

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 1755 OF 2021

IN

COMMERCIAL SUTT NO. 227 OF 2017

Deven Yogesh Kanani

...Applicant
(Defendant No. 1)

In the matter between

Nirupama Yogesh Kanani & Anr.

...Plaintiffs

Versus

Deven Yogesh Kanani & Anr.

...Defendants

And

Court Receiver & Anr.

...Respondents

Ms. Jyoti i/by Entrust Legal Services for the
Applicant/Defendant No. 1.

Mr. Aditya Udeshi i/by M/s. Sanjay Udes & Co. for the
Plaintiffs.

Ms. Jyoti Chavan, AGP for State.

Ms. Rekha Rane, 2nd Asstt. to C.R.

SHARAYU
PANDURANG
KHOT

Digitally signed
by SHARAYU
PANDURANG
KHOT
Date:
2022.02.04
18:04:40 +0530

CORAM : R.I. CHAGLA J

DATE : 31 January 2022
(Through V.C.)

ORDER :

1. Heard learned Counsel for the parties.
2. Learned Counsel appearing for the Applicant undertakes to file Vakalatnama within a period of one week from the date of this order.
3. By this Interim Application, the Applicant is seeking orders of this Court to decide the Application dated 5th December 2020 under Section 195(b)(i) and (iii) read with 340 of the Code of Criminal Procedure, 1973 (“**Cr.P.C.**”) as a Superior Court.
4. The Applicant had made an Application before the Court Receiver under Section 195 read with 340 of Cr.P.C. for offences against public justice under Section 380, 409 read with 34, 120(B) of the Indian Penal Code (“**I.P.C.**”) for recording a finding of offences committed by the Respondents under Section 192 and punishable under Section 193 I.P.C.
5. The Applicant has referred to the proceedings before the Court Receiver and has stated that the vehicle

belonging to the company Hiena Pharma had been stolen and sold by Respondent No. 1 with the help of Respondent No. 2.

6. It is stated that such sale by the Respondent No. 1 is nothing but theft namely the act of stealing the vehicle belonging to Hiena Pharma, the partnership firm without knowledge of the Court Receiver and causing immense prejudice to the Applicant. The Respondents have caused such circumstances to exist that the sale of the vehicle would not appear or appear with reduced value and thereby cause the Court Receiver to form an incorrect erroneous opinion while drawing up of accounts.

7. Further, the Respondents after selling the vehicle to Kishor Madiyar submitted false information on 23rd April 2019 to Juhu Police Station, the Registration Card showing the car still registered in the name of the Respondent No. 1 without disclosing the fact that she had already initiated sale of the vehicle on 15th April 2019 by mentioning that the Respondent No. 1 was the owner of the vehicle though it is an admitted fact in the Court that it was the vehicle belonging to Hiena Pharma the partnership firm, as it was bought from the company funds.

Thus, complaint is made of offences committed by the Respondents under Section 192, 193 of I.P.C. By this Application, the Applicants have sought orders from this Court to decide the Application dated 5th December 2020, being a Superior Court.

8. Learned Counsel appearing for the Respondent No.1 has vehemently opposed the Interim Application. He has referred to the provisions of the Cr.P.C. in particular Section 340 read with Section 195(1)(b)(i) and (iii). He has submitted that it is clear from a reading of Section 195 of the Cr.P.C. that the Court referred to therein is a "Court" as defined under Sub-Section (3) of Section 195. That Court will not take cognizance of offences mentioned in (a) and (b) of Sub-Section (1) of Section 195. Section 340 provides that, if upon an application made, the Court is of the opinion that it is expedient in the interest of justice that the enquiry should be made in any offence referred to in (b) of Sub-Section (1) of Section 195, which appears to have been committed in, or in relation to, any proceeding in that Court, as the case may be then, such Court may, after preliminary enquiry, if any, as it thinks necessary, either record a finding to that effect, make a complaint thereof

in writing, send it to a Magistrate of the first class having jurisdiction; 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 bind over any person to appear and give evidence before such Magistrate.

9. Learned Counsel for Respondent No. 1 has thereafter, referred to Section 195 of the Cr.P.C. and in particular, Sub-Section (b)(i), wherein it is provided that the offences which are punishable under the sections of the I.P.C. mentioned therein, no Court shall take cognizance of such offences when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court. He has thereafter, referred to Sub-Section 3 of Section 195, which has defined the term "Court" in clause (b) of Sub-Section (1), which means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, provincial or State Act if declared to be that Act to be a Court for the purposes of this section. He has submitted that therefore, the Court Receiver is not a Court within the meaning of that Section. Thus, he has submitted that the basis of this Interim

Application to proceed with the Application dated 5th December 2020 under Section 195(b)(i) and (iii) read with 340 of the Cr.P.C. as a Superior Court is entirely erroneous.

10. Having considered the submissions of the learned Counsel for the Applicant as well as the learned Counsel for the Respondent No. 1, it does appear from a reading of Section 340 of the Cr.P.C. with Section 195(b)(i) and (iii) of the Cr.P.C., that this Interim Application has been erroneously filed.

11. The submission of the learned Counsel for the Respondent No. 1 is required to be accepted as the Court defined under Sub-Section (3) of Section 195 does not include a Court Receiver and hence the filing of the application before the Court Receiver under Section 195 read with Section 340 of the Cr.P.C. is entirely misconceived. It is this Application which this Court is called upon to decide as a Superior Court under Section 195(b)(i) and (iii) of the Cr.P.C.. Further, it appears from paragraph 36 of the Interim Application that the Applicant has claimed that the offence of theft which the Respondents are alleged to have committed is a separate

cognizance offence. A separate criminal case No. 292/SW/2021 under Section 380, 409, 504 read with 34, 120(B) of IPC has been filed with the 10th Metropolitan Magistrate for the offence of theft. A distinction has been sought to be drawn with regard to perjury i.e. the act of stealing the car without the knowledge of the Court Receiver and which is stated to be a separate offence and can be tried only as per provisions of Section 195 read with Section 340 of Cr.P.C.. However, the offence of perjury, is in the proceedings before the Court Receiver which is not a "Court" as defined under Sub-Section (3) of Section 195 of Cr.P.C. and thus, neither Section 195 of the Cr.P.C. nor Section 340 can have any application. The entire basis of the Interim Application is erroneous and contrary to the relevant provisions viz. Section 340 and 195 of the Cr.P.C..

12. Accordingly, the Interim Application is rejected.

13. There shall be no order as to costs.

[R.I. CHAGLA J.]