

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.4101 OF 2014

Mukesh S. Gondkar & Anr.

.. Petitioners

-Versus-

The State of Maharashtra

..Respondent

Mr. Tejas Dande i/b. Tejas Dande & Associates for petitioners

Mr. Suresh Sabrad for respondent No.2

Mrs. A.S.Pai, APP for State.

CORAM : DR. SHALINI PHANSALKAR JOSHI, J.
DATE : 22nd February 2016.

P.C.

1] By this petition, the original accused Nos. 1 and 2 in R.C.C.No.45 of 2007 are challenging the order passed by J.M.F.C. Pimplegaon (B) Dist. Nashik on 2nd May 2014 thereby rejecting their application seeking compensation under section 250 of Cr.P.C.

2] The submission of the learned Counsel for the petitioners is that the respondent No.2 herein had filed the false criminal case against the petitioners under section 420, 406 read with 34 IPC. As a result thereof, the petitioner No.1's reputation was damaged and both the petitioners had to undergo the entire proceedings of trial which resulted into causing physical and mental harassment to them. The trial court has acquitted

both the petitioners for the offences punishable under section 420 and 406 read with 34 IPC and the observations made by the trial court in the judgement are sufficient to infer that it was a false, frivolous and vexatious litigation initiated by the respondent. Therefore, at the time of advancing the submissions after the closure of the evidence, the learned Counsel for the petitioners has also requested the Court for grant of compensation to the petitioners under section 250 of Cr.P.C. The trial Court, however, did not advert to the said aspect and simplicitor acquitted the petitioners. Therefore, the petitioners moved this application before the trial court seeking compensation for the mental and physical harassment which they had undergone as a result of criminal prosecution initiated against them by the respondent No.2. According to the learned Counsel for the petitioners, the trial court, however, filed the said application without giving any sufficient reasoning but further giving advice that the petitioners can invoke appropriate remedy either by way of civil suit or criminal prosecution. It is urged that the impugned order of the trial court is required to be quashed and set aside being perverse and illegal.

3] According to the learned Counsel for the respondent No.2, however, such an application itself was not tenable considering the fact that the case has already ended into acquittal and the judgement was

also pronounced. According to him, once the case filed against the petitioner has been concluded, the application under section 250 of Cr.P.C. cannot be maintained at all. Only when the Magistrate passes an order of either the discharge or acquittal and at the time of passing such order is of the opinion that there was no reasonable ground for making accusations, the Magistrate can call upon the complainant to show cause as to why he should not pay compensation to such accused. As in the present case, the judgement was already pronounced, the application under section 250(1) of Cr.P.C. was not maintainable.

4] The provisions of section 250 of Cr.P.C. to which reference is made read as follows:-

“Section 250. Compensation for accusation

without reasonable cause -

(1) If, in any case instituted upon complaint or upon information given to a police officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that there was no reasonable ground for making the accusation against them or any of them, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one or, if such person is not present direct the issue of a summons to him to appear and show cause as aforesaid.

(2) The Magistrate shall record and consider any cause which such complainant or informant may show, and if he is satisfied that there was no reasonable ground for making the accusation, may, for reasons to be recorded, make an order that compensation to such amount not exceeding the amount of fine he is empowered to impose, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.

(3) The Magistrate may, by the order directing payment of the compensation under sub-section (2) further order that, in default of payment, the person ordered to pay such compensation shall undergo simple imprisonment for a period not exceeding thirty days.

(4) When any person is imprisoned under sub-section (3), the provisions of sections 68 and 69 of the Indian Penal Code (45 of 1860) shall, so far as may be, apply.

(5) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him:

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(6) A complainant or informant who has been ordered under sub-section (2) by a Magistrate of the second class to pay compensation exceeding one hundred rupees, may appeal from the order as if such complainant or informant had been convicted on a trial held by such Magistrate.

(7) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (6), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided; and where such order is made in a case which is not so subject to appeal the compensation shall not be paid before the expiration of one month from the date of the

order.

(8) The provisions of this section apply to summons-cases as well as to warrant cases.”

5] Thus, the perusal of this provision makes it clear that only at the time of passing the order of acquittal or discharge, the Magistrate may call upon informant or complainant to show cause why he should not be asked to pay compensation or if such complainant is absent, direct issuance of summons to him to appear and show cause as to why he should not be paid compensation. The order under this section is purely discretionary in the sense that it depends upon the Magistrate, forming an opinion that there was no reasonable ground for making an accusation. Thereafter only the Magistrate may by his order call upon the informant to show cause.

6] Thus, three necessary conditions are contemplated for invoking provisions of section 250 of Cr.P.C. (i) that the Magistrate should be of the opinion that there was no reasonable ground for making accusations; (ii) that the order of Magistrate hearing the case is either of discharge or acquittal and (iii) at the time of passing such an order or discharge or acquittal only the Magistrate may in his discretion on being of the opinion that there is no reasonable ground for making accusations, issue show

cause notice to the informant/ complainant.

7] In the instant case, the Magistrate has already disposed of the case by acquitting the petitioners. Accepting that the argument was advanced at the time of conclusion of the trial that petitioners may be awarded compensation under section 250 of Cr.P.C., such a question would arise for consideration of the Magistrate only when the Magistrate is of the opinion that there was no reasonable ground for making accusations. Perusal of the impugned judgement passed by the Magistrate in RCC No.45 of 2007 nowhere expressly shows that the Magistrate has formed such an opinion after considering the evidence on record. Conversely, the observations made by the Magistrate in para 24 of his judgement reflects that the accused persons had succeeded to raise probable defence in their favour and as a result thereof, they were acquitted, holding that they cannot be fastened with the criminal liability and it would be open for the informant/ complainant to commence appropriate proceedings or civil proceedings, if any, before appropriate forum if desired. Therefore, the magistrate has nowhere come near to form an opinion that there was no reasonable ground for making accusations against the petitioners.

7] Therefore, no question arises of Magistrate exercising his powers

or discretion under section 250 of Cr.P.C. Merely because the case as noted above has ended up in acquittal of the petitioners does not necessarily mean that it was an unnecessary prosecution launched without there being reasonable ground. Therefore, no fault can be found with the order of the trial court in not considering the arguments which might have been advanced at the conclusion of the trial that in case of acquittal of the petitioners, the Magistrate should also exercise his powers under section 250 of Cr.P.C. The occasion for giving reasons for not exercising these powers was to arise only when the Magistrate was of the opinion that there was no reasonable ground for making accusations. In this case, when the Magistrate has not arrived at that opinion then it was not necessary for the Magistrate to refer to section 250 of Cr.P.C. or to the argument to that effect, advanced by the learned Counsel for the petitioners.

8] In view of the above, no fault can be found in the impugned order of the trial court in rejecting the petitioners' application for compensation under section 250 Cr.P.C., which application was filed subsequent to the disposal of the case. The writ petition, therefore, holds no merit and stands dismissed.

(JUDGE)