



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT NAGPUR, NAGPUR.

...

CRIMINAL REVISION NO.224/2018

Santosh s/o Ramphal Sahu

Applicant

versus

Ganesh s/o Asaram Garkal and others

..Respondent/s

.....
Mr. R.R.Prajapati, Advocate for applicant

Mr.N.P.Lambat, Advocate for Respondents 1 and 2

Respondents 3 and 4 are served.
.....

CORAM: ANIL L. PANSARE, J.

DATED : 29th September, 2023.

PC:

Challenge is to the order dated 09.01.2018 passed by learned District Judge 14, in Criminal Revision No.531/2012 thereby allowing the revision, resulting into reversal of the order dated 14.06.2012 passed by the learned Judicial Magistrate First Class, Nagpur in RCC No.150/2011.

2. Heard the learned counsel for the parties. Mr.R.R. Prajapati, the learned counsel for the applicant has invited my attention to the order passed by the learned Magistrate who has rejected the application filed by the non-applicants/original accused.

3. Briefly stated, the facts of the case are that the non-applicants are/were the police officials. On 7.2.2010 the applicant was in police custody remand of the the non-applicant- Railway Police, for the offence of theft. The applicant alleged that during police custody remand, the non-applicants have snatched his mobile and cash worth Rs.

25,000/- and demanded a sum of Rs. 2 lakhs for not beating him, of which the applicant has arranged Rs. 1.75 lakhs and paid it to the non-applicants.

4. Summons was issued by the learned Magistrate after following the procedure under Section 200 of the Code of Criminal Procedure, 1973 (in short 'the Code'). The non-applicants appeared and filed an application Exh.55 seeking discharge on the count that sanction under Section 197 of the Code has not been obtained. The said application came was rejected by the learned Magistrate on 26.11.2012. The non-applicants challenged the said order before the Sessions Court in the aforesaid revision and the learned Sessions Court vide impugned order, allowed the Revision and discharged the non-applicants for want of sanction u/s 197 of the Code.

5. The learned counsel for the applicant has relied upon the judgment in the case of Choudhury Sultana vs. State of West Bengal and another, reported in 2009 CRI.L.J. 1318, wherein the Hon'ble Supreme Court has held that all the acts done by a public servant in the purported discharge of his official duties cannot, as a matter of course, be brought under the protective umbrella of section 197. The Court held that there can be cases of misuse and/or abuse of powers vested in a public servant which can never be said to be a part of the official duties required to be performed by him. The underlying object of Sec.197 is to enable the authorities to scrutinize the allegations made against a public servant to shield him/her against frivolous, vexatious or false prosecution initiated with the main object of causing embarrassment and harassment to the said official. However, if the authority vested in a public servant is

misused for doing things which are not otherwise permitted under the law, such acts cannot claim the protection of S.197 and have to be considered *dehors* the duties which a public servant is required to discharge or perform.

6. In the present case, the acts allegedly committed by the non-applicants appear to be misuse of the powers. One cannot expect the police officials to demand illegal gratification, as also to snatch the money or the articles possessed by the accused. The allegations being of misuse of powers, in the present case, the protection u/s 197 cannot be sought. The issue is covered by the judgment cited supra. In the circumstances, despite an attempt made by the learned counsel for the non-applicants to support the impugned order, he could not cite any reasons to ignore the judgment passed by the Hon'ble Supreme Court. The learned counsel for the non-applicants submits that the applicant is a hardened criminal. This will be also not ground to obtain sanction u/s. 197 of the Code.

7. The impugned order is, thus, perverse and hence not sustainable in law. Hence the following order :

ORDER:

- i) The Revision Application is allowed.
- ii) The impugned order dated 09.01.2018 passed by the learned Additional Sessions Judge, Nagpur in Criminal Revision No. 531/2012 is quashed and set aside.
- iii) The order dated 26.11.2012 passed by the learned Judicial Magistrate, First class-5, Nagpur is restored.

iv) The parties shall appear before the Magistrate's court on 16th October 2023 at 11.00 am.

(iv) The complaint being of the year 2010, the learned Magistrate shall make sincere endeavour to dispose it of as expeditiously as possible.

(v) The parties to cooperate with the learned Magistrate for disposal of the matter.

[ANIL L. PANSARE, J.]

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