

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

CRIMINAL REVISION APPLICATION NO. 609 OF 2019

Tank Enterprises

...Applicant

Versus

1. R.K. Ratnaparkhi (Deleted)

2. Adv. Vijay Limaye

3. The State of Maharashtra

...Respondents

....

Mr. Kishor Walanju Advocate for the Applicant.

Mr. Harshad Bhadbhade, Advocate for Respondent No.2.

Mr. S. R. Agarkar, APP for the Respondent No.3 – State.

....

CORAM : PRAKASH D. NAIK, J.

DATE : 29th AUGUST, 2022.

PER COURT:

1. The applicant challenges the order dated 09.10.2014 passed by learned J.M.F.C. Court No.4, Pune in M.A. No.794 of 2013 rejecting application for inquiry under Section 340 Cr.P.C. and order dated 06.10.2015 passed by Additional Sessions Judge, Pune dismissing Criminal Appeal No.557 of 2014.

2. During the pendency of this application, it was brought to the notice of this Court that the Respondent No.1 has expired on 19.05.2018. Vide order dated 22.08.2022, it was directed that, Respondent No.1 be deleted from this proceedings. Amendment in

that regard has been carried out and the name of Respondent No.1 has been deleted from the title of this application.

3. The applicant filed an application i.e. Criminal M.A. No.794 of 2013, before the Court of learned J.M.F.C. Court No.4, Pune against Respondents under Section 340(1) of Cr.P.C. for making inquiry under Section 195(b)(ii) of Cr.P.C. r/w Sections 120(B), 167, 193, 196, 202, 465, 466, 468, 471 & 420 r/w Section 511 of Indian Penal Code (for short "IPC").

4. The learned J.M.F.C. Court No.4. Pune vide order dated 09.10.2014, rejected the said application, On the ground that, bar under Section 195 of Cr.P.C. is not attracted and there is no prima facie case to conduct inquiry under Section 340 of Cr.P.C.

5. The applicant preferred Criminal Appeal No.557 of 2014 before the Court of Sessions at Pune challenging the order dated 09.10.2014 passed by learned J.M.F.C. Pune. Vide order dated 06.10.2015, the said appeal was dismissed on the ground that the facts and circumstances on record do not justify initiation of any inquiry or proceedings as contemplated under Section 340 of Cr.P.C.

6. The grievance of applicant is that, M/s. Electronica (Original Complainant) had filed six Criminal Complaints for offence under Section 138 of Negotiable Instruments Act against the applicant

viz. C.C. No.1122/1999, 1123/1999, 1124/1999, 1125/1999, 1126/1999 & 1127/99. It is alleged that it has been transpired from the record that, on 22.03.1999, the learned J.M.F.C. Court No.4 Pune was pleased to order registration of Complainants on 22.03.1999. Verification of the complainant was recorded without actually registering cases. Complainants were adjourned to 20.04.1999, 19.05.1999 and 01.06.1999. Application was made on 01.06.1999 (Exhibit- 4) by original Complainant to return complaints for presentation before the proper Court. Whole record of complaints was returned to Complainant; on 01.06.1999 without facing any entry in respect of filing and return of complaints. After 15 days without any application for delay condonation, all the complaints were presented to Court No.8 on 16.06.1999 and the Court accepted the complaints as if the complaints were transferred by Court No.4 and adjourned for verification on 23.06.1999. On 14.07.1999 the 8th Court without verification issued process. Record was fabricated to bring time barred cases within limitation.

7. Learned Advocate for the applicant submitted that the impugned orders passed by the Courts below are contrary to law. The Respondent No.1 with the assistance of Respondent No.2 by joining hands with the staff of the Court Room Nos. 4 & 8 had

committed the offences mentioned in the application under Section 340 of Cr.PC. It transpires from the rojnama of the Court that, on 22.03.2019, the learned J.M.F.C., Court No.4, Pune was pleased to order registration of complaints and recorded verification of accused No.1 without registering the above cases in the register of cases maintained by the Court and placed the matter for argument on 20.04.1999. The matter was posted for argument on 13.05.1999 and lastly adjourned to 01.06.1999, on which date without making argument, the Respondent Nos.1 & 2 filed applications in all cases for return of complaints on the ground of jurisdiction to the said Court and the learned Magistrate passed the order of return of complaints to the complainant. It transpires from the rojnama and orders passed in the said proceedings that, the complaints were return to Respondent No.1 on 01.06.1999 along with Rojnamas, verification and orders without taking any entry in respect of filing and return of complaints although all the complaints were kept directly for verification on 23.06.2019 without following process of law, the learned J.M.F.C. proceeded with the cases as if the same were filed within limitation and registered the same on 23.06.1999, in absence of delay condonation application. The applicant had approached this Court by preferring Criminal Application No.1260 of 2002 and other

connected matters and the proceedings were stayed by order dated 08.01.2003. The Respondent No.1 then withdrawn all the cases on 06.10.2005. The Courts below have committed an error in appreciating the facts. The cases bearing SCC Nos.1122 of 2019 to SCC 1127 of 1999 were initially filed in the Court of learned J.M.F.C. Court No.4, Pune. The Court committed an error in appreciating that, the Court No.4 transferred those cases to Court No.8, neglecting the fact that the different procedure is provided under Cr.P.C. for transfer of cases. If the complaints bearing S.C.C. No.1122 of 2019 to S.C.C. No. 1127 of 1999 would have been registered in Court No.4, the same should have been reflected in the register of cases in that Court and absence of entry of the same in the said register and even missing of numbers in the said register from S.C.C. No.1057 to 1156, indicate that the record was fabricated. The Courts ought to have initiated action in accordance with Section 340 of Cr.P.C. The Courts have misconstrued the facts of case and evidence on record. The respondents and others had tampered with record of Court. There is limitation under Negotiable Instruments Act for filing complaint for offence under Negotiable Instruments Act. Without application for delay condonation, time barred complaints cannot be entertained. Bar under Section 195 is attracted and action under

Section 340 of Cr.P.C. should have been initiated for fabricating record of the Court. If complaints bearing No.1122 to 1127/1999 were registered in Court No.4, it should have been reflected in register of cases of that Court and absence of entry in register makes it clear that record is fabricated. After verification was recorded and order of return of complaint were passed, without having entry of cases in register would show that record is fabricated. The orders passed by both the Courts are required to be set aside.

8. Learned Advocate for Respondent No.2 submitted that, the Respondent No.1 is the Advocate. The application under Section 340 of Cr.P.C. was not maintainable. The Respondent No.2 had discharged his professional duties and not involved in commission of any offence as alleged by the applicant. Both the Courts have rejected the prayers of the applicant. The Respondent No.2 filed reply, stating that, M/s. Electronica had approached respondent No.2 to file Criminal Complaints under Section 138 of Negotiable Instruments Act against the present applicant. On the basis of instructions he filed six complaints. Initially Respondent No.2 was informed that the bank of M/s. Electronica is falling within the jurisdiction of J.M.F.C. Court No.4 and accordingly complaints were filed in that Court. The practice of Court of Pune at the relevant

time was to register the complaint in the register of the Court only after issuance of process. Since process was not issued, entries were not taken in the register of J.M.F.C. Court No.4. Thereafter application was made to J.M.F.C. Court No.4 to return the complaints for submitting the same before the Court having jurisdiction. The said application was allowed on 01.06.1999. Pursuant to the aforesaid order, the authorized representative of M/s. Electronica received the complaint and presented the same before J.M.F.C. Court No.8 having territorial jurisdiction. Since the verification of complainant was recorded before J.M.F.C. Court No.4, the process was issued by J.M.F.C. Court No.8. After the process was issued, complaints were registered with the Court registrar and duly numbered. The revision applicant appeared in the matter and challenged the order of process. The application for recalling process was rejected by J.M.F.C. Court No.8. The applicant preferred Criminal Revision Application No.192 of 2000 to 197 of 2000 before the District and Sessions Court, Pune. The revision Applications were rejected vide order dated 20.09.2001. The applicant preferred Criminal Application No.1260 of 2002 before this Court. The applicant paid the amount which was subject matter of dishonoured cheque and the original complainant decided to withdraw the complaints. The applications for

withdrawal of complaints were preferred by the complainant. The applicant gave no objection for withdrawal of the complaints. The Learned J.M.F.C. Court No.8, Pune allowed the withdrawal of complaints and the complaints were withdrawn. The applicant filed complaint before the Bar Council against respondent No.2 on 24.01.2005. The said complaint was dismissed on 18.01.2007. The respondent No.2 received a notice dated 06.08.2012 on behalf of the applicant for legal action against him. The notice was replied on 20.08.2012. The applicant filed application under Section 340 of Cr.P.C. on 20.03.2013 seeking directions to register complaint against respondents and the Court's staff. The application was dismissed vide order dated 09.10.2014. The appeal challenging the said order were dismissed by order dated 06.10.2015.

9. Learned J.M.F.C., Court No.4, Pune, while rejecting the application preferred by the applicant has observed that, S.C.C. No.1122/1999 to 1127/1999 were filed before the learned J.M.F.C., Court No.4, Pune on 22.03.1999 which were subsequently transferred to learned J.M.F.C., Court No.8, Pune by order dated 01.06.1999. Perusal of Annexure Nos. 12 to 15, 20 to 23, 27 to 30, 35 to 38, 43 to 46, and 51 to 58 reveals that the complaint under

Section 138 of N.I. Act were presented on 22.03.1999 before the J.M.F.C. Court No.4, Pune. Verification of complainant was recorded and subsequently complainant's counsel moved an application that the Court has no jurisdiction to try and entertain the complaints. By order dated 01.06.1999, complaints were returned to the complainant for its presentation before the proper Court. The same complaints were subsequently presented before the J.M.F.C. Court no.8, Pune on 16.06.1999. Process under Section 138 of N.I. Act was issued against accused on 23.06.1999 and complaints were withdrawn as per Section 257 of Cr.PC. It is the contention of the complainant/applicant that, the complaints filed before the J.M.F.C., Court No.4, Pune were not registered and to substantiate his submission he filed the copy of extract of relevant register at Annexures 70 and 71. On perusal of the same, the entries of 22.03.1999, does not reveal the registration of complaint in the register in the name of electronic a partnership firm duly registered under the Partnership Act through authorized signatory. Thus, according to the applicant, the Respondents and others had fabricated the record of Court by framing incorrect documents including the rojnama, orders with an intention to cause injury to the complainant and thereafter prayed for inquiry under Section 340 of Cr.PC. The learned Magistrate then referred

to the procedure provided under Chapter XXVI of Cr.P.C. and the decision of the apex Court in the case of *Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and another*¹ and observed that, Section 195(1)(b)(ii) of Cr.P.C. would be attracted only when the offences enumerated in the said provision have been committed in respect to documents after it has been produced or given in evidence in a proceedings in any Court i.e. during the time when the document was *custodia legis*. Bar of Section 195 is applicable only to such documents which are forged when they were in custody of the Court. If forged document is filed before a Court, in that contingency bar under Section 195 of Cr.P.C. is not attracted as per law. It was further observed that, as per submission of the complainant record in S.C.C. No.1122 of 1999 to 1127/1999 from 22.03.1999 to 01.06.1999 was forged by R.K. Ratnaparkhi Vijay Limaye and others and was submitted before J.M.F.C. Court No.8 on 16.06.1999. As per extract of the case register, filed by complainant, the record of SCC No.1122/1999 to 1127/1999 is not found to have been registered before J.M.F.C. Court No.4. Therefore prima facie from submission of complainant the record was not in custody of J.M.F.C. Court No.4. In that case there is no question of forgery with documents which are filed in a

¹ AIR 2005 SC 2119 (1)

proceedings in a Court. Therefore bar under Section 195 Cr.P.C. is not attracted. It is further observed that, during the course of argument the complainant (applicant) submitted that the J.M.F.C. Court No.4 had passed orders to return the complaints for its presentation to proper Court on 01.06.1999. In that eventuality, there wont be any forgery of documents, if the Court is not competent to take cognizance of the case and if the complaint is in writing it has to be returned for presentation to the proper Court with an endorsement to that effect as per Section 201 of Cr.P.C. As the same appears to have been done in the said complaints, there is no prima facie evidence before the Court to conduct inquiry under Section 340 of Cr.P.C.

10. Learned Sessions Judge has passed a detailed order while rejecting the appeal preferred by the applicant. The learned Judge has dealt with all the submissions of the appellant/applicant and by assigning cogent reasons, rejected the same. The learned Sessions Judge has observed that in peculiar circumstances the Advocate for respondents are perfectly justified in making the submission that the Appellant (applicant) is not justified in making any grievance as regards filing of complaint No.1122 of 1999 to 1127 of 1999 before the learned J.M.F.C. Court No.8, Pune, after withdrawing the same

from the Court of learned J.M.F.C. Court N.4, Pune. The facts and circumstances on record do not justify initiation of any inquiry or proceedings under Section 340 of Cr.P.C. in relation to the proceedings in S.T.C. No.1122 of 1999 to 1127 of 1999.

11. I do not find any reason to deviate from the view taken by the Courts below. It is evident that the six complaints were filed for offence under Section 138 of the N.I. Act against the applicant before the J.M.F.C. Court No.4 at Pune. Verification was recorded. Complaints were kept for argument on 01.06.1999 and the application preferred by the Respondents, cases were allowed to be withdrawn from the Court of J.M.F.C. Court No.4 for filing the same before the J.M.F.C. Court No.8, Pune. The latter Court accepted those six complaints. The complaints were allowed to be withdrawn in 2005.

12. The facts emerging from the order dated 06.10.2015 passed by the learned Additional Sessions Judge, Pune dismissing Criminal Appeal No.557 of 2014 indicate that, on 16.12.2014, the applicant filed a pursis Exhibit - 9 clarifying that the name of Respondent No.3 shown in Appeal Memo Exhibit -1 as the in-charge staff of Court Nos.4 & 8 of J.M.F.C. Court, Pune are Mr. P.A. Meshram, the then learned J.M.F.C., Court No.4 and Mr. Nagare, the then learned

J.M.F.C. Court No.8, Pune. Thus, the applicant prayed for issuance of notice to the learned Magistrate as stated by him in Exhibit - 9. The learned Judge observed that, in view of provisions under Section 3(1) of Judges Protection Act 1985 r/w Section 77 of IPC and in view of the decision of this Court in the case of *Nilesh C. Ojha Vs. State of Maharashtra and others* in Criminal Writ Petition No.3611 of 2014 by order dated 07.11.2014, it was not possible to entertain any civil or criminal proceedings against the learned Magistrate and pursis Exhibit -9 stood filed. Thereafter, the applicant filed application Exhibit - 16 with a prayer to issue summons to learned J.M.F.C. Mr. P.A. Meshram and Mr. R.T. Nangare. After hearing the arguments and by speaking order, the application was rejected on 10.06.2015.

13. The applicant filed his notes of arguments Exhibit - 17, hence the Respondent No.2 filed notes of arguments Exhibit - 18. On 06.08.2015, Respondent No.2 therein filed with list Exhibit - 19, compilation of 7 documents. On 11.08.2015, the Respondent No.2 filed with list Exhibit - 23, compilation of 6 documents described in it. On 25.08.2018, the appellant filed with list Exhibit - 25 and 26, the copies of documents and on 16.09.2015 the Respondent No.2 filed with list Exhibit - 27, copies of 22 documents. The applicant

had filed Criminal Application No.1260 of 2022 before the High Court. As per Order dated 08.01.2023 passed in the proceedings in STC No.1122 of 1999 were stayed. In that Criminal Application, the applicant had alleged that, STC No.1122 of 1999 was one of the complaints which was returned by J.M.F.C. Court No.4, Pune to Complainant for presentation of the same before J.M.F.C. Court No.8 Pune. In STC No.1122 of 1999 to 1127 of 1999, the applicant had filed discharge applications and the same were rejected by learned J.M.F.C. Court No.8, Pune. The Criminal Revision Application No.192 of 2000 to 197 of 2000 challenging the orders of learned J.M.F.C. were dismissed by order dated 20.02.2001. The applicant filed complaints dated 13.08.2004 and 03.09.2004 before the Principal District Judge and Sessions Judge, Pune and the Registrar of High Court at Bombay. In all the six complaints, applications for withdrawal were filed. Say was filed by the applicant in those complaints. The complaints were withdrawn in 2005. On 24.01.2005, the applicant filed complaint against Respondent No.2 with Bar Counsel of Maharashtra and Goa alleging the misconduct. The said complaint was dismissed on 18.01.2007. The applicant issued notices to Respondent on 06.08.2012. Thereafter M.A. No.400794/2013 was filed under Section 340 of Cr.P.C. on 30.03.2013.

14. While dismissing the Revision Application preferred by the applicant before the Court of Sessions vide common order dated 20.01.2001 in Paragraph 14 it was observed as follows :-

“ Under Section 462 of the Code of Criminal Procedure no finding, sentence or order of any criminal court is to be set aside on the ground of proceeding having been held in a wrong place. No prejudice has been caused to the accused by the presentation of the complaint before the Court of learned J.M.F.C. Court no.4 on 22/03/1999. For this reason mere transfer r return of the complaint on the administrative ground of the territorial jurisdiction to another court would not mean that the complaint was presented on 16.06.1999 for deciding the point of limitation. The date as 22/03/1999 when the complaint was presented before the learned J.M.F.C. Court No.4, Pune has to be taken into consideration and not the date of presentation of the complaint on its return to the learned J.M.F.C. Court No.8, Pune on 16/06/1999. Hence, the complaint was presented in the Court within the period of limitation prescribed in the Negotiable Instruments Act.

15. There is no order placed on record to indicate that the observations made in Paragraph 14 in the common order passed in Criminal Revision Application Nos.192 of 2000 to 197 of 2000 have been reversed or set aside. Thus, the said observation has reached to finality. All the complaints were allowed to be withdrawn with

the knowledge of the same to the applicant in 2005. If the applicant had any grudge about transfer of those complaints, he would have opposed the withdrawal of those six complaints. The learned Sessions Judge in order dated 06.10.2015 has observed that the applicant had remained silent spectator for years together. In order dated 20.01.2001 it was observed that, all the six complaints were filed well within the period of limitation and there was no illegality or irregularity. The applicant is trying to re-agitate the said grievance which was set at knot.

16. Hence, no case is made out to initiate action against Respondents under Section 340 of Cr.P.C. The Revision application is devoid of merits and deserves to be dismissed.

ORDER

Criminal Revision Application No.609 of 2019 is
rejected and disposed of accordingly.

(PRAKASH D. NAIK, J.)