

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL WRIT PETITION NO. 1145 OF 2017**

Appasaheb S/o Baburao Shinde,
 Age : 63 Years, Occupation : Pensioner,
 R/o. 5-Sawedi, Bhutkarwadi, Taluka & District
 Ahmednagar.

..PETITIONER
 (Original
 accused No.4)

VERSUS

1] The State of Maharashtra

2] Sachin S/o Mahadeo Vaidya,
 Age : 33 years, Occu. Not known
 R/o. Ghatnandur, Taluka Ambajogai,
 Dist. Beed.

..RESPONDENTS
 (R.No.2 is
 original
 complainant)

...

Advocate for Applicant : Mr. V. S. Sakolkar

APP for Respondent-State: Mr. A.R. Kale

Advocate for Respondent Nos.2 : Mr. N. S. Tekale

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CORAM : MANGESH S. PATIL, J.

Date of reserving the Judgment : 06.08.2018

Date of pronouncing the Judgment : 27.08.2018

JUDGMENT :-

Rule. The rule is made returnable forthwith. With the consent of parties, the matter has been heard finally.

2] The petitioner is taking exception to the order passed by the learned Sessions Judge Beed in Criminal Revision Petition No. 70 of 2015 dated 26.05.2017 dismissing Revision preferred by him under Section 397 of the Code of Criminal Procedure, thereby confirming

order passed by the Judicial Magistrate First Class (Court No.5) Beed in Misc. Criminal Application No. 1053 of 2012 directing the process to be issued against him and two more officers for the offence punishable under Section 193 of the Indian Penal Code 1860.

3] Shortly stated, the allegations in the complaint filed by respondent No.2 herein are to the effect that he was an employee of the Maharashtra State Bharat Scout and Guides having its head office at Mumbai. He was posted in its branch at Beed between 30.06.2008 and 31.03.2011. A Committee was set up by the head office to examine the affairs in the branch at Beed that led to a departmental enquiry being initiated against the respondent no.2 (complainant). He was charged for various misconducts. Alleging that during the course of that departmental enquiry the petitioner and the other officers/ employees had made a false statement, the respondent no.2 filed a complaint before the learned Magistrate seeking direction under Section 156(3) of the Code of Criminal Procedure. The learned Magistrate took cognizance of the complaint, recorded statement of verification under Section 200 of the Code of Criminal Procedure and further directed an investigation under Section 202 of the Code. After the concerned police submitted a report dated 15.05.2013, the learned Magistrate dismissed the complaint against three of officers but directed the process to be issued against the petitioner and two more officers for the offence

punishable under Sections 193 of the Code of Criminal Procedure.

4] Being aggrieved and dissatisfied with such a process the petitioner preferred Criminal Revision before the learned Sessions Judge, who, by the impugned Judgment and order, dismissed it. Even respondent no.2 complainant had preferred Criminal Revision Petition No. 129 of 2015 against the order passed by the learned Magistrate dismissing the complaint against three officers but the learned Additional Sessions Judge, by the Judgment and order dated 26.07.2016, dismissed the revision.

5] The learned Advocate for the petitioner vehemently submitted that the learned Sessions Judge committed an error by allowing the two criminal revisions to be decided separately by the two different Judges instead of clubbing them together and allowing them to be decided by the same Judge. He would then submit that in the departmental enquiry, respondent No.2 has been found to be guilty of the misconduct and has been removed from the service. He has challenged it before the Appellate Officer and now the matter is pending in this Court in the form of the Writ Petition No. 2185 of 2013. Thus according to the learned Advocate, when nothing could be found in the departmental enquiry about he having made any false statement, respondent no.2 cannot be allowed to agitate the issue by resorting to a parallel

proceeding.

6] The learned Advocate would further submit that since respondent no.2 was alleging the offence to have been committed during the departmental enquiry proceeding, no such separate complaint could have been initiated, in view of the bar contained under Section 195 of the Code of Criminal Procedure. Therefore, on facts as well as law, there was no sufficient material to direct the process to be issued. The learned Magistrate committed an error in appreciating the facts and the law in proper perspective and even the learned Sessions Judge missed the point and by the impugned Judgment and order dismissed the revision. He relied upon the decision of the single Judge of this Court in the case of *Prabhakar Ramchandra Patki Vs. State of Maharashtra and Another 2010 (2) Mh. L. J. (Cri) 41.*

7] The learned Advocate for the petitioner would further raise an objection to the maintainability of the complaint filed by respondent no.2 on the ground that no prosecution could have been initiated against the petitioner being a public servant except with the previous sanction under Section 195 of the Code of Criminal Procedure. He would further submit that when the revision was pending before the Session Court the amendment was effected to Section 156 as well as Section 190 of the Code of Criminal Procedure debarring the Magistrate

from directing investigation and taking cognizance under those provisions respectively since the petitioner was a public servant and therefore, even on this count the complaint ought to have been dismissed under Section 203 of the Code of Criminal Procedure.

8] The learned advocate would also submit that in view of Section 340 of the Code of Criminal Procedure also the private complaint was not maintainable and it is only the Inquiry Officer could have filed the complaint.

9] The learned A.P.P requested to decide the petition on merits.

10] The learned Advocate for respondent no.2 justified the order passed by the learned Magistrate and the view taken by the learned Sessions Judge. According to him, there was enough material before the learned Magistrate to direct process to be issued by invoking the power under Section 204 of the Code of Criminal Procedure and no fault can be found with the satisfaction arrived at by him at the stage of issuance of process. It was based on plausible appreciation of the allegations, facts and the circumstances, which could not have been interfered with by the learned Sessions Judge. The learned Sessions Judge has also appreciated the circumstances in the proper perspective and has correctly refused to intervene.

11] As far as argument regarding bar contained under Section 195 of the Code of Criminal Procedure is concerned, the learned Advocate would submit that the bar is not applicable to the cases where the offence punishable under Section 193 of the Indian Penal Code is committed during departmental enquiry. The learned Advocate would submit that departmental enquiry is not a proceeding before the Court as contemplated under sub section (1) of Section 340 of the Code of Criminal Procedure. He would submit that it is not a Court for the purpose of that provision and will not be covered by the bar contained under Section 195 of the Code of Criminal Procedure. No illegality has been committed by respondent no.2 in initiating a proceeding for the offence punishable under Section 193 of the Code of Criminal Procedure in respect of such a false statement made during the departmental enquiry.

12] As far as factual aspects are concerned, the learned Magistrate, pursuant to an enquiry directed by him under Section 202 of the Code of Criminal Procedure, has come to a reasonable and plausible conclusion to the effect that the petitioner and the other two accused in their statements before the Inquiry Officer had falsely stated that respondent no.2 herein who was the delinquent had not shown the documents to the enquiry officer during the inspection that was carried out, whereas the report of the inspecting team which comprised of even the petitioner

as one of the members, contained a statement to the effect that the record was in the custody of couple of other officers and not respondent no.2 delinquent. Thus, *prima facie*, there was a contradiction between the report of the inspection submitted by a team of which the petitioner was a member and his statement made before the Inquiry Officer during the course of the departmental enquiry. On a plain reading of the impugned order passed by the Magistrate and confirmed by the learned Sessions Judge, I do not find any perversity or arbitrariness in coming to the conclusion that *prima facie* there was substance to hold that the offence punishable under Section 193 of the Indian Penal Code was committed which was sufficient for the Magistrate to have proceeded in directing the process to be issued under the powers contained in Section 204 of the Code of Criminal Procedure. The order may be cryptic but that provision does not require a detailed order to be passed as is the situation where, while dismissing a complaint under Section 203, he has to objectively record brief reason to demonstrate as to how there is no sufficient ground for proceeding. Therefore, as far as the factual aspect obtaining before the learned Magistrate are concerned, he has come up with a precise reason which enabled him to direct process to be issued under Section 193 of the Code of Criminal Procedure.

13] Now coming to the legal aspect and the objection raised by the learned Advocate for the petitioner regarding maintainability of the

complainant on various counts, it is necessary to reproduce the different provision involved. Section 340 of the Code of Criminal Procedure reads as under :-

" Procedure in case mentioned in section 195 – (1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary

(a) record a finding to that effect

(b) make a complaint thereof in writing,

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of Section 195

(3) A complaint made under this section shall be signed,

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint'

(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.

(4) In this section, " Court" has the same meaning as in Section 195. "

14] It is apparent from the plain reading of this provision that when any offence is committed in or in relation to a proceeding in a Court which is referred to in clause (b) of sub section (1) of Section 195 of the Code of Criminal Procedure, a specific procedure is to be followed by that Court where the proceeding is pending or by some superior Court. It also requires that such a complaint has to be signed by such officer as the High Court may appoint when the complaint is directed to be made by the High Court and in any other cases by the Presiding Officer of the Court or such other officer as may be authorized by that Court. As can be seen from sub Section (4) of the Section 340 of the Code of Criminal Procedure for the purpose of that section the word 'Court' has the same meaning as in Section 195 of the Code of Criminal Procedure.

Section 195 reads as under :-

" Section 195 Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence – (1) No Court shall take

cognizance-

(a)(i) of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860) or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence,

except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b)(i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause(i) or sub-clause(ii), [except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.]

(2) Where a complaint has been made by a public servant under clause (a) of sub-section(1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court, and upon its receipt by the Court, no further proceedings shall be taken on the complaint.

Provided that no such withdrawal shall be ordered if the trial in the court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term " Court" means a Civil, Revenue or Criminal Court, and includes a Tribunal constituted by or under a Central Provincial or State Act if declared by that Act to be a Court for the purpose of this Section.

(4) For the purpose of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate
Provided that -

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate

(b) where appeal lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

15] In view of clause (b) of sub section (1) of Section 195, a Court cannot take cognizance of any offence contained in sub section (b) except on a complaint in writing of that Court or any officer authorized by that Court or by the Court to which that Court is subordinate. Sub section (3) of Section 195 then lays down that for the purpose of clause (b) of sub section (1), the term 'Court' means a Civil, Revenue or a Criminal Court and also includes a tribunal constituted by the Central

Provincial or State Act if it is so declared by that Act for the purpose of that section. Thus, it is apparent that whenever an offence as enlisted in clause (b) of sub section (1) of Section 195 of the Code of Criminal Procedure is committed during a judicial proceeding, in view of Section 340 of the Code of Criminal Procedure, the complaint has to be lodged by the Court or some officers directed by that Court or the superior Court and by virtue of Section 195, no Court can take cognizance of such of an offence, except on filing of such complaint by the Court. For the purpose of applicability of such a procedure the offence punishable under Section 193 of the Code of Criminal Procedure should have been committed during the judicial proceeding before a Court as defined under sub section (3) of Section 195 of the Code of Criminal Procedure.

16] Since admittedly the alleged offence in the matter in hand was committed during the course of the departmental enquiry and when there is nothing on the record to show that the departmental proceeding was a proceeding in a Court as defined under sub section (3) of Section 195, the procedure under Section 340 could not have been expected to be followed and consequently even the bar contained under Section 195 of the Code of Criminal Procedure would not be applicable.

17] In this regard, it is also necessary to consider the provision of Section 193 of the Indian Penal Code which provides for punishment for

the offence as defined under Section 191 of the Indian Penal Code.

Section 193 reads as under :

Section 193 – Punishment for false evidence – Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. "

18] As can be seen, the first part of the provision requires the false evidence to have been given in a judicial proceeding where the punishment may extend to seven years and fine. The latter part covers a situation where a false evidence is given in 'any other case' wherein the punishment may extend to three years and fine. As is observed above, when the alleged offence in the matter in hand was not committed in relation to a judicial proceeding and was committed in a departmental enquiry proceeding, it was duly covered by the latter portion of Section 193 of the Code of Criminal Procedure. In view of such state of affairs, no fault can be found in respondent no.2, who was the delinquent in the departmental enquiry, in filing the complaint in respect of the offence punishable in the latter part of the Section 193 of the I.P.C. He was not

expected to have followed the procedure laid down under Section 340 of the Code of Criminal Procedure and even the bar contained under Section 195 of the Code of Criminal Procedure would not be applicable to the complaint filed by him.

19] So far as the powers of the Magistrate to take cognizance under Section 190 of the Code of Criminal Procedure without there being any sanction to prosecute the petitioner, who is a Government servant are concerned, suffice for the purpose to observe that admittedly this bar was introduced for the first time by the Legislature in the form of the proviso in the year 2016 whereas admittedly respondent no.2 had filed the complaint and even the learned Magistrate had taken the cognizance much prior thereto. The complaint was filed on 19.11.2012 and the order directing the process to be issued was passed on 04.10. 2014 when there was no such bar operating against the power of the Magistrate to take cognizance under Section 190 of the Code of Criminal Procedure.

20] Considering all the aforementioned facts and the law as discussed here-in-above, no fault can be found in the order passed by the learned Magistrate in directing the process to be issued and in the order passed by the learned Sessions Judge in dismissing the revision preferred by the petitioner. There is no apparent illegality. The Writ Petition is liable to

be dismissed.

21] The Writ Petition is dismissed.

The Rule is discharged.

(MANGESH S. PATIL, J.)

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