

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

CRIMINAL WRIT PETITION NO.3426 OF 2017

Vasant Ramchandra Khot	Petitioner
Versus	
Ashok Dadu Nidhore	
and others	 Respondents

Mr. Kedar P. Lad, Advocate for the Petitioner.
Mr. N.B. Patil, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.
DATE : 02nd AUGUST, 2023

P.C. :

1. In this Petition the Petitioner has challenged the order dated 28.3.2011 passed by the learned Judicial Magistrate, First Class, Gargoti in Criminal Misc. Application No.114/2009. The Petitioner has also challenged the order dated 27.3.2017 passed by the Additional Sessions Judge-2, Kolhapur in Criminal Revision Application No.78/2011 by which the learned Additional Sessions Judge had upheld the order passed by the learned Magistrate.

2. Heard Shri Kedar Lad, learned counsel for the Petitioner and Shri N.B. Patil, learned APP for the Respondent-State.

3. The complaint was filed in the Magistrate's Court by the Petitioner against the Respondent Nos.1 & 2. The allegations in the complaint were that the Respondent No.1 had obtained a caste certificate for the Respondent No.2 making an application before the Sub-Divisional Officer, Radhanagari. In that application, he had submitted the genealogy in which Mahadev @ Mahadu Nidhore was shown as the Respondent No.1's paternal uncle. Based on this genealogy, the Respondent No.2 had obtained the caste certificate.

4. In another proceedings, the Respondent No.1 was one of the Defendants. Those proceedings were Regular Civil Suit No.79/2001 before the Civil Judge, Junior Division, Gargoti. In those proceedings, the Respondent No.1 had filed an affidavit in the form of his examination-in-chief on 23.7.2007. In that document, he had mentioned that he was not aware as to whether Laxman Nidhore had a son named Mahadev.

This averment was directly contrary to his stand taken before the Sub-Divisional Officer, referred to

hereinabove. Therefore, according to the Petitioner, the Respondents have committed the offences punishable under Sections 193 & 199 as well as 417 of IPC.

5. The learned Magistrate dismissed the complaint on the ground that there was bar of taking cognizance because of provisions of Section 195(1)(b) of the Code of Criminal Procedure. He further observed that the correct procedure which could be adopted was under Section 340 of Cr.P.C.. On these reasons, he dismissed the complaint vide his order dated 28.3.2011. Said order was challenged in Criminal Revision Application No.78/2011 before the learned Additional Sessions Judge-2, Kolhapur. Learned Additional Sessions Judge concurred with the reasons given by the learned Magistrate and dismissed the Revision Application.

6. Learned counsel for the Petitioner submitted that the bar under section 195(1)(b) of Cr.P.C. would get attracted only in respect of the documents tendered in the Court and not otherwise. This was the only submission made by learned counsel for the Petitioner.

7. I have considered these submissions and I have perused the impugned orders. I am unable to agree with the submission made by learned counsel for the Petitioner. Section 193 of IPC covers the cases where the person gives false evidence in any such judicial proceedings. It is not restricted to tendering of documents. Similarly Section 199 of IPC also refers to any declaration made by such person. Therefore, Section 195(1)(b) of Cr.P.C. would get attracted, which reads thus :

“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) xxxxx

(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. The provisions of Section 195 of Cr.P.C. will be applicable; and as rightly observed by both the Courts, learned Magistrate could not have taken cognizance of such complaint since it was not filed by the Court where such false evidence was given.

9. With the result, I do not find any infirmity in the impugned orders and the Petition is dismissed.

(SARANG V. KOTWAL, J.)

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