

(2015) 07 GUJ CK 0002

In the Gujarat High Court

Case No : Special Criminal Application (Quashing) No. 2151 of 2013

Bharatkumar Chhotalal Mehta

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 17-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 204, 397, 399, 401, 482

Penal Code, 1860 (IPC) — Section 204, 323

Citation : (2015) CriLJ 4317

Hon'ble Judges : V.M. Sahai, Actg. C.J.

Bench : Single Bench

Advocate : B.S. Nilak, for the Appellant; Kanjibhai M. Bhut, Mitesh Amin, P.P. and Maulik G. Nanavati, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Sahai, Actg. C.J.

1. Heard Mr. Kanjibhai M. Bhut, learned advocate for the petitioner, Mr. Mitesh Amin, learned Public Prosecutor for respondent No. 1 and Mr. Maulik G. Nanavati, learned advocate for respondent Nos. 2 to 4. This petition has been filed by the petitioner under Article 226 of the Constitution of India as well as under Section 482 of the Code of Criminal Procedure for quashing and setting aside the impugned order dated 30.05.2013 passed by the learned 2nd Additional Sessions Judge, Vadodara in Criminal Revision Application No. 177 of 2009, by which, the learned Sessions Judge has set aside the order passed by the learned Judicial Magistrate, First Class, Vadodara dated 25.02.2009, wherein the Magistrate has issued summons for appearance against the respondents on a private complaint.

2. The case of the petitioner was that he was residing in a premises from which the respondents forcefully evicted the petitioner and his family members with the help of police and the petitioner suffered injury and offence under Section 323 of the Indian Penal Code was made out against respondent Nos. 2 to 4 and

therefore, the petitioner has filed a criminal complaint dated 10.02.2009 against respondent Nos. 2 to 4 which was registered as criminal complaint No. 522/2009. Thereafter, the Sessions Judge has set aside the order of the learned Magistrate after recording a finding in Para 9 of the judgment, which is reproduced as under:

"9. On perusal of the R & P, it reveals that opponent No. 2 lodged complaint against applicants who are public servants and working with VMSS and discharging their duties as per BPMC Act. It can be said that considering above mentioned facts, they were discharging their public duty enshrined to them as per statute. It is also the fact on record that the applicants have sealed the premises with the help of police. Thus, it can be inferred that opponent No. 2 and his family members have obstructed the applicants from discharging their official duty. Further, on perusal of order of learned Trial Court, it can be said that the learned Trial Court has not assigned any reason for issuing process against the present applicants, who are public servants and they were discharging their duty. On the contrary, it came on record that hot oil was thrown on them when they were discharging their duties. Hence, according to me, order of learned Trial Court for issuing process against the applicants under Section 323 of the Indian Penal Code is erroneous and requires interference of this Court. Accordingly, I answer Point No. 1 in affirmative and following order is passed so far as Point No. 2 is concerned.

The revision application under Sections 397 , 399 , 482 and 401 of the Code of Criminal Procedure presented by the applicants is hereby allowed.

The order passed by the learned Trial Court is hereby quashed and set aside.

R & P be sent back to the trial Court.

No order as to costs."

3. Learned counsel for the petitioner has urged that the learned Sessions Judge has wrongly observed that since no reason was assigned by the Magistrate, the impugned summoning order deserves to be quashed. In support of his contention, he has relied on the decision of the Apex Court in U.P. Pollution Control Board Vs. M/s. Mohan Meaking Ltd. and Others, and in Fiona Shrikhande Vs. State of Maharashtra and Another, , wherein the Apex Court has held that no specific reasons are required to be assigned by the learned Magistrate for summoning the accused and issuing a process under Section 204 of the Code of Criminal Procedure and the Apex Court has further observed that the Magistrate has to see whether the allegation made in the complaint are prima facie sufficient to proceed against the accused but the Magistrate is not supposed to inquire into the merits or demerits of the case. There is no dispute with the law laid down by the Apex Court. Though no reasons are required to be assigned by the Magistrate for issuance of process under Section 204 of the Code of Criminal Procedure, but he has to be satisfied whether the allegations made in the complaint are prima facie sufficient to proceed against the accused. This

satisfaction can be arrived at by a perusal of the complaint or perusal of the material and there is no obligation on the Magistrate to examine the merits or demerits of the case but prima facie satisfaction for issuance of summons under Section 204 of the Code of Criminal Procedure is required to be recorded by him in writing for issuance of process under Section 204 of the Code of Criminal Procedure. The Magistrate cannot issue process under Section 204 , Cr.P.C. mechanically.

4. I have also perused the order of the Judicial Magistrate, First Class, dated 25.02.2009. He has passed two line orders saying that on payment of process fee, summons be issued for offence under Section 323 of the Indian Penal Code. This does not disclose that the Magistrate has applied his mind before issuing the process under Section 204 of the Code of Criminal Procedure, though he may not give reasons as to why he is issuing process but he has to mention in the order that, on the material on record, he is satisfied that the process be issued under Section 204 of the Code of Criminal Procedure. In absence of such satisfaction being on the record, the order of the Judicial Magistrate, First Class becomes vulnerable.

5. For the aforesaid reasons, in my opinion, the learned Sessions Judge has rightly set aside the order passed by the Judicial Magistrate, First Class, Vadodara, as the Judicial Magistrate, First Class has not prima facie assigned any satisfaction for issuing process against the respondents, who are public servants and they were discharging their official duty, such process cannot be issued by me Magistrate mechanically without any application of mind. Further the Sessions Court from the records and proceedings has independently come to the conclusion that there was no prima facie merit in the allegation of the petitioner. On the contrary, the Magistrate has categorically recorded findings that the petitioner had obstructed the respondents, who were performing their official duties. Therefore, the private complaint filed by the petitioner deserves to be quashed. Therefore, I am in complete agreement with the view taken by the learned Additional, Sessions Judge, Vadodara. This petition fails and is accordingly dismissed. Notice is discharged. No order as to costs.