

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3906 OF 2014

Shri Suresh Ramanlal Maniyar & anr. ... Petitioners.
Versus
Shri Vijay Singhal & ors. ... Respondents.

Ms. Gauri Jadhav h/f. Mr. Tushar Jadhav, advocate for petitioners.

Mr. Bhooshan R. Mandlik h/f. Mr. S.S. Patwardhan, advocate for
respondent No. 1.

Ms. A.T. Javeri, APP for State.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : JUNE 22, 2016

P.C.:

1 Heard the learned Counsel for the Petitioner and the learned
counsel for the respondent. Perused the papers.

2 Rule. Rule made returnable forthwith with the consent of the
parties.

3 The Petitioner herein happens to be the original Complainant in R.C.C No. 1019 of 2013. The Petitioner questions the correctness and validity of the order dated 14/7/2014 passed by the learned Adhoc Addl. Sessions Judge-1, Kolhapur in Cri. Rev. Application No. 103 of 2013, thereby quashing and setting aside the order of issuance of process passed on 8/8/22011 by Chief Judicial Magistrate, Kolhapur in R.C.C. No. 1019 of 2013.

4 The facts of the case in nut-shell are as under :

 The petitioner herein happens to be complainant. On 23/9/2010 the petitioner has filed complaint alleging therein that the Petitioner happens to run a shop in City Survey No. 448/C/1 in E Ward, Station Road, Kolhapur. That he runs a shop since 55 to 60 years. The owner of the said property where his shop is situated is Shri Virupaksh Shivpad Nashte. The petitioner was running a typing center and cycle repairing store in that shop. That the complaint was filed against the Commissioner of Kolhapur.

5 It was contended that in the absence of any notification or in the absence of there being any process of land acquisition, the shop run by the Petitioner was demolished on 1st April, 2010. That the Petitioner had allegedly informed the Commissioner immediately that the said portion of the land was not acquired for the purpose of road widening and there is no notification to that effect and that the accused had behaved in an abusive manner with the Petitioner. That according to the Petitioner, the accused had committed an offence punishable under Section 427, 432, 435 of the Indian Penal Code and had demolished the said property.

6 The Petitioner had filed an application under the Right to Information Act to the original Town Planning Authority of Kolhapur Municipal Corporation. That in the reply, the Petitioner was informed that there was no reference to urgent acquisition of the land under Section 17(1) of the Land Acquisition Act and there was no resolution

to that effect by the standing committee. It is on the basis of this information that the Petitioner had proceeded to file complaint against the respondent contending therein that in the absence of any notification, the respondent had demolished the said shop.

7 It is further contended that the learned Magistrate, Kolhapur had sent the complaint for an enquiry/investigation under Section 202 of the Code of Criminal Procedure, 1973. By an order dated 8/2/2013 the learned Magistrate had arrived at a conclusion that a prima facie case is made out against the accused. Hence, the process was issued against all the accused under Section 427 read with Section 34 of the Indian Penal Code.

8 The observation of the learned Magistrate in the Order dated 8/2/2013 is as follows :

“In the report submitted by the police under Section 202 of the Code of Criminal Procedure, 1973, it is mentioned that the

complainant are residing forcibly in the said property that means possession of the complainant is not in dispute.”

9 It was also stated that the complainant had produced notification dated 29/9/2009 which does not indicate that the Survey No. 448-C/1/C was acquired for the purpose of road widening. It prima facie appears that the learned Court was weighed by photographs produced on record and the fact that the property was not acquired under the Land Acquisition Act. The main contention of the petitioner is that there is no notification to the effect that the said land was acquired and there has been demolition of the said shop, which is arbitrary act on the part of the accused persons.

10 Being aggrieved by the order dated 8/2/2013 issuing process, the Commissioner of Kolhapur Municipal Corporation who was arraigned as an accused, in his personal capacity had filed Criminal Revision Application No. 103 of 2013. The learned Revisional Court

has observed that the complainant had no locus standi to file complaint. That the proposed accused were public servant and had exercised powers in discharge of their official duties and hence, in the absence of sanction under Section 197 of the Code of Criminal Procedure read with Section 482 of the Bombay Provincial Municipal Corporation Act, 1949, the learned Magistrate had issued process.

11 The revisional court has also observed specifically as follows :

“The admitted facts are there was Land Acquisition scheme for widening the road. The notification was also issued and the proposed scheme was also framed. The accused persons are the officers engaged for the work of acquisition purpose rather they are competent authority under the act and in the absence of sanction taking of cognizance against the public servant would be an abuse of process of law. Hence, the revision application is allowed.

12 Learned Counsel for the Petitioner rightly submits that the revision application was filed only by the Commissioner of the

Municipal Corporation challenging the order of issuance of process. However, the revisional court has quashed and set aside the order of the issuance of process against all the accused who were not present before the court or who had not filed any specific application seeking the relief of quashing of order of issuance of process.

13 The learned Counsel for the Petitioner has placed reliance upon the Judgment of the Hon'ble Apex Court in the case of **Choudhary Parveen Sultana vs. State of West Bengal & anr. reported in AIR 2009 SC 1404**. The Hon'ble Apex Court has held as follows :

“All acts done by a public servant in the purported discharge of his official duties cannot as a matter of course be brought under the protective umbrella of [Section 197](#) Cr.P.C. On the other hand, there can be cases of misuse and/or abuse of powers vested in a public servant which can never be said to be a part of the official duties required to be performed by him. ... the underlying object of [Section 197](#) Cr.P.C is to enable the authorities to scrutinize the allegations made against a public servant to shield him/her against frivolous, vexatious or false prosecution initiated with the main object of causing

embarrassment and harassment to the said official. However, as indicated hereinabove, if the authority vested in a public servant is misused for doing things which are not otherwise permitted under the law, such acts cannot claim the protection of [Section 197](#) Cr.P.C. and have to be considered de hors the duties which a public servant is required to discharge or perform. Hence, in respect of prosecution for such excesses or misuse of authority, no protection can be demanded by the public servant concerned.”

In the present case, the respondent No.1 happens to be the commissioner of Municipal Corporation. He had been arraigned as an accused in his personal capacity. By any stretch of imagination, it cannot be stated that the Commissioner would undertake the exercise of widening road in his personal capacity, but in the capacity of the Commissioner of the said Municipal Corporation and therefore, the said citation would be of no relevance in the present case.

14 In the complaint, it is not stated as to whether the Petitioner had made any enquiry with the owner of the land as to whether he

had received the notice. Moreover, in the enquiry under Section 202 of the Code of Criminal Procedure, 1973, it is clearly stated that the complainant are residing forcibly in the said property. It can therefore, be inferred that they were not in lawful possession of the said premises. They could be trespassers or encroachers. It is apparent that in view of this no notice was issued to the Petitioner. It would be incumbent upon the Municipal Corporation to remove encroachment after following due procedure of law. The statement of the owner was recorded in the enquiry under section 202 of the Code of Criminal Procedure.

15 It appears from the record that the Petitioner herein had submitted before the learned Magistrate that D.P. Line was laid which is one day before 1st April, 2010, which would indicate that the land was acquired just one day prior to the date of demolition. It also appears that the landlord had filed a proceedings against the present

petitioner for eviction and the petitioner had not abided by the orders passed in the said proceedings.

16 Suffice it to say that the Commissioner and other authorities had not abused the power entrusted in them and had rightly demolished the said shop in the interest of public at large residing within the limits of the Municipal Corporation. Hence, the Petition being sans merits deserves to be dismissed.

17 The Writ Petition stands dismissed. Rule is discharged. The Writ Petition stands disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)