

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1227 OF 2018

Jayram s/o. Hanumant Bhujbal,
Age : 30 years, Occ. Agri.,
r/o. Makni Tq. Purna,
Dist. Parbhani ..Petitioner

Vs.

The State of Maharashtra,
(Through - Prakash Vitthal Kale),
Registrar,
District and Sessions Judge,
Parbhani ..Respondents

Mr.N.Y.Kingaonkar, Advocate for petitioner

Ms.R.P.Gaur, APP for respondent

**CORAM : R.G. AVACHAT, J.
RESERVED ON : AUGUST 19, 2019
PRONOUNCED ON : SEPTEMBER 04, 2019**

JUDGMENT :-

Rule. Rule made returnable forthwith. With the consent of learned Counsel for the parties, heard finally.

2. By this petition, the petitioner seeks quashment of the order dated 25.01.2017 passed by

learned Sessions Judge, Parbhani, in Special (A.C.B.) Case No.1 of 2014, with a consequential prayer for quashment of the proceedings in Regular Criminal Case No.43 of 2017 instituted pursuant to the order dated 25.01.2017.

3. Heard Mr.Kingaonkar, learned Counsel for the petitioner and Ms.Gaur, learned APP for the respondent.

4. The facts, necessary for deciding present petition, are as under :-

The mother of the petitioner owns agricultural land at village Makni, Tq. Purna, Dist. Parbhani. Sugarcane crop in the said agricultural land was, allegedly, damaged by wild animals. The petitioner, therefore, preferred an application to the Range Forest Officer, Parbhani, for grant of compensation. One Shri. Lute was the Clerk serving in the Forest Department. He demanded Rs.1,000/- from the petitioner to ensure grant of compensation.

Since the petitioner did not want to pay the bribe, he approached the Anti Corruption Bureau. A trap was laid and Mr.Lute came to be apprehended accepting the bribe amount. He came to be proceeded against by filing charge-sheet before the Special Court for trial of the offences under the Prevention of Corruption Act.

5. The petitioner was examined as prosecution witness No.1. Recording of his evidence was over on 04.10.2016. Learned Public Prosecutor in-charge of the case, found the petitioner to have not supported the prosecution. He, therefore, moved an application (Exh.48), requesting the learned Judge seized of the matter, to take necessary steps for prosecuting the petitioner for giving a false evidence. Learned Sessions Judge, by order dated 25.01.2017, directed the Registrar, District and Sessions Court, Parbhani, to lodge complaint against the petitioner for the offence punishable under Section 193 of the Indian Penal Code. The Registrar, in turn, filed the

complaint (R.C.C. No.43 of 2017) before learned Chief Judicial Magistrate, Parbhani (C.J.M.). Learned C.J.M. issued process against the petitioner herein. This is how, the petitioner is before this Court, seeking quashment of the order stated above.

6. Mr.Kingaonkar, learned Counsel for the petitioner, would submit that no preliminary enquiry was made by the learned Sessions Judge before passing the order dated 25.01.2017. Learned Counsel would further submit that the provisions of Section 340 of the Code of Criminal Procedure (Cr.P.C) have not been complied with. According to learned Counsel, the petitioner gave evidence long after he lodged the complaint with the A.C.B. Since his memory did not serve him well, he could not give evidence very much consistent with his complaint lodged with the A.C.B. Learned Counsel took me through the evidence, to ultimately submit that the petitioner has not committed the offence of perjury, as alleged in the complaint. According to learned Counsel, the accused

in the case has been convicted for the charge of accepting bribe and an appeal from conviction is *sub-judice* before this Court.

7. Learned APP would, on the other hand, submit that no preliminary enquiry is necessary for taking a decision under Section 340 of Cr.P.C. to move against a person committing an offence against the administration of justice. Learned APP would further submit that perusal of the evidence of the petitioner would, undoubtedly, suggest that he did not stand by the prosecution. He has, therefore, rightly been proceeded against by filing complaint (R.C.C. No.43 of 2017) pursuant to the order dated 25.01.2017 passed by learned Sessions Judge.

8. The order dated 25.01.2017 passed under Section 340 of Cr.P.C. is basically under challenge in this petition. In view of Section 341 of Cr.P.C., said order is appealable. The petitioner has, however, not preferred an appeal there-against.

Since this Writ Petition has been entertained and argued finally, I do not propose to go into the technicalities regarding failure of the petitioner to file an appeal against the impugned order. Suffice it to say that learned Counsel for the petitioner did not bring to the notice of this Court the order dated 24.04.2019. Be that as it may.

9. Since the accused in Special (A.C.B.) Case No.1 of 2014, has been convicted and his appeal from conviction is *sub-judice* before this Court, it would not be in the fitness of things even to make *prima facie* observation, as to whether the petitioner is being rightly proceeded against. The petition could be disposed of on the law point.

10. Section 340 of Cr.P.C. reads thus :-

340. Procedure in cases 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."

11. The provisions of Section 340 of Cr.P.C. would, undoubtedly, indicate that preliminary enquiry

before proceeding to take action under the Section, is not a condition precedent. In the case of **B.K. Gupta Vs. Damodar H. Bajaj and ors.**, (2001)9 SCC 742, the Hon'ble Supreme Court has observed that there are two conditions on fulfillment of which a complaint can be filed against a person, who has given a false affidavit or evidence in a proceeding before a Court. The twin conditions are – (a) that a person has given a false evidence in a proceeding before the Court; and (b) in the opinion of the Court, it is expedient in the interest of justice, to make an enquiry against such a person in relation to the offence committed by him.

12. This Court desist from making observation regarding the first condition mentioned above, since the accused in the Special Case has been convicted and appeal from conviction is pending. So far as regards compliance of the second condition is concerned, it is to be stated that learned Public Prosecutor in-charge of the case, had moved an

application (Exh.48) praying for taking necessary action. Learned Sessions Judge in-charge of the case, on the same day, passed the order - "Heard. Appropriate steps would be taken". Thereafter, on 25.01.2017, i.e. after about 4 months and 21 days, learned Sessions Judge was pleased to pass the order, which is reproduced below in verbatim:-

" कार्यालयीन आदेश

मी श्रीमती मु. श्री. जवळकर, प्रमुख जिल्हा व सत्र न्यायाधीश, परभणी, फौजदारी प्रक्रिया संहितेचे कलम ३४०(३)(ब) च्या अधिन राहून आदेश करते की, श्री.पी.वी.काळे, प्रबंधक, जिल्हा व सत्र न्यायालय, परभणी, यांनी विशेष खटला (ए. सी. बी.) क्र.०१/२०१४ मधील साक्षीदार जयराम पि. हनुमंत भुजबळ, रा. माखणी, ता. पूर्णा विरुद्ध त्याने या प्रकरणात खोटी साक्ष दिल्याचे लक्षात आल्यावरून कलम १९३ भा.द.वि. खालील गुन्हा केल्याच्या दोषारोपाबाबत रीतसर फिर्याद द्यावी."

13. Perusal of the office order dated 25.01.2017 indicates that the same appears to have been passed in administrative capacity. Learned Sessions Judge has not observed in her order as to how it is expedient in the interest of justice, to make an enquiry against the petitioner herein in relation to the alleged offence committed by him.

14. For want of compliance of the second condition, it has to be stated that the impugned order dated 25.01.2017 suffers. The impugned order is not in compliance with the mandate of Section 340 of Cr.P.C. The impugned order, therefore, needs to be set aside. As a result thereof, the prosecution instituted by filing complaint (R.C.C. No.43 of 2017) before learned Chief Judicial Magistrate, Parbhani, also has to be quashed and set aside.

15. In view of the above, the Writ Petition is allowed in terms of Prayer Clauses (C) and (E). Rule made absolute accordingly.

[R.G. AVACHAT, J.]

kbp