
(2000) 06 BOM CK 0019

In the Bombay High Court

Case No : Criminal W.P. No. 984 of 1993 & Criminal Writ Petition No. 984 of 1993

Bhiku Yeshwant Dhangat and Others

APPELLANT

Vs

Baban Maruti Barate and Another

RESPONDENT

Date of Decision : 06-06-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 204, 204(2), 87
Penal Code, 1860 (IPC) — Section 34, 403, 420, 468

Citation : (2001) BomCR(Cri) 69 : (2001) 4 BOMLR 654 : (2001) CriLJ 295 :
(2000) 4 MhLj 861

Hon'ble Judges : Pratibha Upasani, J

Bench : Single Bench

Advocate : Pankaj Sutar instructed by Prafulla Shah, for the Appellant; V.S. Gokhale for Respondent No. 1 and D.N. Salvi, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Dr. Pratibha Upasani, J.—This Criminal Writ Petition is filed by the petitioners/ original accused, being aggrieved by the order of issuance of process, by the learned Judicial Magistrate, First Class, Pandharpur in R.C.C. No. 97 of 1989, under sections 403, 420 and 468 read with section 34 of the Indian Penal Code.

2. The main ground on which the order of issuance of process is assailed, is that the complaint dated 19th April, 1989 filed by respondent No. 1/original complainant-Baban Maruti Barate, is not accompanied by a list of witnesses, nor any list of documents is annexed to the complaint.

3. The complaint is filed by the complainant accusing the petitioners of falsification of records in respect of land bearing Survey No. 1133, B/I(I 160) at village Mauje, Pandharpur and also Survey No. 482. The petitioners are also accused of transferring this land in the name of the 1st Petitioner and falsification of accounts and embezzlement of funds collected for constructing Dharmashala.

4. The case of respondent No. 1/original complainant is that, petitioner No. 1/accused No. 1-Bhiku Yeshwant Dhangat got transferred to his name, the above mentioned property in the revenue records, belonging to Mandedkar Dharmashala, so also the land bearing Survey No. 482. Petitioner No. 2-Ramchandra Vadju Gurav was appointed as a Manager thereof. The petitioners collected money from 18 villagers for constructing Dharmashala and pocketed 50% of the amount illegally, which was collected by them. It is contended that thereafter, they hushed up the matter and misappropriated the amount with the help of the Builder by name Khare.

5. It is contended by the petitioners that Respondent No. 1 has filed Civil Suit in the Civil Court, which is pending. However, they are mainly assailing the lapse on the part of the complainant in furnishing a list of documents and a list of witnesses in the private complaint dated 19th April, 1989, filed by them in the Court of the Judicial Magistrate, First Class, Pandharpur, being R.C.C. No. 97 of 1989.

6. I have heard Mr. Pankaj Sutar, who is appearing for the petitioners, so also Mr. Gokhale, who is appearing for respondent No. 1/original complainant, I have also heard Mr. Salvi, the learned A.P.P. appearing for the State/Respondent No. 2.

7. Mr. Sutar submitted that the list of documents and the list of witnesses are not furnished along with the complaint filed by the complainant, which ought to have been filed as per the provisions of section 204(2) of the Code of Criminal Procedure, 1973. He argued that the learned Magistrate, therefore, erred in issuing process only on the basis of the complaint, without there being any list of witnesses or documents.

8. I have perused the proceedings and having gone through the complaint and other material on record, I find that there is, indeed substance, in the arguments of Mr. Sutar.

9. Section 204 of the Code of Criminal Procedure, 1973, lays down as to what procedure has to be followed by the Magistrate before issuing the process. Section 204 of the Code of Criminal Procedure, 1973, for the sake of convenience, may be reproduced, which is as follows:

204. Issue of process. -(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be:-

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-

section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 87.

10. What is material or relevant for the present case at hand is subsection (2) of section 204 of the Code of Criminal Procedure, 1973. The learned Magistrate has issued process simpliciter on the basis of the complaint though list of witnesses, as required, was not filed by the complainant along with his complaint. There is, thus, non-compliance of section 204(2) of the Code of Criminal Procedure, 1973. Mr. Gokhale appearing for the original complainant concedes that the names of the witnesses were not furnished along with the complaint. Of course, it should not be interpreted that while giving the list of witnesses in the case, separate list has to be furnished by the complainant. It is sufficient if the complainant incorporates the names of the witnesses in the complaint itself instead of giving a separate list. But the names of the witnesses must be mentioned and the accused must be made aware, of the possible witnesses to be examined by the complainant. Taking cognizance of the complaint without there being any disclosure as to the witnesses whom the complainant would be examining, is improper. In the present case at hand, the Judicial Magistrate, First Class, Pandharpur has done exactly the same and, therefore, the order of issuance of process will have to be set aside. Hence, the following order :

Criminal Writ Petition No. 984 of 1993 is allowed in terms of prayer clause (b-1). R.C.C. No. 97 of 1989, pending before the J.M.F.C, Pandharpur is hereby quashed and set aside. Rule made absolute. Interim stay dated 1st February, 1994 is hereby vacated.