

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.1106 OF 2018**

ANIL S/O HARIBHAU SAMUDRE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Mr. S. J. Salunke, Advocate for the Petitioner.
Mr. S. B. Narwade, APP for Respondent No.1.
Mr. A. A. Nimbalkar, Advocate for Respondent No.2.
Mr. P. P. More, Advocate for Respondent No.3.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 11th NOVEMBER, 2023.

PRONOUNCED ON : 06th NOVEMBER, 2023.

ORDER:-

1. The petitioner/original complainant impugns the common judgment and order dated 24.05.2018 passed by the Sessions Court, Ambajogai, Dist. Beed in Criminal Revision No.71/2015 as well as Criminal Revision No.1/2016 dated 24.05.2018, by which the order dated 21.11.2015 passed by the Judicial Magistrate First Class, Ambajogai, thereby issuing process against accused (respondent nos.2 and 3) in R.C.C. No.330/2015 has been quashed and set aside. (Hereinafter, parties are referred as per their original status in R.C.C. No.330/2015 for the purpose of convenience and brevity).

2. The complainant had approached the Judicial Magistrate First Class at Ambajogai by filing complaint in R.C.C. No.330/2015 against the accused persons for the offenses punishable under Sections 3(1)(8) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Sections 167, 196, 120(B), 191, 192, 193, 402, 465, 468, 471 and 500 of the Indian Penal Code.

3. In nutshell the complainant alleges that accused no.1 while discharging his duties as police station officer at City Police Station, Ambajogai, prepared a false proposal dated 23.08.2012 seeking externment of the complainant under Section 56(1) of the Maharashtra Police Act, 1951 from the districts Beed, Parbhani and Latur. In the said proposal accused no.1 enlisted pending criminal cases against the complainant. While doing so he included Crime Nos.62/2001, 179/2005 and 371/2005 pertaining to cases already ended in acquittal. It is further alleged that although complainant had pointed out that acquittal is recorded in the aforesaid cases, accused no.2, i.e. Sub Divisional Police Officer, Ambajogai entertained such proposal. As such, complainant alleges that accused no.1 has intentionally prepared false proposal for externment and accused no.2 entertained and recommended such proposal. The complainant further alleges that, when the proposal was placed before Sub Divisional Magistrate, proceedings has been dropped.

4. After recording verification statement of complainant under Section 200 of the Criminal Procedure Code and learned magistrate passed the following order:

ORDER

“1. Complaint is dismissed for the offence punishable under Section 3(1)(8) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and 420 of the Indian Penal Code.

2. Issue process against the accused no.1 and 2 under Section 167, 196, 191, 192, 193(II), 465, 468, 471 and 500 of the Indian Penal Code 417 r/w Sec. 34 of the Indian Penal Code on payment of P.F. returnable o 25/1/2015.

3. It be registered as Regular Criminal Case.”

5. Aggrieved accused persons filed two independent Criminal Revisions before the Additional Sessions Judge at

Ambajogai under Section 397 of the Criminal Procedure Code, thereby impugning the aforesaid order of issuance of process. After hearing parties Learned Sessions Judge allowed both Revisions vide impugned judgment and order dated 24.05.2018. Consequently, dismissed the Miscellaneous Criminal Application No.85/2015 (R.C.C. No.330/2015). Consequently, complainant impugns the common judgment and order passed by the Sessions Court in this Criminal Writ Petition filed under Article 226 and 227 of the Constitution of India.

6. Mr. Salunke, learned Advocate appearing for the petitioner would submit that the case of the complainant is based on documentary evidence. The contents of the complaint, verification statement and documentary evidence on record clearly depicts that accused no.1 had made false proposal for externment, which was entertained and recommended by accused no.2 without applying her mind. The action against the complainant was tainted with malafides. He would submit that the contents of the proposal were defamatory and detrimental to the Constitutional right of the complainant guaranteed under Article 21 of the Constitution of India. He would submit that the learned JMFC had applied mind to the aforesaid facts and process was issued against accused nos.1 and 2. The learned Sessions Judge erroneously allowed the Criminal Revisions. He would submit that the acts alleged against accused persons does not fall within the ambit and scope of the protection to police officers in terms of Section 161 of the Maharashtra Police Act or Section 197 of the Criminal Procedure Code. Even, the issue of limitation in filing or entertaining the complaint has been wrongly dealt with by the Sessions Court.

7. The learned Advocate appearing for the accused supports the impugned order contending that the reasoning adopted by the Sessions Court is consistent with the relevant provisions of law and its interpretation espoused in various judgments of the Supreme Court of India as well as this Court as regards to the relevant provisions under Criminal Procedure Code and Maharashtra Police Act.

8. Having considered submissions advanced it is apposite to refer Section 161 of the Maharashtra Police Act:

“Section 161

Suits or prosecutions in respect of acts done under colour of duty as aforesaid not to be entertained, or to be dismissed if not instituted 1[within prescribed period]

(1) In any case of alleged offence by the 2[the Revenue Commissioner, the Commissioner], a Magistrate, Police officer or other person, or of a wrong alleged to have been done by 3[such Revenue Commissioner, Commissioner], Magistrate, Police officer or other person, by any act done under colour or in excess of any such, duty or authority as aforesaid, or wherein it shall appear to the court that the offence or wrong if committed or done was of the character aforesaid, the prosecution or suit shall not be entertained, or shall be dismissed, if instituted, more than six months after the date of the act complained of:

4[Provided that, any such prosecution against Police officer may be entertained by the court, if instituted with the previous sanction of the State Government within two years from the date of the offence.]

In suits as aforesaid one month's notice of suit to be given with sufficient description of wrong complained of

(2) In the case of an intended suit on account of such a wrong as aforesaid, the person intending to sue shall be bound to give to the alleged wrong-doer one month's notice at least of the intended suit with sufficient description of the wrong complained of, failing which such suit shall be dismissed.

Plaint to set forth service of notice and tender of amends

(3) The plaint shall set forth that a notice as aforesaid has been served on the defendant and the date of such service, and shall state whether any, and if any, what tender of amends has been made by the defendant. A copy of the said notice shall be annexed to the plaint endorsed or accompanied with a declaration by the plaintiff of the time and manner of service thereof."

9. The bare reading of the aforesaid provision would show that limitation is provided for instituting suit of prosecution against police officer for any acts done "under colour or in excess of any such duty or authority". The sub-Section further widens its net to bring within its sweep the acts done of "aforesaid character". Pertinently Section 161 of the Maharashtra Police Act has been interpreted by Supreme Court in the matter of ***K. K. Patel Vs. State of Gujarat***¹ and the following observations are made:

"The sub-section imposed a ban on the court from entertaining a prosecution for an offence falling within the purview of the sub-section and was committed by a police officer, if the prosecution was instituted more than one year after the date of the act complained of. The only exception to the said ban is, if the complainant gets sanction from the State Government to prosecute the police officer the aforesaid period of one year would get enlarged to two years. Offences falling within the purview of the sub-section relate to those acts done "under the colour or in excess of any duty or authority as aforesaid". The sub-section then widens the net a little further by bringing within its sweep those offences committed through any acts done which are "of the character aforesaid". The expression "aforesaid" in the sub-section is evidently with reference to what is mentioned in Sections 159 and 160 of the same enactment. Those provisions afford an absolute immunity to a public servant from any penalty or liability to pay damages in respect of any "act done in good faith" in pursuance of or intended pursuance of "any duty imposed or any authority conferred on him by any

¹ 2000 Bom.C.R. (Cri.) 505.

provision of this Act or any other law for the time being in force or any rule, order or direction made or given thereunder". Such absolute immunity is not afforded in respect of any offence or wrong alleged to have been done by such public servant, if it was done "under colour or in excess of any such duty or authority as aforesaid". Nonetheless the said statute has fixed a time limit for initiation of prosecution proceedings in such cases against the public servant. If prosecution proceedings were not initiated within such time limit, they cannot be commenced thereafter.

In the present case, it is the admitted fact that the complaint was filed only long after the period indicated in Section 161 of the Act was over, either with or without sanction from the State Government. Therefore, the complaint is irretrievably barred under the said provision."

10. If the aforesaid provision is applied in facts of present case, it is apparent that complaint is absolutely barred by limitation of six month as applicable in state of Maharashtra. Admittedly, in the present case, the notice of externment was issued to the complainant on 12.11.2012 containing all aforesaid offences. The complainant replied to the said notice on 11.12.2012. The report was submitted by accused no.2 on 21.01.2013 and the proceeding has been concluded on 21.04.2014. The present complaint is filed before the learned Judicial Magistrate First Class, Ambajogai on 25.02.2015, which is clearly beyond prescribed limitation period of six months from the date of commission of alleged illegality and irregularity by the accused/police officials. In that view of the matter, apparently the bar for taking cognizance under Section 161 of the Maharashtra Police Act would operate in the facts of the case.

11. The learned Sessions Judge has considered yet another aspect of the matter as regards to tenability of complaint in the context of Section 195 of the Criminal Procedure Code. The

learned Sessions Judge observed that the acts alleged against the accused persons are done during course of discharge of their official duties in proceeding before Sub Divisional Magistrate. Further the proceedings before the Sub Divisional Magistrate is also regarded as proceeding of Court. As such, the complaint constituting alleged offences ought to have been instituted only on the basis of the report made by the presiding officer of Court or by any subordinate officer authorized by him. As such, taking of cognizance of the such complaint itself is prohibited. No fault could be pointed out on behalf of complainant in aforesaid observations of sessions court.

12. In that view of the matter, I do not find any infirmity or jurisdictional error in the impugned order. Hence, Writ Petition sans merit and is accordingly dismissed.

(S. G. CHAPALGAONKAR)
JUDGE