed on 15.12.1992.

9. It was alleged that the construction was not carried out as per specification and that the Respondent No.1 had deliberately allowed certain encroachments to be made on the said land. Upon conducting internal inquiry, a complaint in respect of the said encroachment came to be registered at Sarkarwada Police Station, Nashik on 29.8.2002. Pursuant to which Crime No.168 of 2002 was registered under section 448 r/w. 34 of the IPC against the Respondent No.3.

10. The Respondent No.1 filed a private complaint bearing R.C.C. No.101 of 2003, wherein he has alleged that he is not responsible for the encroachments. The Respondent No.1 claimed that the said encroachments were made on 11.3.1992 whereas the work order was issued on 11.2.1992 and he was appointed as Divisional Engineer (Sinhastha) on 3.4.1992. The Respondent No.1 claimed that he has been falsely implicated in the said crime, which was given wide publicity and as a result he was defamed. The learned Magistrate recorded verification statement and directed Sarkarwada Police Station to conduct inquiry under section 202 of the Criminal Procedure Code. Since the police had not submitted the report within the stipulated time, the learned Magistrate conducted the enquiry and recorded statements of three witnesses and therefore, by order dated 23.4.2003 issued process under sections 465, 109, 112, 119, 120 B and 500 r/w. 34 of the IPC.

11. Mr. Gupte, the learned senior counsel has submitted that the Applicant No.1 herein is the Senior Security and Vigilance Officer, MSRTC, whereas the Applicant No.2 was the Additional Director General of Police, the Applicant Nos.3 and 4 were the Sectional Engineer and Building Inspector, the Applicant No.5 was the Deputy Controller and the Applicant No.6 was the clerk of MSRTC. All the Applicants were therefore public servants within the meaning of Section 21 of the IPC, and in the absence of sanction as contemplated under Section 197 of Cr.P.C. the proceedings were

not maintainable. In support of this contention he has relied upon decision of the Apex Court in ***the State of Himachal Pradesh Vs. M.P. Gupta, (2004) 2 Supreme Court Cases 349.***

12. Mr. Gupte, the learned senior counsel has further submitted that apart from general allegations made by the Respondent No.1 there is no material to prosecute the Applicants for the alleged offences. The learned senior counsel for the Applicants contends that the Respondent No.1 was under suspension pending departmental enquiry and subsequently dismissed from service. Hence there was no question of the Applicants entering into any controversy in depriving him of promotion.

13. Mr. Gupte, the learned senior counsel for the Applicants further submits that the averments in the complaints even if taken on face value do not disclose essential ingredients of the alleged offences. The report submitted by the police in R.C.C. No.897 of 2002 also reveals that the allegations contained in the complaint were false and made with an intention to harass and coerce the Applicants. He has further submitted that the learned Magistrate has not given any reasons for discarding the said report and, or issuing the process.

14. The learned senior counsel for the Applicants has further submitted that none of the Applicants were responsible for publishing or

giving publicity to filing of a complaint against the Respondent No.1. They have not defamed him in any manner. He has further submitted that the complaints do not disclose offence under section 465 of the IPC.

15. Mr. Kulkarni, the learned counsel for the Respondent No.1 submitted that the complaints disclose offences as alleged. The Applicants are involved in lodging false complaints against the Respondent No.1. He contends that the said acts were not committed in discharge of their duty. Hence provisions under Section 197 of the Cr.P.C. are not applicable.

16. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties. Before considering the rival contentions it would be advantageous to refer to section 197 of the Code, which reads as under:

“197. Prosecution of Judges and public servants.

When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction.-

(a) In the case of a person who is employed, or as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) In the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government.”

17. In the *State of Himachal Pradesh Vs. M.P. Gupta, (2004) 2 Supreme Court Cases 349*, the Apex Court has observed following:

“The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection 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 from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity.”

18. In the instant case, the applicants are undisputably the Public Servants within the meaning of Section 21 of the Cr.P.C. It is also not in dispute that no sanction has been obtained to prosecute the Applicants for the alleged offence. The pivotal question is whether the alleged offences

were committed by the Applicants while acting or purporting to act in discharge of their official duty.

19. The complaint reveals that the Applicant No.4, who was a Senior Security and Vigilance Officer of MSRTC had lodged a complaint No.897 of 2002 against the respondent No.1, who was working as Planning Inspector had committed several illegal acts and had misappropriated an amount of Rs.45,000/- and caused wrongful loss to MSRTC. Pursuant to the said complaints crime Nos.473 of 2002 was registered against the Respondent No.1. The said crime was investigated and upon completion of investigation charge-sheet had been filed.

20. The complaints filed by the Respondent No.1 proceed on the basis that the Applicants had conspired to implicate him in a false case and accordingly he had lodged false complaints pursuant to which Crime No.473 of 2002 came to be registered. It is pertinent to note that the complaint, pursuant to which Crime No.473 of 2002 was registered, was lodged by the Applicant No.1 in his official capacity as a Senior Security and Vigilance Officer at MSRTC. The said complaint was investigated by the police and the investigation has culminated in filing of the charge sheet vide C.C. No.64 of 2003. The documents alleged to be forged and fabricated form record of the said charge sheet. The fact that the said complaint was filed by the Applicant No.1 in discharge of his official duty, would attract protection

contemplated under Section 197 of Cr.P.C. A bald statement that all the accused had conspired to implicate the Respondent No.1 in a false complaint would not take the case out of purview of Section 197 of Cr.P.C.

21. It is also not in dispute that the said criminal case arising from Crime No.473 of 2000 is still pending adjudication and it is not permissible at this stage to hold that the said FIR is false and fabricated or that it was filed with a malafide motive, with an intention to defame the respondent. It is also not in dispute that departmental enquiry was conducted against the Respondent No.1 and during the pendency of which he was suspended and subsequently dismissed from services. Hence there is no merit in the contention that the Applicants had conspired to deprive the Respondent No.1 of his promotional prospects.

22. The records further reveal that the learned Magistrate had referred the case to Nashik Police Station for investigation. The police upon investigation had filed a report stating that the complaint is false and is filed to pressurize and harass the Applicants. The learned Magistrate has not given any reasons for discarding the report and for issuing the process.

23. The orders reflect total non-application of mind and cannot be sustained. The complaint and the statements recorded under Section 200 and 202 of the Cr.P.C. as well as the material collected in the course of the

investigation do not disclose commission of alleged offence. Under the circumstances, continuation of proceedings would amount to sheer abuse of process of Court.

24. Hence the applications are allowed. The impugned orders dated 17th March, 2003 and 23rd April, 2003, passed by the learned Chief Judicial Magistrate, Nashik, in Regular Criminal Case No.897 of 2002 and Regular Criminal Case No.101 of 2003 respectively, are hereby quashed and set aside.

(ANUJA PRABHUDESSAI, J.)