

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.1755 OF 2002

Vijay Jagannath Indolikar
745, Gaonbhag Baxi Road,
Tatya Kelkar Wada,
Sangli

..Petitioner

v/s.

1. Maharashtra State

2. Shri Mukund Anant Patankar
3. Shri Gopal Anant Patankar
4. Shri Anant Balkrishna Patankar
(Expired)

Nos. 2 to 4 R/o. 746,
Gaonbhag Baxi Road,
Patankar Wada, Sangli

5. Chief Officer,
Sangli Miraj & Kupwad Corporation
Water Works Dept., Sangli

..Respondents

Mr.J.PKharge for the Petitioner.
Mr. Akshay Deshmukh for the Respondent nos.2 to 4.
Mr. G.H.Keluskar for the Respondent No.5.
Mr. H.J.Dedhia, APP for the Respondent-State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : DECEMBER 14, 2017.**

ORAL JUDGMENT.

1. The petitioner herein has challenged the Order dated 5.9.2001 whereby the learned Addl. Session Judge, Sangli, dismissed the

Criminal Revision Application No.22 of 1996 and thus confirmed the order passed by the Magistrate, dismissing the complaint under Section 203 of Cr.P.C.

2. The brief facts necessary to decide this petition are as under.

The petitioner had filed a private complaint dated 9.2.1996 against the aforesaid respondent nos.2 to 4. The petitioner had claimed that the respondent nos.2 to 4 had purchased the land situated towards northern side of his property. The petitioner further claimed that in the month of June 1991, the respondent nos.1 to 3 disconnected his water connection and caused him loss to the tune of Rs. 3000/- to 4000/-. According to the petitioner the main water connection was disconnected by the respondent no.5 at the instance of the respondent nos.2 to 4. The petitioner further alleged that the respondent had no right to construct a house or wall in the said property, despite which in the month of June 1992 the respondent nos.2 to 4 constructed a wall and thereby obstructed his only access. The petitioner claimed that he had lodged a police complaint against the respondents. Since the police did not take action against the respondent, he lodged a private complaint against the aforesaid respondent.

3. The statement of the petitioner-complainant was recorded under Section 200 of Cr.P.C. After considering the averments made in the complaint, as well as the verification statement, the learned Magistrate held that the dispute between the petitioner and the respondent nos.2 to 4 is basically of civil nature. The learned Magistrate therefore dismissed the complaint under Section 203 of Cr.P.C.

4. Aggrieved by the said order, the petitioner filed a Revision Application No.22 of 1996 before the Sessions Court at Sangli. The learned Sessions Judge confirmed that the dispute is basically of civil nature and that there were no significant grounds for proceeding against the respondent nos.2 to respondent no.5. The learned Sessions Judge held that the order of the Magistrate is neither illegal, nor perverse and that there was no reason to interfere with the same. Based on the aforesaid findings, the learned Sessions Judge dismissed the revision application. Hence the present petition.

5. Mr. Kharge, learned Counsel for the petitioner has submitted that the fact that the civil dispute is pending between the parties is

no ground to dismiss the complaint under Section 203 of Cr.P.C. He has further submitted that the petitioner-complainant had filed a list of witnesses which he proposed to examine under Section 202 of Cr.P.C. and that the learned Magistrate did not examine the said witness. He has also submitted that though there was delay in filing the complaint, the petitioner had filed an application for condoning the delay and that the learned Magistrate has dismissed the complaint without considering the said application.

6. Per contra, Mr.Deshmukh, learned Counsel for the respondent nos.2 to 4 has submitted that the petitioner had earlier filed a civil suit in respect of the same incident viz, construction of wall and disconnection of water supply. He has submitted that the said suit has been dismissed with costs. The learned Counsel for the respondent has further submitted that even otherwise, the averments made in the complaint vis-à-vis the verification statement do not disclose the essential ingredients of the offences. He therefore contends that the learned Magistrate was perfectly justified in dismissing the complaint under Section 203 of Cr.P.C.

7. Mr.Keluskar, the learned Counsel for the respondent no.5 has

deposed that the petitioner has sought to prosecute “the Chief Officer” without disclosing the name of the said Officer. Furthermore, there are no grounds to proceed against Respondent no.5 and that he has been unnecessarily dragged in the litigation.

8. I have perused the record and considered the submissions advanced by the learned Counsel for the petitioner, and the learned counsel for the respective respondents. The gist of the complaint is that the petitioner-complainant has been residing at 745 Gaonbhag Baxi Road, Tatya Kelkar Wada since last 30 years. His father had taken water connection and that the water pipelines were laid in east-west direction to the extent of about 100 meters. The respondent nos.2 to 4 are residing in the property towards the northern side of the property no.746. They have purchased the said property from one Janardhan G. Kelkar. The petitioner claims that in the month of June 1996 the respondent nos.2 to 4 disconnected the water connection and thereby caused loss to him to the tune of Rs.3000/- to 4000/- and further in the month of June 1992 they constructed a wall and obstructed his access. A vague statement has also been made in para 5 of the complaint that the respondent nos. 2 to 4 had also disconnected his electricity connection.

9. In the statement recorded under Section 200 of Cr.P.C. the petitioner had reiterated that in the month of June 1991 the respondent nos.1 to 4 had disconnected his water connection and that in the year 1992 they had obstructed his access by constructing a wall. Thus, the main allegation of the petitioner-complainant is that Respondent nos.2 to 4 had committed offences punishable under Section 426 and 341 of IPC.

10. At the outset, it may be mentioned that Section 468 Cr.P.C. creates a bar for taking cognizance of an offence after the expiry of the period of limitation specified under sub-section (2). The period of limitation as specified in sub-section (2) is as under:-

- (a) Six months, if the offence is punishable with fine only.
- (b) One year, if the offence is punishable with imprisonment for a term not exceeding one year.
- (c) Three years, if the offence is punishable with imprisonment for a term exceeding one year, but not exceeding three years.

11. The commencement of period of limitation is regulated by the provisions of Section 469 Cr.P.C. The period of limitation would

commence from different dates depending upon three situations specified in clauses (a), (b) and (c) of Section 469 Cr.P.C. Whereas, Section 470 and 461 relate to exclusion of time in certain cases.

12. In the instant case, the respondent nos.2 to 5 are alleged to have committed mischief and wrongful restrain, which are offences punishable under Section 426 and 341 of IPC. The offence under Section 426 is punishable with a terms of imprisonment of three months, whereas the offence under Section 341 IPC is punishable with imprisonment for a term of one month. Since the offences which are allegedly committed by the respondent nos.2 to 5 are punishable with imprisonment for a maximum terms of three months, the complaint was required to be filed within one year from the date of the offence or from the date of knowledge of the offence, or the date on which the identity of the offender was known. The averments in the complaint indicate that the alleged offence of mischief and wrongful restrain was committed in the month of June 1991 and June 1992 respectively. It is not the case of the complainant that he was not aware about the commission of the said offence or that the identity of the offence was not known to him. Hence, the complaint was required to be filed within one year from

the date of the offence. In the instant case, the petitioner has filed the complaint in the year 1995 which is way beyond the period of limitation prescribed under Section 468(2)(b) of Cr.P.C.

13. The learned Counsel for the petitioner has submitted that the petitioner had filed an application for condonation of delay which has not been considered by the learned Magistrate. Suffice to say that there is no express provision in the Limitation Act which enables the Magistrate to condone the delay in filing the complaint and/or which permits him to take cognizance of the offence beyond the period prescribed in sub-Section 2 of Section 468 of Cr.P.C.

14. Be that as it may, a perusal of the application which is placed on record indicates that the petitioner had stated that the complaint is filed under Section 341, 426, 427, 430 and 506 of IPC, and the period of limitation for filing such complaint is of 3 years. It has to be noted that the averments made in the complaint as well as the verification statement, even if taken at face value, do not disclose ingredients of the offence under Section 506 of IPC or that the matter is any other offence which is punishable with a term of imprisonment exceeding one year. Hence, the contention of the

petitioner that the limitation prescribed for taking cognizance of the offence was of 3 years has no merits. The complaint was therefore filed beyond the period of limitation prescribed under Section 468(2) of Cr.P.C. and on this count alone the same was liable to be rejected.

15. The learned Counsel for the respondent nos.2 to 4 has placed on record copies of the judgments in Regular Civil Suit No.528 of 1990 and 814 of 2000 (Old Special Suit No. 250/1995). A perusal of the judgment in Regular Civil Suit No. 528 of 1990 reveals that the petitioner had filed the said suit alleging that the respondents had obstructed his access on 4.9.1990. These averments falsify the contention of the petitioner that the access was obstructed in the month of June 1992.

16. Similarly, Special Civil Suit No. 814 of 2000 reveals that the complainant had alleged that the water connection was disconnected in the month of August 1993 and that even prior to that the respondent nos.2 to 4 had interrupted the water supply. The petitioner had therefore sought relief of injunction to restrain the respondents from preventing the petitioner from taking water supply. Both the civil suits have been dismissed by judgment dated 7.6.2012

and 19.3.2013. Having lost the civil litigation in the first round, the petitioner cannot be permitted to agitate the same in the criminal court. Considering the above facts and circumstances, the learned Magistrate was justified in dismissing the complaint.

17. It is also pertinent to note that the petitioner-complainant has arrayed the respondent no.5, Chief Officer, Sangli Miraj & Kupwad Corporation, Water Works Department, as accused no.4 without disclosing the name of the said Chief Officer. Even otherwise, the complaint does not indicate that the Chief Officer had committed any offence as alleged, despite which the petitioner-complainant has unnecessarily dragged the respondent no.5 into this litigation.

18. The contention of the learned Counsel for the petitioner that the learned Magistrate ought to have conducted inquiry under Section 202 of Cr.P.C. has absolutely no merits. There is nothing on record to indicate that the witnesses whose names were cited in the list annexed to the complaint were present on the date the statement of the complainant was recorded under Section 200 of Cr.Pc. Hence, it was not obligatory on the part of the Magistrate to postpone the issuance of process and/or to order inquiry under Section 202 of

Cr.P.C.

19. Having perused the records, I am of the considered view that the complaint as well as the verification statement does not disclose the essential ingredients of the alleged offence. Hence, the learned Magistrate as well as the learned Sessions Judge were perfectly justified in dismissing the complaint under Section 203 of Cr.P.C.

20. At this stage, the learned Counsel for the respondent no.5 has submitted that pursuant to the Order dated 20.4.2017 passed by this Court (Coram Sadhana Jadhav, J.) the respondent no.5 has given water connection to the petitioner. He has further submitted that the petitioner has refused to acknowledge that the respondent no.5 had complied with the order. Hence, the employees of the respondent no.5 had prepared a panchanama and also taken photographs. The respondent no.5 has also stated that the petitioner is liable to pay an amount of Rs.3766/- towards costs of water connection as well as the outstanding arrears along with interest to the tune of Rs.38,497/-. The learned Counsel for the Respondent no.5 submits that the petitioner has not paid the said amount till this date.

21. Needless to state that in this petition filed by the petitioner-complainant this Court can not pass any order in favour of the respondent no.5. The respondent no.5 is always at liberty to take appropriate action in accordance with law.

22. In the light of the above, the petition stands dismissed.

(ANUJA PRABHUDESSAI, J.)