

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) 764/2019

Rajesh Shivnarayan Waghmare **Versus** Hiralal s/o Satyanarayan Pande and others.

WITH

CRIMINAL APPLICATION (APL) 768/2019

Prashant Manikrao Pachghare **Versus** Hiralal Satyanarayan Pande and others

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri Vinay V. Dahat, counsel for applicant.
Shri M.P. Sagdeo, counsel for non-applicants/respondents 1 to 4.

CORAM: ROHIT B. DEO, J.

DATE: 21.02.2020

The jurisdiction of this Court under Section 482
is invoked in the backdrop of peculiar facts.

2. The non-applicants are agriculturist who have some grievance, the details of which it is not necessary to delve into, as regards the acquisition of their land.

3. The non-applicants approached this Court in writ petition to seek redressal. The writ petition was disposed of since the learned Division Bench was not inclined to look into the disputed questions of fact. The

non-applicants then instituted civil suit, which is pending.

4. The non-applicants further instituted Misc. Complaint Case 153/2012 the prayer clause of which reads thus:-

“i] To try and punish the accused under Section 420 r/w section 427 and r/w section 441 of I.P.C. and or any suitable provisions of law for cheating and dishonestly including delivery of property to N.A/Accused No.2, causing damage to the field property of the complainant and criminal trespass by both the Non-applicants/Accused.

ii] Any may pass order directing the accused to pay the compensation to the complainant.

iii] May pass such other order as deems fit in the above circumstances in favour of complainant.”

5. The Executive Engineer, Minor Irrigation Department, Civil Lines, Nagpur was arrayed as accused 1. The learned Magistrate issued show cause notice vide order dated 20.06.2016. The Executive Engineer, Minor Irrigation challenged the institution of the proceedings before this Court in Criminal Application (APL) 159/2017. The learned Division Bench quashed the complaint as far as the Executive Engineer, Minor Irrigation Department is concerned. The relevant observations of the learned Division Bench read thus:-

*“We find much force in the submissions made on behalf of the applicant that the learned Magistrate was not justified in entertaining the criminal application filed against the post and not against the person. In a criminal complaint, it is necessary for the complainant to join the person who has allegedly committed the offence for which an action is sought against him by the prayer in the complaint. When we had issued notice to the respondents in this criminal application, we had noted that the impugned order was totally in contravention of the law laid down by the Division Bench of this Court in the case of **State of Maharashtra Vs. Shashikant Eknath Shinde** reported in **2013(5) ABR 86** . It is apparent from a perusal of the cause title of the complaint that the complaint is not filed against any individual working in the Irrigation Department, who has allegedly committed the offences under the provisions of Sections 420, 427 and 441 of the Indian Penal Code. The other respondent to the complaint is a private contractor who is not an employee of the Minor Irrigation Department. It was necessary for the respondents to have joined the person, who according to the respondents had committed the offences under Sections 420, 427 and 441 of the Indian Penal Code, to the complaint. It is rightly submitted on behalf of the applicant that it would be very difficult for the applicant even to show cause as per the order dated 20-6-2016, as the Executive Engineers in the Minor Irrigation Department, Civil Lines, Nagpur change from time to time due to their transfer. In the circumstances of the case, the learned Judicial Magistrate First Class could not have proceeded against the applicant –Executive Engineer, Minor Irrigation Department, as the applicant was not joined in person. In the peculiar circumstances of the case, since the complaint cannot be proceeded against the post but could be proceeded only against the person who has allegedly committed the offence for which action is sought against him, the proceedings are liable*

to be quashed and set aside, so far as the applicant is concerned.

Hence, for the reasons aforesaid, the criminal application is allowed. Miscellaneous Criminal Application No. 153/2012 is quashed and set aside so far as the applicant is concerned. Consequently, the order dated 20-6-2016 would also not operate against the applicant. Order accordingly.”

6. The non-applicants / complainants then preferred an application dated 06.10.2018 seeking correction of the complaint by adding names of the petitioners herein. The learned Magistrate vide order dated 06.10.2018 issued notice to the petitioners. The order dated 06.10.2018 reads thus:-

“Issue notice to the persons named in paragraph no 3 of the application.”

7. Pursuant to the order dated 06.10.2018, the petitioners have received communication from the Magistrate’s Court to appear and show-c`ause. The order dated 06.10.2018 and communication 29.04.2019 are assailed herein.

8. The submission of the learned counsel for the petitioners is that the learned Magistrate seriously erred in

taking cognizance of the complaint, in the manner in which the cognizance was taken. In my considered view, the order which is impugned is not an order of taking cognizance. The complainants sought to correct the complaint. Whether the complainants are entitled to do so, is something which the trial Court would have to decide on merits. Probably, the trial Court assumed that in the interest of natural justice, the petitioners should be given an opportunity to show cause why the complainants should not be permitted to correct the complaint. This appears to the limited purpose of the notice. In any event, the trial Court cannot take cognizance of an offence by merely issuing notice to some persons on an application for correction of the complaint. Even if the complainants are permitted to correct the complaint, the learned Magistrate will have to apply mind and then to take judicious decision on whether a case is made out for proceeding against the petitioners. This observation and clarification would suffice to allay the apprehension of the petitioners. It is further made clear that since the petitioners are not accused, they need not appear personally and suffice if the petitioners appear through counsel, and that too, if they so desire.

9. Criminal writ petitions are disposed of with aforesaid observation and clarification.

JUDGE

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