

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

REVISION APPLICATION NO. 558 OF 2017

Rambhau Venkatesh Ganacharya
Age : 82 years, Occ. : Retired
Secretary of Siddheshwar Flats Owners
Co-operative Housing Society,
R/o. A-8, Sindagi Complex, 162/8,
Railway Lines, Old Employment Chowk,
Solapur

...Applicant/
Complainant

Vs.

1. Rajkumar Laxminarayan Rathi,
R/o. 158C, Railway Line,
Solapur
2. H. P. Daga,
R/o. H. P. Daga and Company,
95/20, Budhwar Peth, Daga Niwas,
Solapur - 413 002.
3. B. S. Katre
R/o. Bank Associate, below Ground
Floor of Bramhadeodada Mane
Co-operative Bank, Opp. Zilla
Parishad, Solapur.

4. The State of Maharashtra

...Respondents

Mr. I. M. Khairdi a/w Mr. Sachin P. Patil - Advocate for the
Applicant-Complainant

Mr. A. D. Kamkhedkar - APP for the Respondent-State

Adv. Ashish Gabhale a/w Adv. Swaraj Subhash Patil i/by
Shraddha Dube Patil and Co. - Advocate for Respondent Nos. 1
to 3.

CORAM : S. M. MODAK, J.

DATE : 30th JANUARY, 2024

JUDGMENT :-

1. Heard learned Advocate for the Applicant-Complainant, learned Advocate for Respondent Nos. 1 to 3, and learned APP for the Respondent - State.

2. The Court of the JMFC, Solapur issued a process against these three Respondents for the offence punishable under Sections 415, 419, 420, 463, 464, 465, 468, 469, 470, 471 of the Indian Penal Code, at page no. 22.

3. It is on the private complaint of the Applicant-Complainant. Whereas this order was set aside by learned Principal District Judge, Solapur as per Order dated 07/08/2017. It is in revision filed by only Accused No. 1, whereas Accused Nos. 2 and 3 were the Respondents.

4. Learned Principal District Judge has passed the following order :-

"01) Revision petition is allowed.

02) Issue process order against the accused persons is set aside.

03) The learned magistrate is directed to ascertain more material/conduct inquiry and then to decide the complaint afresh on its own merit for which the

complainant is directed to appear before the learned magistrate on 23.08.2017."

5. Learned Principal District Judge has not dismissed the complaint for want of the material, but for the reasons stated in the order has directed the learned Magistrate to ascertain the more materials and then to decide the complaint afresh.

6. The contention on behalf of the Complainant is that the scope of the revision is very limited. The revisional court is supposed to verify whether there is sufficient material for issuance of the process and defence of the accused cannot be considered. Further submission is that revision was filed only by accused no. 1, whereas the order of issue of the process was set aside against all accused persons and learned Principal District Judge ought not have done the same.

7. Learned Advocate for the Complainant read over the avernment in the complaint and the observations in the order of issue of the process and impugned order. Whereas learned advocate for the Respondents supported the impugned order.

Avernments in complaint

8. The present Complainant is Secretary of one 'Sidheshwar Flat Owners Cooperative Society'. Whereas Accused no. 1 is the President of that Society and Accused no. 2 is the

Chartered Accountant appointed to audit the accounts of the society. Whereas Accused No. 3 is District Deputy Registrar.

9. There was audit conducted for the period 01/04/2012 to 31/03/2013. Report was submitted. One of the recommendation was to initiate action against the Secretary/Complainant. It is for the reason that the Secretary has kept an amount of Rs. 5 Lakhs in deposit in his personal name. On the basis of this audit report, there was notice issued by Accused No. 3 to the Complainant dated 21/09/2015.

10. On this background, the Complainant alleged that the audit report is false and it is prepared on the basis of the false and fabricated documents. Accused Nos. 1 to 3 in connivance has prepared that report.

11. That is why the Complainant filed Private complaint before the Court of JMFC, Solapur and he issued process under Sections 415, 419, 420, 463, 464, 465, 468, 469, 470 and 471 of the Indian Penal Code (Page no. 22). This order was challenged at the instance of Accused No. 1 only by way of revision and impugned order came to be passed. So there are two aspects:-

- a) Preparation of the audit report giving recommendation for taking an action against the

Complainant;

- b) The offence as alleged to be committed by accused Nos. 1 to 3. The foundation is the audit report.

Order of issue of process

12. On this background, the Complainant alleged that all the accused committed various offences as mentioned above. The order passed by learned Magistrate is on page no. 22. Learned Magistrate has observed that sanction is not required under Section 197 of the Criminal Procedure Code to prosecute Accused No. 3. Admittedly, accused no. 3 has not filed revision and this was not the ground uphold by learned Principal District Judge while passing the impugned Order. The relevant portion of the order passed by the learned Magistrate is as follows:-

“Hence considering the facts of the present case, in view of ratio laid down in above cases, there seems no necessity of obtaining sanction against accused no. 3 before issuing process against him. Prima-facie material available on record, to proceed against accused no. 1 to 3 for the offences punishable u/s. 415, 419, 420, 463, 464, 465, 468, 469, 470, 471 of the Indian Penal Code. Issue summons to the accused returnable on 06.05.2016.”

(page no. 22).

Judgments quoted

13. Learned Advocate for the Applicant relied upon the following judgments:-

- (i) Shri Damodar Sakharam Naik Vs. State of Goa and Anr.¹
- (ii) Kishore Devji Sagar and Anr. Vs. Mashreq Bank PSC and Anr.²

They are on different set of facts. Once the Magistrate has issued the process after taking all aspects into consideration, the discretion should not be interfered by the Superior Court. However, when learned Principal District Judge has observed that few facts were not considered, it is fit case for interfering in the order. Instead of filing appropriate proceedings when the accused has filed quashing petition against the Order of the issue of the process. It is observed that appropriate remedy to appear before the trial Court is available. These observations are also on the basis of the facts of the case. It is settled law that Order of the issue of the process though passed at an interim stage, it can be challenged by way of revision.

Impugned Order

14. When the accused no. 1 has preferred revision, he has

1 2014 ALL MR (Cri) 532

2 2013 ALL MR (Cri) 2903

challenged the said Order on certain grounds. My attention is invited to ground no. 7. It talks about giving of the letter by opponent no. 1 that is President of the Society to Opponent No. 2 that is Chartered Accountant and resolution is referred. Admittedly, this ground was not upheld by learned Principal District Judge.

15. The following are the grounds which appealed to the conscious of learned Principal District Judge. They are as follows:-

- a) It is true that the extensive reasons are not required to be quoted while taking cognizance. However this was not considered as ground by learned Principal District Judge, para no. 10.
- b) Learned Principal District Judge has reproduced the recommendation in the audit report and differentiated about the wordings of that resolution, para no. 13.
- c) According to learned Principal District Judge, there is difference in between 'the amount is kept in the fixed deposit' and 'amount is going to be kept in fixed deposit'.
- d) Learned Principal District Judge has observed that learned Magistrate ought to have examined and seen the materials prior to the issuance of the process.

- e) So far as role of the Accused No. 3 is concerned, learned Principal District Judge has observed that he has issued a notice on the basis of the audit report. Learned Magistrate has not examined this aspect, Para no. 14.
- f) Learned Principal District Judge further observed that in fact the audit report was prepared on the basis of the information and documents supplied by Secretary-Complainant.
- g) Learned Principal District Judge concluded that the foundation of the audit report was not considered by learned Magistrate.
- h) Learned Principal District Judge has restrained himself from making further observation. Instead of setting aside the order of issue of process, he thought it fit to remand the matter to learned Magistrate.

16. It is true that even though accused no. 3 is not the Applicant, who is one of the Respondent and he has argued the matter before the learned Principal District Judge, it is not always required that the person who is aggrieved by the order should be the Applicant only, he can agitate his grievance, if he is one of the Respondent.

17. After reading the impugned order, I do not find that

learned Principal District Judge has exceeded his revisional powers. The grievance is not available to the Applicant-Complainant to the effect that learned Principal District Judge has exceeded revisional jurisdiction because he has not dismissed the complaint. It cannot be said that the revisional court had gone into merits and defences of the accused. What the revisional Court did is directed the trial Court to assess the materials and then to take a decision again. The revisional Court wanted the trial Court to consider the facts:-

- a) Preparation of audit report,
- b) It is prepared on the basis of information and documents supplied by Complainant as a Secretary.
- c) and Accused No. 3 issued notice on the basis of audit report.

18. In fact learned Principal District Judge restrained himself from dismissing the complaint. Instead he gave an opportunity to the Complainant. He did two things :-

- a) Given an opportunity to the Complainant to show the materials;
- b) put a guard on the trial Court to assess the materials on the basis of reasons given in the order passed by revisional Court.

In a given situation, it can be said as most judicious order.

19. So I do not find any illegality in the impugned order.

Hence there is no merit in the revision. So it is dismissed. The Complainant can appear before the learned Magistrate and satisfy learned Magistrate how case for issue of the process is made out.

20. With these observations, the following order:-

ORDER

- (i) Revision is dismissed.
- (ii) Let the Complainant to appear before the learned Magistrate, Solapur on 15/02/2024.
- (iii) Interim stay is vacated.
- (iv) Let the Court of JMFC Solapur to assess the materials filed by the Complainant and then to take fresh decision.
- (v) The Complainant is at liberty to produce additional materials relevant for issuance of process.
- (vi) The learned Magistrate to assess these new materials also in the light of observations made by the revisional Court.

21. Interim application, if any, stands disposed of.

[S. M. MODAK, J.]