

(2022) 09 BOM CK 0032

In the Bombay High Court

Case No : Criminal Writ Petition No. 110 Of 20 22

Chitra And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 12-09-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Order 7 Rule 11(a), Order 7 Rule 11 (a)(d), Order 7 Rule 11(d)
Code Of Criminal Procedure, 1973 — Section 195(1)(b), 202, 204, 340
Indian Penal Code, 1860 — Section 34, 193, 199, 200, 420, 468, 471
Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 51, 60, 76

Citation : (2022) 09 BOM CK 0032

Hon'ble Judges : Vinay Joshi, J

Bench : Single Bench

Advocate : P.R. Agrawal, I.J. Damle, Ram Karode

Final Decision : Allowed

Judgement

Vinay Joshi, J

1. RULE. Rule is made returnable forthwith. Heard finally by consent of learned Counsel appearing for the parties.

2. The challenge in this petition is to the order of issuance of process. The petitioner nos. 1 to 4 are accused nos. 1 to 4 of private complaint bearing No.676 of 2019, filed by respondent nos.2 and 3. The learned Magistrate by taking cognizance of the complaint directed to initiate an inquiry in terms of Section 202 of the Code of Criminal Procedure (the Code). After assessing the entire material, the Magistrate has issued process in terms of Section 204 of the Code vide order dated 26.09.2019. The process was issued against all petitioners for the offence punishable under Sections 193, 199, 200, 420, 468 and 471 read with Section 34 of the Indian Penal Code. Being aggrieved, the petitioners have preferred the Criminal Revision No.121 of 2019 in which the order of issuance of

process was upheld except process under Section 193 of the Indian Penal Code. The petitioners have impugned herein both orders by invoking inherent jurisdiction of this Court with an urge to dismiss the complaint by setting aside both the impugned orders.

3. The litigation backs a checkered history. The respondent nos. 2 and 3 (Complainants) have filed private complaint alleging that the petitioners (accused) have filed a false affidavit before the Land Acquisition Officer thereby stating that no litigation was pending in between the parties. It was a case that a certain piece of land was in the name of father of accused namely Shriramji Ghongade, which came to be acquired. The Award was passed by the competent authority in the name of Shriramji, who died in the year 2017. The accused in the capacity of legal representatives of Shriramji, applied to the Land Acquisition Authority for receipt of compensation. In said proceedings, they have filed an affidavit stating that no civil or criminal litigation relating to acquired land, was pending in the Courts of law.

4. It is the complainants case that at the time of filing said affidavit dated 30.04.2019, Regular Civil Appeal No.59 of 2019 was pending in between the parties and thus, by suppressing the said fact, the accused have filed a false and misleading affidavit, therefore, committed the offence. The Police have conducted an inquiry stating that the affidavit was in usual standard format. The learned Magistrate prima facie found that the material is sufficient to issue a process and accordingly, passed the impugned order. The Revisional Court held that process under Section 193 of the Indian Penal Code is untenable and thus, reversed the order of issuance of process to that extent only but upheld the order of issuance of process as regards to rest of the penal provisions.

5. Learned Counsel appearing for the accused has seriously assailed the order of issuance of process by contending that though such affidavit was filed, it was in a standard format provided in the Land Acquisition Office. He would submit that virtually no litigation was pending, as already the rights of the parties were crystallized in earlier litigation. It is submitted that the accused never intended to suppress the litigation nor it has any consequences. According to him, mere incorrect statement ipso facto does not make accused liable for criminal prosecution. It is submitted that, the Land Acquisition Officer is not a judicial authority and therefore, Section 199 and 200 of the Code would not apply. He would submit that the essential ingredients to constitute the offence of forgery and cheating, are totally missing and thus, continuation of criminal prosecution is abuse of process of Court.

6. Per contra, learned Counsel appearing for the complainant would submit that, it is a matter of record that though Regular Civil Appeal No.59 of 2019 was pending in between the parties, still the accused have filed an affidavit dated 30.04.2019 making a positive statement that no litigation relating to the acquired land, was pending. It is submitted that by making such incorrect and false statement, the accused have withdrawn the compensation amount and

thus, the offence is committed.

7. The learned Counsel appearing for the accused has taken through factual aspect for which the otherside has no dispute. The certain piece of land was initially owned by one Abhiman Sakharam Ghongade. He has bequeath the said piece of land in favour of predecessor of the accused namely Shriramji by executing of document of Will dated 15.04.1959. The testator Abhiman died in the year 1960, and thus, by virtue of testamentary document, Shriramji became exclusive owner of the said land. The name of Shriramji was mutated to the revenue record in close proximity. The accused are wife, two sons and daughter of deceased Shriramji. During lifetime of Shriramji, complainant Vasant Ghongade along with others had filed a Regular Civil Suit No.358 of 1977 against Shriramji seeking declaration, possession and injunction. In said suit, he has disputed testamentary dispossession by Abhiman in terms of Will dated 15.04.1959. After recording the evidence, the competent Civil Court has recorded the categorical findings that Shriramji (predecessor of accused) has proved that title of disputed land vests with him by virtue of document of Will dated 15.04.1959 and accordingly, dismissing the suit vide judgment and decree dated 31.08.1985. It is informed that the said judgment and decree was not challenged, meaning thereby ownership of Shriramji, has attained finality.

8. During the course of time, some portion of the said land has been acquired by the State. The Award was passed determining the compensation. In the meantime, complainant Vasant once-again filed another suit bearing Regular Civil Suit No.335 of 2018 against the accused as well as Special Land Acquisition Officer seeking declaration of joint ownership and injunction restraining disbursement of the compensation amount to the accused. Though temporary injunction was sought, it was not pursued. In said suit, the accused appeared and raised preliminary objection in terms of Order VII Rule 11(a) and (d) of the Code of Civil Procedure. The Civil Court upheld the objection and thereby rejected the plaint vide order dated 16.02.2019. Being aggrieved by the said rejection of plaint, the complainant Vasant has filed Regular Civil Appeal No.59 of 2019 on 14.03.2019. In said appeal, accused No.1 Chitra and accused no. 2 Amol appeared on 22.04.2019. These state of affairs were existed on the date of filing of disputed affidavit dated 30.04.2019. In real sense, the entire controversy revolves around the affidavit dated 30.04.2019 of accused no. 2 Amol and accused no. 3 Prashant stating that no civil litigation was pending relating to the acquired land. The main thrust of the complainant is on the point that on the date of filing of affidavit i.e. on 30.04.2019, Regular Civil Appeal No. 59 of 2019 was very much pending, and thus, it is a deliberate false statement made to the authority inducing them to disburse the compensation amount.

9. Learned Counsel appearing for the accused has primely contended that though it is a matter of record that such affidavit was filed during the pendency of the appeal, however, it was totally unintentional. He would submit that already the rights of ownership have been concluded finally in Regular Civil Suit No.358 of

1977 way-back in the year 1985. The complainant by suppressing said fact has filed subsequent suit bearing No.335 of 2018 in which he has not pressed for temporary injunction as well as the plaint was rejected under Order VII Rule 11 (a)(d) of the Code of Civil Procedure. Having regard to the said factual aspect, the affidavit cannot be termed as an intentional one to mislead the authority.

10. The Revisional Court has rightly considered that the Land Acquisition Officer before whom the affidavit was filed, cannot be termed as a "Court" and therefore, Section 193 would not apply. In order to constitute the offence punishable under Section 199 and 200 of the Indian Penal Code, essentially the statement made in declaration must be to the authority, who is bound or authorized by law to receive the same as an evidence. Moreover, the declarant must know or believe that it is a false declaration which touches to the material point, for which such a declaration is made. In this regard, the learned Counsel appearing for the accused would submit that the Land Acquisition Authority i.e. Deputy Collector (Acquisition) is not empowered by law to receive the affidavit as an evidence. Besides Section 60 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Act') the learned Counsel for the complainant is unable to point out any provision which authorizes the Deputy Collector to require the party to file affidavit. In fact, Section 60 of the Act pertains to the powers of 'authority' which is established under Section 51 of the Act. Disbursing Authority cannot be termed as an authority clothed with the powers under Section 60 of the Act. Already an Award has been passed by determining the amount of compensation. The Deputy Collector was to disburse the amount of compensation, which does not include the process of adjudication. In case of any dispute about the disbursement, he has to refer the same to the 'authority' constituted under the Act in terms of Section 76 of the Act.

11. Apart from that the affidavit dated 30.04.2019, appears to have been in the format which was commonly used in the Land Acquisition Office. The Police Authority in their report stated that the said format was commonly used by the farmers as prepared at the office of Maha Setu. Moreover, the affidavit was sworn only by the accused nos. 2 and 3. The statement made in the affidavit no longer binds accused nos. 1 and 4, who were consenting party to the extent of disbursement of amount to rest of the accused.

12. In order to constitute the offence of cheating and forgery, the act must be an intentional one, which appears to be totally absent. Learned Counsel appearing for the accused by relying on the decision of the Supreme Court in case of Sh. Narendra Kumar Srivastava vs. State of Bihar and ors. 2019 AIR (SC) 2675 would submit that mere incorrect or false statement does not make it incumbent on the Court to initiate prosecution. Though the said decision pertains to Section 340 of the Code, however, principally to initiate the prosecution, the Court shall take into consideration all relevant circumstances to decide the question of expediency. The Criminal prosecution cannot be launched to gratify the feelings

of personal revenge or vindictiveness.

13. Further reliance is placed on the decision of the Supreme Court in case of *Amarsang Nathaji vs. Hardik Harshadbhai Patel and ors.* (2017) 1 SCC 113 to contend that mere contradictory statement in judicial proceedings is not by itself always sufficient to justify a prosecution. Section 195(1)(b) of the Code creates a bar for Court to take cognizance, if a false evidence is given in the judicial proceeding. Though herein the question of tenability of private complaint arose, however, the same analogy can be considered. Unless it is satisfy that there is propriety in initiating criminal prosecution and it is expedient in the interest of justice, unmeritorious criminal prosecution shall not be allowed to prevail. The learned Sessions Court went on technicalities without considering the necessity to continue such prosecution in the canvass of peculiar facts of the case. The complaint nowhere discloses that it was a deliberate and an intentional act of the accused. The act of filing affidavit was in the nature of completing the formality before the Deputy Collector. Already, the issue about title of the father of accused was concluded in Civil Suit of the year 1977. The Second suit was also thrown out by the Court as untenable. The complainant could not get any relief of temporary injunction in the second suit. Moreover, it is informed that pending appeal was also dismissed in default. Therefore, it cannot be said that intentionally accused nos. 2 and 3 have sworn the affidavit to mislead the authority.

14. Facing the criminal prosecution is a serious affair. The Supreme Court in case of *State of Haryana vs. Bhajan Lal* AIR 1992 SC 604 has ruled that if a criminal proceeding manifestly attended with mala fide and the proceeding is instituted with an ulterior motive for wreaking vengeance then it shall not be continued. It is apparent that the complainant failed in Civil Court to establish his title as well as to restrain the authority from disbursing the amount of compensation. On successive failure, the complaint has been lodged, which cannot be termed as bona fide one. Moreover, the complainant failed to point out any provision under which the Land Acquisition Authority is bound and require to obtain affidavit while disbursing the amount of compensation. In the wake of such position, continuation of criminal prosecution is nothing but abuse of the process of Court as well as it would be exercise in futility. The peculiar fact persuades to invoke the inherent jurisdiction to prevent the misuse of the process of Court. Therefore, the order of issuance of process is untenable in the eyes of law.

15. In view of above, the petition is succeeds. The impugned order dated 04.01.2022 passed by the Sessions Judge, Amravati in Criminal Revision Application No. 121 of 2019 and order dated 26. 09.2019 passed by the Judicial Magistrate First Class, Amravati in Regular Criminal Case No.676 of 2019 are set aside and the private complaint No.676 of 2019, is hereby quashed and set aside.

16. Rule is made absolute in the aforesaid terms with no order as to costs.