

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

CRIMINAL WRIT PETITION NO. 768 OF 2022

Sachin s/o. Sopanrao Bhosale
Age : 35 years, Occu. : Labour,
R/o. Dhumalwadi Road,
Vrudanwan Colony,
Tq. Akole, Dist. Ahmednagar .. Petitioner

Versus

1. Pallavi w/o. Sachin Bhosale
Age : 33 years, Occu. : Household,
R/o. C/o. Sayaji bansi Palande
Gokul Colony, College Road,
Tq. Rahuri, Dist. Ahmednagar
2. Balasaheb Bansi Palande
Age : 50 years, Occu. : Agri.,
R/o. Dadh Bu., Tq. Rahata,
Dist. Ahmednagar .. Respondents

Mr. Rajendra H. Wagh, Advocate for the Petitioner.
Mr. R. S. Kasar, Advocate for Respondent Nos. 1 and 2.

CORAM : KISHORE C. SANT, J.

Date on which reserved for judgment : 31st March, 2023.

Date on which judgment pronounced : 05th June, 2023.

JUDGMENT :-

1. Rule. Rule made returnable forthwith by consent of the parties.
2. The petitioner is the original complainant who had filed a complaint in the Court of learned J.M.F.C., Rahuri. The petition is

directed against the judgment and order passed by the learned Sessions Judge, Ahmednagar dated 02.05.2022 in Criminal Revision No. 61/2021. The learned Sessions Judge by way of impugned judgment and order quashed and set aside order passed by the learned J.M.F.C. issuing process.

3. The petitioner – complainant had filed a complaint bearing Criminal Miscellaneous Application No. 399/2018 against the respondents for the offences punishable under Sections 340, 344 of the Code of Criminal Procedure (for short “Cr.P.C.”) and Sections 191, 193, 196, 199, 200, 181, 182 and 420 of the Indian Penal Code (for short “I.P.C.”). In short it is the complaint of the petitioner that respondent No. 1 – his wife had lodged the proceeding under the Protection of Women from Domestic Violence Act (for short “Domestic Violence Act”) bearing Criminal Miscellaneous Application No. 242/2013. The learned J.M.F.C. by judgment and order dated 07.10.2015 was pleased to allow the said application directing the present petitioner to pay an amount of Rs. 4,000/- (Rs. Four Thousand only) per month to respondent No. 1 and Rs. 500/- (Rs. Five Hundred only) per month to daughter towards maintenance. The petitioner and his parents were directed to pay an amount of Rs. 15,000/- (Rs. Fifteen Thousand only) towards compensation and Rs. 3,000/- (Rs. Three Thousand only)

towards cost of the proceedings. The complainant later on came to know that in the proceedings under the Domestic Violence Act the respondent No. 1 had made a false statement that she is jobless and does not have any income source. Other factual incorrect statement is made that she belongs to Hindu religion when in fact, before the marriage she had converted to Christianity. It is further submitted that, by furnishing false information she has misled the Court in the judicial proceedings. The learned J.M.F.C. on recording the evidence was pleased to pass an order of issuance of process against the respondents for the offence punishable under Sections 181, 182, 191 r/w Section 193 of the I.P.C. by order dated 24.03.2021.

4. The order of issuance of process came to be challenged by the respondents in the Court of learned Sessions Judge, Ahmednagar by way of Criminal Revision No. 61/2021. The petitioner appeared in the revision. The matter was heard. The learned Sessions Judge allowed the revision petition and quashed the order of issuance of process passed by the learned J.M.F.C. The learned Sessions Judge mainly considered that, no Court can take cognizance of the offence punishable under Sections 181 and 182 of the I.P.C. in view of Section 195 (1) of the Cr.P.C., except on the complaint in writing by the public servant concerned or of some other public servant to whom such public

servant is administratively subordinate. As regards the offence punishable under Section 193 of the I.P.C. complaint can be lodged only in writing of that Court or the officer authorized by such Court in writing in this behalf, or of some other Court to which that Court is subordinate. Thus, the learned Sessions Judge considering legal position quashed and set aside the order. The learned Sessions Judge considered the judgments of the Hon'ble Apex Court in the cases of (i) **Pritish Vs. State of Maharashtra** in Appeal (Crl.) 1188/2001 (ii) **Iabal Singh Marwah and another Vs. Meenakshi Marwah and another** reported in **(2005) 4 SCC 370** and (iii) **Perumal Vs. Janaki** reported in **(2014) 5 SCC 377**. The learned Sessions Court thus allowed the revision.

5. The petitioner is challenging the order mainly on the ground that the learned Sessions Judge has not considered that, prima facie, offence was made out in the complaint. Though the respondent No. 1 was in service, she has falsely stated before the Court in the proceedings that she is jobless and does not have any income source. Further though she was converted to Christianity, still she stated to be belonging to Hindu and by this she has clearly committed an offence. He submits that this act of the respondents also amounts to cheating under Section 420 of the I.P.C. as the parties married to each other

under the belief that she is Hindu. There is material on record to show that, in fact, respondent No. 1 was working as Professor at Rahuri in Arts, Science and Commerce College and was getting regular payment. The suppression of this fact also attracts the criminal consequences. Thus, when the respondent No. 1 had given false information, the action ought to have been taken against the respondent No. 1. The learned J.M.F.C. had issued process only after verification of the complaint and after satisfying himself about the genuineness of the complaint. The learned Session Court has committed illegality by setting aside the order of issuance of process. He thus prayed for allowing the writ petition.

6. Learned advocate for respondents submits that, the learned Sessions Judge has rightly considered the legal position. No illegality is committed by the learned Sessions Court and supported the order. He prayed for rejection of the petition.

7. After hearing the parties, this Court finds it necessary to see the legal position first as the revision is allowed by considering the legal position. The first reason assigned by the learned Sessions Court is that the cognizance of the offence punishable under Sections 181, 182 of the I.P.C. can be taken only on complaint in writing of the public servant. Sub Section (1) of Section 195 of the Cr.P.C. reads as under :

195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. -

- (1) No Court shall take cognizance -
 - (a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or
 - (ii) of any abetment of, or attempt to commit, such offence, or
 - (iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;
 - (b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or
 - (ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or
 - (iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub- clause (i) or sub- clause (ii), [except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

8. Thus, it is clear that, for taking cognizance for the offence under Sections 172 to 188 mainly clause (a) (i) it is necessary that the complaint be filed in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. So far as offence punishable under Sections 191, 193 are concerned, clause

(ii), clause (b) (i) of sub section (1) of Section 195 of the Cr.P.C. is material. The cognizance can be taken only on a complaint in writing of that Court or by such officer of the Court as that may Court authorize in this behalf. In view of clause (a) (i) and (b) (i) of sub section (1) of Section 195 of the Cr.P.C., the learned J.M.F.C. could not have taken cognizance of the offences punishable under Sections 181, 182 r/w Section 193 of the I.P.C. So far as offence punishable under Section 191 of the I.P.C. is concerned it only speaks of a person legally bound by an oath or by an express provision of law makes a false statement. In this case, it is seen that even Section 191 of the I.P.C. is not attracted looking to the allegations as it is.

9. Learned advocate for the petitioner in this case relied upon the judgment of the Hon'ble Apex Court in the case **Perumal Vs. Janaki** (supra). In the said case, the Hon'ble Apex Court had considered the position as regards Section 195 (1) (b) (i) of the Cr.P.C. In that case, the respondent was working as Sub Inspector. On the basis of complaint received by the police station she filed a charge-sheet. In that case the accused was tried and was acquitted. The accused therefore had filed a complaint under Section 190 of the Cr.P.C. in the Court of learned J.M.F.C. for the offence punishable under Section 193 of the I.P.C. The said complaint was dismissed as not maintainable.

Therefore, the matter was carried to the High Court. The High Court also rejected the contention of the accused and therefore, he had approached the Hon'ble Apex Court. The Hon'ble Apex Court by considering Section 191 of the I.P.C. held that, the officer filing a charge-sheet does not make any statement on oath nor he is bound by any express provision of law to state the truth though being a public servant is obliged to act in good faith. In that case, it was held that no offence was made out under Section 191 of the I.P.C.

10. Next judgment relied upon by the learned advocate for the petitioner is in the case of Iqbal Singh Marwah and another (supra). The Hon'ble Apex Court held that, it was not the case of any of the parties that the said offence had taken place when the alleged will had been produced or filed in the Court of District Judge and in view of that bar created under Section 195 (1) (b) (ii) would come into play and the appeal was dismissed.

11. Learned advocate for respondents relied upon the judgment of the Hon'ble Apex Court in the case of Kailash Mangal Vs. Ramesh Chand (D) Th. Legal Representative reported in 2015 (15) SCC 729. In this case, the Hon'ble Apex Court has considered the provisions of Section 195 (1) (b) (ii) of the Cr.P.C. and held that, the false affidavit alleged to have been filed in that case was pending before the Civil

Court which falls under Section 193 of the I.P.C. and therefore, the proceeding ought to have been initiated on the complaint in writing by that Court. He further relied upon the judgment in the case of Sh. Narendra Kumar Srivastava Vs. State of Bihar & Ors. reported in 2019 (3) SCC 318. In this case, the Hon'ble Apex Court considered the provisions of Section 195 (1) (b) (i) of the Cr.P.C. It is held in paragraph Nos. 14 and 16 as under :

“14. Section 195 of the Cr.P.C. lays down a rule to be followed by the court which is to take cognizance of an offence specified therein but contains no direction for the guidance of the court which desires to initiate prosecution in respect of an offence alleged to have been committed in or in relation to a proceeding in the latter court. For that purpose, one must turn to Section 340 which requires the court desiring to put the law in motion to prefer a complaint either suo motu or an application made to it in that behalf.

16. Section 340 of Cr.P.C. makes it clear that a prosecution under this Section can be initiated only by the sanction of the court under whose proceedings an offence referred to in Section 195(1)(b) has allegedly been committed. The object of this Section is to ascertain whether any offence affecting administration of justice has been committed in relation to any document produced or given in evidence in court during the time when the document or evidence was in custodia legis and whether it is also expedient in the interest of justice to take such action. The court shall not only consider prima facie case but also see whether it is in or against public interest to allow a criminal proceeding to be instituted.

12. Thus, considering the above position this Court finds that, in the present case the learned Sessions Judge has rightly considered the legal

position and hence, no interference is called for.

13. Rule stands discharged.

(KISHORE C. SANT, J.)

P.S.B.