

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

CRIMINAL APPLICATION NO. 961 OF 2013

1 Mr. Shree Prakash Singh & Anr. ... Applicants

Vs

1 The State of Maharashtra & Anr. ... Respondents

Mr. Abhishek Bharati with Mr. Makarand Kale for the Applicant.

Dr. F.R. Shaikh, APP, for the Respondent No.1-State.

***CORAM : S.C. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.***

THURSDAY, 6TH APRIL, 2017

P.C. :

1 By this application under section 482 of the Criminal Procedure Code, the applicants are seeking to quash and FIR bearing No. 172 of 2013 registered by the Gamdevi Police Station, Mumbai.

2 The only contention raised before us is that the FIR, read as a whole, alleges commission of an offence punishable under section 506 Part II of the Indian Penal Code.

3 The argument is that such an FIR could not have been registered in law. The further argument is that by the Criminal Procedure Code, 1973, such an offence, as is allegedly committed, has not been treated as cognizable. Our attention was invited to the ad-interim order passed by this Court in this application and it is submitted that the same is on the footing that the Police machinery could not have registered the FIR.

4 Section 506 reads as under :

'506. Punishment for criminal intimidation.- *Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extent to two years, or with fine, or with both;*

If threat be to cause death or grievous hurt, etc. - *And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."*

5 The first part of Section 506 deals with punishment for criminal intimidation. The second part is that if the threat be

to cause death or grievous hurt or to cause a destruction of any property by fire or to cause an offence punishable with death or imprisonment for life or imprisonment for a term which may extend to seven years or to impute unchastity to a woman shall be punished and for the term specified therein.

6 However, our attention has been invited to the Code of Criminal Procedure, 1973, and the "Classification of Offences" appearing in the First Schedule thereto. As far as the offence of criminal intimidation and the offence described as above in the second part for which punishment is for imprisonment for two years or fine or both or imprisonment for seven years or fine or both, have been treated as non-cognizable and bailable. That is why the submission is that no FIR could have been registered.

7 This submission is countered by the State by inviting our attention to the Notification issued by the Department of Home. That Notification, copy of which was handed in, is dated 4th October, 1961. The second Notification is of 10th August, 1962. Both these Notifications read as under :

"HOME DEPARTMENT

(Special)

Sachivalaya, Bombay, 4th October 1961

CRIMINAL LAW AMENDMENT ACT, 1932.

No. SB. I/CLA. 1060/26963. - In exercise of the powers conferred by section 10 of the Criminal Law Amendment Act, 1932 (XXIII of 1932), and in supersession of Government Notification, Home Department (Political), No. S. D. 7753, dated the 27th December 1932, the Government of Maharashtra hereby declares that an offence punishable under section 506 of the Indian Penal Code, 1860 (XLV of 1860), when committed in Greater Bombay shall, notwithstanding anything contained in the code of Criminal Procedure, 1898 (V of 1898), be cognisable and non-bailable.

By order and in the name of the Governor of Maharashtra.

J. R. CABRAL,

Deputy Secretary to Government

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HOME DEPARTMENT

(Special)

Sachivalaya, Bombay, 10th August 1962

CRIMINAL LAW AMENDMENT ACT, 1932.

No. S.B.I./CLA. 1061/27115. - Whereas by Government Notification, Home Department (Special), No. B.B.I./CLA 1060/26963, dated the 4th October 1961 issued under section 10 of the Criminal Law Amendment Act, 1932 (XXIII of 1932), the offence of criminal intimidation punishable under section 506 of the Indian Penal Code (XLV of 1860), when committed in Greater Bombay, is declared to be cognizable and non-bailable;

And where as it is expedient that the said offence in

that area should be cognizable and non-bailable only if it is punishable under the latter part of the said section 506;

Now, therefore, in exercise of the powers conferred by section 10 of the Criminal Law Amendment Act, 1932 (XXIII of 1932), the Government of Maharashtra, in modification of the previous orders, hereby declares that the offence of criminal intimidation punishable under section 506 of the Indian Penal Code (XLV of 1860), where the threat is to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or for imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, when committed in Greater Bombay, shall, notwithstanding anything contained in the Code of Criminal Procedure, 1898 (V of 1898), be cognizable and non-bailable; and for that purpose amends Government Notification, Home Department (Special) No. S. B. I./CLA. 1060/26963, dated the 4th October, 1961, as follows, namely:-

In the said notification, for the words, figures and brackets "an offence punishable under section 506 of the Indian Penal Code, 1860 (XLV of 1860)," the words, figures and brackets, "the offence of criminal intimidation punishable under section 506 of the Indian Penal Code (XLV of 1860) where the threat is to cause death or grievous hurt or to cause the destruction of any property by fire or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman," shall be substituted.

By order and in the name of the Governor of Maharashtra.

*J. R. CABRAL,
Deputy Secretary to Government"*

8 The argument of Mr. Bharti is that a Division Bench of this Court sitting at Goa in the case of *Vishwajit P. Rane vs. State of Goa and Ors. 2010 (3) Bombay Cases Reporter (Criminal) 341* has taken a view that the registration of an FIR under section 154 of the Criminal Procedure Code, where the offence alleged is punishable under section 506 Part II of the Indian Penal Code is itself illegal. The complaint is liable to be quashed.

9 However, Mr. Bharti appearing on behalf of the applicant thereafter fairly invites our attention to the judgment of the Hon'ble Supreme Court in the case of *Aires Rodrigues vs. Vishwajeet P. Rane* reported in *AIR 2017 S.C. 731* which expressly overrules the view taken in *Vishwajit P. Rane* (supra).

10 Mr. Saste, therefore, submits that both the Notifications issued by the Home Department are valid and the FIR cannot be quashed. Mr. Saste also apologizes on behalf of the Investigating Officer and tenders his personal affidavit. That is in the context of the non compliance with the order dated 7th October, 2013. Contrary to the injunction not to file a charge-sheet and granted vide this order, the Investigating Officer says

that inadvertently he has proceeded to file a charge-sheet in the competent criminal court.

11 Therefore, he tenders an unconditional apology and says that he had never any intent to disobey or act in contravention of the order passed by this Court. He states on oath and says that he has greatest regard and respect for this Court and would do nothing so as to undermine its dignity and status. Mr. Saste submits that once the legal position is now clarified, this Court should accept the apology placed on affidavit.

12 After hearing both sides, we find that the legal issue stands concluded by the judgment of the Hon'ble Supreme Court.

13 The contention and the challenge before the Hon'ble Supreme Court was that such a Notification as was issued by the then Union Territory of Goa (now State) Daman and Diu making the above offence cognizable and non bailable when committed in the said territory is repugnant to the provision of the Code of Criminal Procedure and the State could not issue a Notification in conflict with the Central legislation.

14 On the other hand, the Notification was supported with the plea that the same is issued under a subsisting and valid law which is also a Central legislation. Therefore, the question of repugnancy does not arise.

15 The Hon'ble Supreme Court considered this challenge and held thus :

"9. Section 10 of the Criminal Law Amendment Act, 1932, under which the said Notification has been issued, is as follows:

"10. Power of State Government to make certain offences cognizable and non-bailable.-

(1) The (State Government) may, by notification in the (Official Gazette), declare that any offence punishable under Sections 186, 188, 189, 190, 228, 295A, 298, 505, 506 or 507 of the Indian Penal Code, when committed in any area specified in the notification shall, notwithstanding anything contained in the Code of Criminal Procedure, 1898, shall, while such notification remains in force, be deemed to be amended accordingly.

(2) The (State Government) may, in like manner and subject to the like conditions, and with the like effect, declare that an offence punishable under Section 188 or Section 506 of the Indian Penal Code shall be non-bailable"

10 There is no dispute that the 1932 Act is a Central Legislation and even today it is operative and power conferred under Section 10 can be exercised.

11. In these circumstances, merely because 1898 Code has been repealed and replaced by 1973 Cr.P.C., could not affect the situation. Section 484 of Cr.P.C. 1973 as well as Section 8(1) of the General Clauses Act, 1897 saved a notification which may have been issued under Cr.P.C. of 1898. Section 8 of the General Clauses Act is as follows: "Section 8 in The General Clauses Act, 1897 8. Construction of references to repealed enactments -

(1) Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

(2) Where before the fifteenth day of August, 1947, any Act of Parliament of the United Kingdom repealed and re-enacted, with or without modification, any provision of a former enactment, then reference in any Central Act or in any Regulation or instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

12 In these circumstances, we are unable to sustain the view taken in the impugned orders.

13 It is pointed out by learned counsel for the appellant that a contra view has been taken by the High Courts of Gujarat, Delhi, Allahabad and Madras in *Vinod Rao v. The State of Gujarat* - (1980) 2 GLR 926, *Sant Ram v. Delhi State*-17 (1980) Delhi Law Times 490, *Mata Sewak Upadhyay v. State of U.P.*-1995 JIC 1168 (All) (FB), *P. Ramakrishnan v. State Rep. By the Inspector of Police* - 2010-1-LW (Crl.) 848 respectively. He also pointed out that a different view has been taken by the High Court of Allahabad in *Pankaj Shukla v. Anirudh Singh* - 2011 (2) ADJ 472 without noticing the Full-Bench decision of the High

Court of Allahabad in Mata Sewak Upadhyay (supra).

14 *It is not necessary to refer to all the above judgments. View taken in support of the notification remaining valid and operative in Vinod Rao(supra) is, inter alia, as follows: "Therefore, applying the rule of construction laid down in Section 8 of the General Clauses Act, we must read in Section 10 of the Criminal Law Amendment Act, 1932. Cr.P.C., 1973 in place of the expression of "Cr.P.C., 1898". When we so read it, it becomes clear that the notification issued under Section 10 with reference to Cr.P.C., 1898 should be read as having been issued with reference to the Cr.P.C., 1973. So far as the impugned notification is concerned, it also refers to the Cr.P.C., 1898. The Rule of construction laid down in Section 8 of the General Clauses Act, 1897 also requires us to construe reference to the repealed enactment made in any "instrument" as reference to the repealing enactment or the new enactment which has been brought into force. The expression 'instrument' used in Section 8 of the General Clause Act, 1897, in our opinion, necessarily includes a notification such as the impugned notification. Therefore, applying the rule of construction laid down in Section 8 of the General Clauses Act, 1897, we read both in Section 10 of the Criminal Law Amendment Act, 1932 and in the impugned notification reference to Cr.P.C., 1898, as a reference to Cr.P.C., 1973. Therefore, the effect of the notification issued under Section 10 in 1937 is to modify the relevant provisions in the Cr.P.C., 1973. Therefore, the notification of 1937 as well as the subsequent notification issued in 1970 are relevant to the instant case."*

15 *Contra view is on lines of the impugned order relevant part of which has been reproduced above.*

16 *We approve the view taken by the High Courts of Gujarat, Delhi, Allahabad and Madras in Vinod Rao, Sant Ram, Mata Sewak Upadhyay, and P. Ramakrishnan (supra) and disapprove the view taken by High Court of Allahabad in Pankaj Shukla (Supra).*

17 *In the result, the appeals shall stand allowed."*

16 In the light of this authoritative pronouncement, we have no alternative, but to hold that both the Notifications issued by the State of Maharashtra and reproduced above, cannot be said to be in conflict with the Central legislation. Consequently, the application fails and is dismissed. The judgment of the Hon'ble Supreme Court binds us and it cannot be brushed aside because the view taken at Goa was in relation to a distinct provision of the Indian Penal Code. Secondly, the Supreme Court expressly overrules that judgment which is heavily relied upon by Mr. Bharti. Thirdly, and lastly, the power to issue the notification is conferred by the Act of 1932, which is conferred by the Act of 1932, which is still a valid law of Parliament. There is thus no repugnancy.

17 Now, that the charge-sheet is filed in the competent criminal court, we clarify that without expressing any opinion on the merits of the controversy, it would be open for the applicant to take out such proceedings as are permissible in law, including

seeking a discharge from the criminal case. We keep open all contentions in that regard and of both sides. With the above clarification, the criminal application is disposed of.

18 In the passing, we also accept the apology tendered on behalf of the Investigating Officer, but caution that the explanation furnished, namely, that there are too many proceedings and, therefore, it was not possible that the Investigating Officer is aware of all the orders made from time to time. Even with regard to this application there were several orders and one of which is crucial, has escaped his attention is the explanation. That cannot be a general rule. The Investigating Officers and particularly the Police machinery has to be careful when dealing with the orders passed by this Court. We administer such caution and close the proceedings in that regard. Apology accepted.

PRAKASH D. NAIK, J.

S.C. DHARMADHIKARI, J.