

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1137 OF 2018

Rajesh Gulab Patil	]	Applicant
Vs.		
Shankar Rama Parad and another	]	Respondents

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Mr. Manoj Mohite, Ms. R.W. Correia i/b Mr. A.V. Chatuphale, for the Applicant.

Mr. Rohit D. Joshi, for the Respondent No.1.

Mr. A.R. Patil, A.P.P for the Respondent No.2- State.

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CORAM : REVATI MOHITE DERE, J.

DATE : 19TH NOVEMBER, 2019.

P.C. :

Heard learned Counsel for the parties.

2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Mr. Joshi waives notice on behalf of the Respondent No.1 and learned A.P.P waives notice on behalf of the Respondent No.2-State.

3. At the outset, learned Counsel for the Applicant seeks leave to amend. Leave granted. Amendment to be carried out forthwith.

4. By this application filed under section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr. P.C'), the Applicant has impugned the order dated 25th September, 2017 passed by the learned Special Judge S.C. & S.T. (Prevention of Atrocities) Act, Thane in Criminal M.A. No.55 of 2017, by which process was issued as against the Applicant and other accused.

5. The principal grievance of the learned Counsel for the Applicant is that order issuing process was erroneous and unsustainable in law. He submitted that the learned Special Judge issued process without recording the verification of the complainant i.e Respondent No.1. Learned Counsel relied on the judgments of the Apex Court in the case of **M/s. Nova Electricals Vs. State of Maharashtra and another reported in 2007 CRI. L.J. 535** and **Associated Cement Co. Ltd. Vs. Keshavanand, (1998) 1 Supreme Court Cases 687** in support of his submission.

6. Learned Counsel for the Respondent No.1 opposed the application. He submitted that no interference was warranted in the impugned order issuing process.

7. Perused the papers. The Respondent No.1-Shankar Rama Parad (original complainant) filed a private complaint on 2nd February, 2017 in the Court of the learned Special Judge, S.C & S.T. (Prevention

of Atrocities) Act, Thane, as against the applicant and others alleging offences punishable under sections 504, 506, 441, 447, 415, 418, 420 r/w 120 (B) and 34 of the Indian Penal Code along with section 3(1) (iv) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) Act, 1989. The Respondent No.1 in the said complaint prayed for an order under section 156 (3) of the Cr. P.C. The learned Special Judge vide order dated 13th April, 2017 called for a report under section 202 Cr. P.C. with a direction to submit the report within two months. On 24th July, 2017, the Police submitted its report under section 202 Cr. P.C and on 25th September, 2017, the learned Special Judge issued process as against the applicant and other accused for the aforesaid offences. A copy of the Roznama is annexed at Exhibit L at page 69 to the aforesaid application. Admittedly, the learned Special Judge did not record the verification of the Respondent No.1 in the said case prior to passing the order under section 202 Cr. P.C .

8. It is evident from the aforesaid that the learned Special Judge has not complied with the procedure as contemplated in Chapter XV of Cr. P.C. It is not in dispute that the learned Magistrate had not recorded the verification of the Respondent No.1 prior to passing the order under section 202, Cr. P.C.

9. In **M/s. Nova Electricals** (supra), this Court in paragraph 5 and 6 has observed as under;

5. It is not in dispute that the act of verification is to be performed by the Court. The complainant cannot be penalized for omission to record verification by the Court. It is also not in dispute that the parameters for quashing of the entire proceeding are quite different, inasmuch as for quashing of proceeding, it has to be established that either there is no cause of action or the proceeding would amount to an abuse of process of Court. This is not the case here. In this view of the matter, prayer is rightly restricted only to the legality of the impugned order of issuing process passed on 20th November, 2002. Time and again, provisions of section 200 of the Criminal Procedure Code, has been interpreted by this Court. Section 200 itself makes it clear that verification is mandatory. It would be appropriate to reproduce relevant portion of Section 200, Cr.P.C at this juncture:

200 : A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) and (b)...

6. Recording of verification is not a mere formality. By recording verification, the Magistrate has to ascertain whether the complaint is genuine or frivolous. The object of verification is to discourage frivolous proceeding. The Magistrate has to apply his mind to the facts of the case and to decide whether all formalities are completed and whether grounds to proceed with the matter for redressal of genuine grievance exist. This aspect has been dealt with by the Apex Court in the matter of S.W. Palnitkar and Others v. State of Bihar and Another, reported in (2002) 1 SCC 241 : AIR 2001 SC 2960. The Apex Court has observed in para No. 15 as under:

15. In case of a complaint under Section 200, Cr. P.C. or I.P.C a Magistrate can take cognizance of the offence made out and then has to examine the complainant and his witnesses, if any, to ascertain whether a prima facie case is made out against the accused to issue process so that the issue of process is prevented on a complaint which is either false or vexatious or intended only to harass. Such examination is provided in order to find out whether there is or not sufficient ground for proceeding....”

10. Considering the aforesaid, the order dated 13th April, 2017 calling for a report under section 202 Cr. P.C prior to recording of verification as well as the order dated 25th September, 2017 issuing process cannot be sustained and as such are quashed and set aside. The matter is remitted back to the trial Court for dealing with the complaint in accordance with law. The learned Special Judge to decide the complaint in accordance with law from the stage of verification.

11. Accordingly, the application is allowed and rule is made absolute in terms of prayer clause (b). Since the complaint is of February, 2017, the learned Magistrate to decide the same as expeditiously as possible.

12. The Application is disposed of on the aforesaid terms.

13. All the concerned to act upon the authenticated copy of this order.

[REVATI MOHITE DERE, J.]