(2018) 10 BOM CK 0166

In the Bombay High Court

Case No : Criminal Revision Application (Revn) No. 6 209, 214 Of 2010

Dinguram Ramaji Sangore APPELLANT

Vs

State Of Maharashtra Thr. Govt. Pleader RESPONDENT

Date of Decision : 30-10-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 193, 196, 199, 200, 205, 211, 228, 294, 120B, 419, 463, 468
Code of Criminal Procedure, 1973 — Section 173, 195, 195(i)(b)(ii)

Citation : (2018) 10 BOM CK 0166

Hon'ble Judges : M.G. Giratkar, J

Bench : Single Bench

Advocate : S.A. Mohta, N.B. Jawade

Final Decision : Allowed

Judgement

1. All the revisions are against the judgment of conviction dated 06.03.2007 awarded by Chief Judicial Magistrate, Gadchiroli in Regular Criminal Case

No. 44 of 2003 for the offence punishable under Sections 468 and 120Â?B of the Indian Penal Code.Â All the applicants are convicted for the offence

punishable under Section 468 of the Indian Penal Code and sentenced them to suffer Rigorous Imprisonment for the period of six months with fine of

Rs.1,000/Â? each, in default, to suffer RI for one month. All the applicants sentenced to suffer RI for six months and fine of Rs.1,000/Â? each, in

default, RI for one month for the offence punishable under Section 120Â?B.

2. All the applicants/accused moved before Sessions Court by filing criminal appeals. The said appeals came to be dismissed vide judgment dated 27th

October, 2009. Hence, all the applicants/accused before this Court in the respective revisions.

3. The case against the applicants (hereinafter referred as â??accusedâ?? for the sake of brevity) in short is that one Smt. Rahidas was working as a

nurse in Primary Health Center, Subhashgram. She lodged a report against accused Tridev Majumdar and Dinbandhu Samaddar. On her report,

Summary Criminal Case No. 720 of 1996 (4/2008) was registered before the Judicial Magistrate, First Class at Chamorshi. It is the case of

prosecution that the husband of complainant namely Dinguram (applicant/ accused No.1) and accused Nos.3 and 4 Tridev and Dinbandhu brought

accused No.2 Sau. Sonam to Advocate Dhait. Dinguram introduced her as his wife and requested to draft compromise petition. Compromise Petition

was drafted and submitted to the Court of Judicial Magistrat, First Class. Offence punishable under Section 294 of the Indian Penal Code is not

compoundable, therefore, compromise was not effected.

JMFC started recording the evidence. Accused No.2 Sau. Sonam entered the witness box and stated her name as Smt. Rahidas Dinguram Sangare.

When some questions were asked by Assistant Public Prosecutor Shri Tarare, she could not depose. Due to recess, matter was adjourned. During the

recess period, APP Tarare enquired from Court Constable Premanand Lade.

Premanand Lade, Court Constable submitted written report stating that accused No.2 Sonam was not Smt. Rahidas, but she is Smt. Sonam w/o

Narendra Bishwas. This fact was brought to the notice of Court by Prosecutor Shri Tarare. Learned Magistrate passed the order to that effect at

Exh.1 and forwarded the matter to Police Station, Gadchiroli for investigation. Accused Nos.1 and 2 were also sent along with written report of

Advocate Pramod Tarare, Special Public Prosecutor. Crime was registered against all the accused. Offence under Sections 419, 205, 193 read with

Sections 34 and 120Â?B of the Indian Penal Code came to be registered against the applicants/accused. Charge was framed. Later on, altered for the

offence punishable under Section 419, 205, 468, 120Â?B read with Section 34 of the Indian Penal Code.

The prosecution has examined Parvatabai, Rahidas, Adv. Dhait, Adv. Tarare and Adv. Munghate. After hearing the prosecution and the defence,

learned JMFC convicted the accused as stated above.

It is pertinent to note that as per operative order, the main accused Smt. Sonam was not convicted and she was called to receive the sentence.

Additional Sessions Judge also noted that accused No.2 Smt. Sonam was convicted but not sentenced by the JMFC and directed to verify about her

conviction and sentence.

4. Heard Shri Mohta and Shri Borkar, learned Counsel appearing on behalf of the respective applicants/accused. They have pointed out Section 195 of

the Code of Criminal Procedure and submitted that offence took place while recording the evidence before JMFC. Therefore, it was for the JMFC

himself to lodge complaint. There is specific bar under Section 195 of the Code of Criminal Procedure for taking cognizance on the police report.

Therefore, all the proceedings are vitiated. Hence, the applicants/accused are entitled for acquittal. Shri Mohta, learned Counsel for the applicants has

pointed out the judgment of the Hon'ble Supreme Court in the case of Dr. Vimla .v. The Delhi Administration (reported in AIR 1963 SC, 1572). He

also pointed out the judgment in Summary Criminal Case No. 720 of 1996 (4/2008) which is taken on record and marked as â??Xâ?? for identification.

5. There is no dispute that accused persons were charge sheeted by police for the offence punishable under Sections 419, 205, 120Â?B read with

Section 34 of the Indian Penal Code. There is also no dispute that offence alleged against accused persons of forgery and perjury was committed

before the trial Court. The compromise deed for compounding the offence was not acted upon. There is a specific bar under Section 195 of the Code

of Criminal Procedure, 1973. Section 195 reads as under :Â?

â??195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents

given in evidence. Â? (1) No Court shall take cognizance Â?

(a)(i) â?¦

(ii) â?¦

(iii) â?¦

(b)(i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both

inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in; or in relation to, any proceeding in

any Court, or (ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or (iii) of any criminal

conspiracy to commit, or attempt to commit, of the abetment of, any offence specified in subÂ?clause (i) or subÂ?clause (ii), [except on the complaint in

writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is

subordinate.]â?? (emphasis supplied).

6. As per Section 195 of the Code of Criminal Procedure, no Court shall take cognizance of any of the offence punishable under Sections 193 to 196

(both inclusive), 199, 200, 205 to 211 (both inclusive) and 228 when such offence is alleged to have been committed in, or in relation to, any proceeding

in any Court, or of any offence described in section 463 of â?¦ Penal Code, or of any criminal conspiracy to commit, or attempt to commit, or the

abetment of, any offence specified in subÂ?clause (i) or subÂ?clause (ii), except on the complaint in writing of that Court or by such office of the Court

as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

7. From the evidence of material witness, it is clear that offence charged against the accused/applicants took place before the Court while recording

evidence. Therefore, it was for the concerned Magistrate himself to lodge a complaint. The Magistrate was not authorized to lodge report to the

Police Station. There is a specific bar under Section 195 of the Code of Criminal Procedure that Court shall not take any cognizance on the report

under Section 173 lodged by the police. In the present case, a mandatory provision is not followed by the concerned JMFC. The CJM was not

authorized to take cognizance as per Section 195 of the Code of Criminal Procedure.

8. Accused are convicted for the offence punishable under Sections 468 and 120Â?B of the Indian Penal Code. Though Section 468 is not quoted in

Section 195(i)(b)(ii) of the Code of Criminal Procedure, but offence is Section is 463 and punishment is provided for the offence under Section 463

vide Section 468. Sections 463 and 468 read as under :Â?

â??463. Forgery. Â? [Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause

damage or injury], to the public or to any person, or to support any claim of title, or to cause any person to part with property, or to enter into any

express or implied contrct, or with intent to commit fraud or that fraud may be committed, commits forgery.

468. Forgery for purpose of cheating. Â? Whoever commits forgery, intending that the [document or electronic record forged] shall be used for the

purpose of cheating, shall be punished with imprisonment of either description a term which may extend to seven years, and shall also be liable to fine.

Classification of offence. Â? The offence under this section is cognizable, nonÂ?bailable, nonÂ?compoundable and triable by Magistrate of the first class.

State Amendment â?" [Madhya Pradesh]. Â? In its application to the State of Madhya Pradesh, in section 468, for the words â??Magistrate of the

First Classâ??, substitute â??Court of Sessionâ??. Â? Mdhya Pradesh Act 2 of 2008, section 4.â??

9. Therefore, conviction under Section 468 is not a separate offence but it is for the offence under Section 463 of the Indian Penal Code. Cognizance

of the offence under Section 463 and also the conspiracy on the report of police is specifically barred by the Court under Section 195 of the Code of

Criminal Procedure.

10. All the accused/applicants are convicted for the offence punishable under Sections 468 and 120Â?B of the Indian Penal Code. Moreover, there is

no specific evidence in respect of conspiracy of the accused persons. There is no evidence to show the intention of accused No.2 Smt. Sonam to

cheat or give false evidence. It is pertinent to note that accused No.2 Smt. Sonam and other accused are Bengali shifted from West Bengal and

residing in a Camp at Subhashgram, Tahsil Chamorshi. Specific suggestion was given to the witnesses that she was not knowing Marathi langugage,

therefore, she could have committed mistake. Possibility cannot be ruled out that Smt. Sonam could not have understood Marathi and, therefore, she

could have entered the witness box. When Sonam entered the witness box, she deposed her name as Smt. Rahidas wife of Dinguram but she could

not give further evidence. It is pertinent to note that she was the witness in that case. Witnesses were called and, therefore, she entered the witness

box. As per the evidence, Shri Tarare had suspected something, therefore, he asked Court Constable Premanand Lade to verify.Â Premanand Lade

submitted written report stating that accused No.2 is not Rahidas but she is Sau.

Sonam Narendra Bishwas. It is material to note that the trial Court

not examined Premanand Lade, Court Constable who identified Sonam stating that she was not Smt. Rahidas but she was Sonam. Report of

Premanand Lade also not produced on record.

11. Accused Tridev and Dinbandhu were facing Criminal Case No. 720 of 1996 in which Smt. Rahids was the complainant. Her husband Dinguram

and accused Sonam were witnesses in that case. Said case came to be decided on 06.05.2009 and accused Tridev and Dinbandhu are acquitted.

Learned Counsel Shri Mohta pointed out the judgment of the Hon'ble Supreme Court in the case of Dr. Vimla .v. The Delhi Administrtion (cited

supra). Their Lordships have observed in paras 14 and 15 as under :Â?

â??14. To summarize : the expression â??defraudâ?? involves two elements, namely, deceit and injury to the person deceived. Injury is something

other than economic loss that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to

any person in body, mind, reputation or such others. In short, it is nonÂ? economic or nonÂ? pecuniary loss. A benefit or advantage to the deceiver will

almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no

corresponding loss to the deceived, the second condition is satisfied.

15. Now let us apply the said principles to the facts of the present case. Certainly, Dr. Vimla was guilty of deceit, for though her nme was Vimla, she

signed in all the relevant papers as Nalini and made the insurance company believe that her name as Nalini, but the said deceit did not either secure to

her advantage or cause any nonÂ?economic loss or injury to the Insurance Company. The charge does not disclose any such advantage or injury nor is

there any evidence to prove the same. The fact that Dr. Vimla said that the owner of the car who sold it to her suggested that the taking of the sale of

the car in the name of Nalini would be useful for incomeÂ?tax purposes is not of any relevance in the present case, for one reason, the said owner did

not say so in his evidence and for the other, it was not indicated in the charge or in the evidence In the charge framed, she was alleged to have

defrauded the insurance company might not have padi the money. But as we have pointed out earlier, the entire transaction was that of Dr. Vimla and

it was only put through in the name of her minor daughter for reasons best known to herself on the evidence as disclosed, neither was she benefited

nor the insurance company in curved loss in any sense of the term.â??

12. In the present case, main accusation is against accused No.2 Sonam Bishwas. She was not present at the time of judgment. Nothing on record to

show that she is convicted and sentenced by the trial Court. Nobody was cheated by the accused. In view of the above cited judgment, offences are

not proved.

13. The accused persons are convicted for the offence under Section 463 punishable under Section 468 and conspiracy under Section 120Â?B of the

Indian Penal Code. There is a specific bar under Section 195 of the Code of Criminal Procedure to take cognizance of the offence punishable under

Section 463 and conspiracy punishable under Section 120Â?B of the Indian Penal Code on police report under Section 173 of the Code of Criminal

Procedure, except on the complaint in writing of that Court. Cognizance by CJM on the police report itself is illegal.

14. There is no dispute that the accused persons were charge sheeted by police on the report of JMFC. FIR was registered vide Crime No. 218 of

2002 against accused persons. Investigating Officer prepared spot panchnama recorded the statements of witnesses and forwarded chargeÂ?sheet to

CJM. This is nothing but in contravention of Section 195 of the Code of Criminal Procedure. Therefore, cognizance by CJM, Gadchiroli for the

offence punishable under Sections 419, 205, 193 read with Sections 34 and 120Â?B of the Indian Penal Code is specifically barred under Section 195

of the Code of Criminal Procedure.Â Hence, all the accused are entitled for acquittal.

In that view of the matter, all the revisions deserve to be allowed. Hence, the following order Â?

(i) Criminal Revision Nos.6 of 2010; 209 of 2009 and 214 of 2009 are hereby allowed. Impugned judgments are hereby quashed and set aside.

(ii) All the accused/applicants namely Dinguram Ramaji Sangore; Dinbandhu Fatik Samaddar; and Tridev Vikas Mujumdar are hereby acquitted of the

offences charged with.

(iii) Accused Dinguram Ramaji Sangore is in jail, as per the non bailable warrant issued by this Court, from 07.10.2018. Hence, he be released

forthwith, if he is not required in any other crime/case.

(iv) Other accused namely Dinbandhu and Tridev are on bail. Their bail bonds stand cancelled. Fine amount, if paid by the accused, be refunded to

them. R and P be sent back to the trial Court.

