

**(2017) 11 BOM CK 0165**  
**In the Bombay High Court**  
**Case No : 15 of 2012**

Dr. Kakasaheb

APPELLANT

Vs

Prashant & Anr

RESPONDENT

---

**Date of Decision :** 29-11-2017

**Acts Referred:**

[Code of Criminal Procedure, 1973](#), [Section 482](#), [Section 197](#) - Saving of inherent powers of High Court - Prosecution of Judges and public servants  
[Indian Penal Code, 1860](#)

**Citation :** (2017) 11 BOM CK 0165

**Hon'ble Judges :** A.S. Chandurkar

**Bench :** SINGLE BENCH

**Advocate :** A. S. Mardikar, S. G. Joshi, A. B. Mirza, S. Haider

---

## Judgement

1. By this application filed under Section 482 of the Code of Criminal Procedure, 1973, the accused in Regular Criminal Complaint Case No.75/2011 has challenged the order issuing process on the complaint filed by nonapplicant No.1.

2. Brief facts relevant are that nonapplicant no.1 on 13.3.2011 lodged a report alleging commission of offence punishable under Section 3(1)(x) of the Prevention of Atrocities to Scheduled Castes and Scheduled Tribes Act, 1989 (for short, the said Act). According to nonapplicant no.1, he was working as a clerk in the college run by the persons accused therein. It was his grievance that on 12.3.2011 the said persons had abused the nonapplicant no.1 in the matter of his caste. Pursuant thereto the statement of the nonapplicant no.1 came to be recorded on 14.3.2011 by the SubDivisional Police Officer. As the said SubDivisional Police Officer was on leave, the applicant herein was directed to investigate the offence. On 24.3.2011, the applicant visited the office of the concerned college and directed nonapplicant no.1 to remain present for recording his supplementary statement. Accordingly, on 30.3.2011 the applicant recorded supplementary statement of nonapplicant No. 1. Thereafter on 13.4.2011, the nonapplicant no.1 issued a letter to the applicant in which it was stated that

though the nonapplicant no.1 had stated that he desired to continue with his earlier statement recorded on 14.3.2011, the applicant recorded his supplementary statement. Though a period of fourteen days had passed, the said statement was not given to nonapplicant no.1 for its perusal.

3. Thereafter on 30.4.2011, the nonapplicant no.1 filed a complaint against the applicant for the offence punishable under provisions of Section 3(ii)(vi) and Section 4 of the said Act along with Sections 217, 406, 463, 467 and 471 of the Penal Code. According to nonapplicant no.1, the supplementary statement dated 30.3.2011 was not of the complainant and that it was not recorded according to his say. This according to nonapplicant no.1 resulted in commission of offence punishable under said provisions. In the said complaint, the statement of the nonapplicant no.1 was recorded. On that basis, the learned Judicial Magistrate First Class was pleased to issue process against the applicant for the offence punishable under the aforesaid provisions. The applicant challenged this order dated 24.6.2011 passed by the learned Magistrate before the Sessions Court. By judgment dated 19.9.2011, the learned Judge of the Sessions Court was pleased to maintain the order issuing process under Sections 217, 463, 467 and 471 of the Penal Code. However, the order issuing process under the provisions of the Act of 1989 was set aside. Being aggrieved the applicant has preferred the present criminal application.

4. Shri A. S. Mardikar, learned Senior Counsel for the applicant submitted that in the absence of any valid sanction under Section 197 of the Code the learned Magistrate could not have taken cognizance of the alleged offence. It was submitted that the allegations made against the applicant were with regard to his alleged commission/omission while recording the supplementary statement of nonapplicant no.1 on 30.3.2011. The applicant had recorded that statement while performing his duties as the Investigating Officer. The act of recording this statement was in discharge of his official duty and therefore the applicant was entitled for statutory protection in that regard. The duty of investigating the offence and recording the statement of the complainant was interlinked with the discharge of official work and there could be no segregation of the two aspects. The applicant had not done anything which was not beyond the duty of the Investigating Officer and therefore the complainant ought to have obtained sanction under Section 197 of the Code before proceeding against him. In that regard the learned Senior Counsel placed reliance on the decisions in *Abdul Wahab Ansari vs. State of Bihar* and anr. 2001 ALL MR Criminal 183, *State of Orissa & Ors. vs. Ganesh Chandra Jew* 2004 ALL MR Criminal 1492 and *D. T. Virupakshappa vs. C. Subash* (2015) 12 SCC 231. It was then submitted that no offence was also made out under the provisions of Section 217, 463, 467 and 471 of the Penal Code. There was no question of the applicant disobeying any direction of the law as to the way in which he had to conduct himself as a public servant so as to save some other person from legal punishment. There was also no question of the applicant committing any forgery as alleged. Both the Courts failed to take into consideration these aspects of the matter and therefore the

proceedings were liable to be quashed.

5. Shri A. B. Mirza, learned Counsel for nonapplicant no.1 - complainant supported the impugned order. According to him, the statement of the complainant having been recorded on 14.3.2011, there was no reason whatsoever to record his supplementary statement as was done by the applicant. The act as alleged amounted to abuse of the authority given to the applicant as an Investigating Officer. The entire object behind recording the supplementary statement was to create material in favour of the accused persons and therefore the alleged act not being part of his official duty, sanction was not required to be obtained. Placing reliance on the judgment of the Hon'ble Supreme Court in Inspector of Police and another vs. Battenapatla Venkata Ratnam and another (2015) 13 SCC 87 and Choudhury Parveen Sultana v. State of W. B. and anr. 2009 Cr. L.J. 1318, it was submitted that there was no need to obtain sanction when the act alleged was a result of abuse of power and authority conferred on the accused. Hence, there was no need to obtain sanction before proceeding against the applicant. The supplementary statement was likely to be relied upon by the accused persons in support of their defence and such act would result in weakening the case of nonapplicant no.1. It was therefore submitted that no interference was called for with the impugned order. Shri J. Y. Ghurde, learned Additional Public Prosecutor for nonapplicant no.2 also supported the impugned order. He submitted that the supplementary statement as recorded was not in accordance with the statement made by nonapplicant no.1. Therefore the alleged act of the applicant was not in furtherance of his official duties and for said reason it was not necessary to obtain sanction.

6. I have heard the learned Counsel for the parties at length and I have perused the material placed on record. In the complaint as filed by nonapplicant no.1 it is his grievance that his statement was initially recorded on 14.3.2011 and the same indicated the correct picture. The applicant while recording the supplementary statement on 30.3.2011 had merely stated that only certain points as stated by the nonapplicant no.1 were being noted. However, the nonapplicant no.1 found that the said statement was not recorded as per his say but it was prepared with a view to favour the accused persons in Crime No.3022/2011. The applicant as a public servant had recorded a false and fabricated supplementary statement of the nonapplicant no.1. These are the contents of the complaint filed by nonapplicant no.1.

7. On a reading of the entire complaint it can be seen that the initial statement of nonapplicant no.1 was recorded by the SubDivisional Police Officer on 14.3.2011. Thereafter charge was given to the applicant herein and in that regard the applicant conducted further investigation. During that process the supplementary statement of nonapplicant no.1 was recorded on 30.3.2011. The question therefore is whether in these facts, sanction was required to be obtained under Section 197 of the Code for proceeding against the applicant.

8. In this regard the legal position that can be deduced from the decisions relied

upon by the learned Counsel for the parties is that the offence alleged to have been committed must have something to do or must be related in some manner with the discharge of official duty of the accused. There must be a reasonable connection between the act alleged and the discharge of official duty. The act must bear such relation to the duty that the accused could lay reasonable claim which is not fanciful that he did it in the course of performance of his duty. The use of the expression 'official duty' implies that the act or omission must have been done by the public servant in the course of his service and that it should have been done in discharge of his duty. If an act or omission is found to have been committed by a public servant in discharge of his duty, then it must be given liberal and wide construction so far as its official nature is concerned. The act alleged must fall within the scope and range of the official duties of the public servant concerned. If there is a reasonable connection between the act alleged and the duty performed, sanction would be necessary.

9. When the facts of the present case are viewed in the light of the aforesaid legal position, it becomes clear that the act alleged to have been committed while recording the supplementary statement of the complainant has a direct connection with the discharge of official duty by the applicant. In the complaint itself, it has been stated that the applicant was a public servant and while acting in that capacity he recorded a false supplementary statement not according to the say of the complainant and without giving an opportunity to the complainant of reading the same. I find that there is a reasonable connection between the alleged act of recording the said supplementary statement as the same is purported to be done in the discharge of official duty. In other words, while doing his official duty if the applicant acted in excess thereof but there was a reasonable connection between the alleged act and the performance of the official duty, the excess would not be a sufficient ground to deprive the application of the protection conferred by Section 197 of the Code. The decisions relied upon by the complainant are clearly distinguishable. In *Inspector of Police and another (supra)* the allegation against the accused persons was that while working as SubRegistrars they had conspired with stamp vendors and document writers to gain monetary benefits and resorted to manipulation of registers resulting in wrongful gain to themselves and loss to the Government. In that context, it was alleged that the alleged indulgence of the officers in cheating, fabrication of records or misappropriation could not be said to be in discharge of the official duty. Similarly, in *Chaudhary Parvin Sultana (supra)* when the allegation was that the Dy. Superintendent of Police had committed acts of extortion and criminal intimidation while conducting investigation, said act was found to be not part of the duty of the Investigating Officer. These decisions therefore are of no assistance to the case in hand. The facts of the present case clearly indicate that the alleged act of preparing the supplementary statement which according to the complainant was not according to his say has reasonable connection with the discharge of official duty by the applicant as the Investigating Officer. In that view of the matter, I find that before taking

cognizance of the complaint, it was necessary for the complainant to have obtained sanction under Section 197 of the Code. This aspect of the matter has not been considered by both the Courts in its proper perspective.

10. In so far as the submission that no offence whatsoever punishable under Sections 217, 463, 467 and 471 of the Penal Code was made out is concerned, the same cannot be accepted at this stage. On a perusal of the averments made in the complaint as well as the statement of the complainant I am satisfied that the complaint does not deserve to be dismissed at the threshold itself. It would be a matter of trial for deciding whether the offence as alleged in the complaint has in fact been made out or not. On a complete reading of the complaint as well as the statement of the complainant, at this stage the proceedings cannot be quashed. To that extent the challenge to the impugned order must fail.

11. In view of aforesaid discussion, the following order is passed: (a) The order dated 24.6.2011 passed by the learned Judicial Magistrate First Class, Anjangaon Surji as well as the order dated 19.9.2011 passed by the Sessions Court, Achalpur in Criminal Revision No.60/2011 is set aside.

(b) It is held that it would be necessary for the complainant to obtain sanction under Section 197 of the Code before proceeding further in the complaint proceedings against the applicant. It would be open for the complainant to seek such sanction and till that stage the proceedings in the complaint shall remain stayed. The learned Judicial Magistrate First Class shall proceed further with the complaint if necessary sanction is granted under Section 197 of the Code.

(c) It is clarified that observations made are only for deciding the present application.

12. The criminal application is partly allowed in aforesaid terms with no order as to costs.