
(1975) 08 BOM CK 0010
In the Bombay High Court

Isaq Mahboob and Others

APPELLANT

Vs

Vithalrao Nagorao Kelgaonkar and Another

RESPONDENT

Date of Decision : 20-08-1975

Acts Referred:

Constitution of India, 1950 — Article 227
Penal Code, 1860 (IPC) — Section 34

Citation : (1976) CriLJ 1856

Hon'ble Judges : Vaidya, J;Aggarwal, J

Bench : Division Bench

Judgement

Aggarwal, J.—In this criminal application under Article 227 of the Constitution of India and u/s 482 of the Criminal Procedure Code, 1973, the accused seek to quash the order dated 20th November 1974, whereby the learned Judicial Magistrate, First Class, Latur, framed charges against them for the offences under Sections 447, 323/34 and 427/34, I.P.C. in Criminal Case No. 898 of 1973 at the instance of the respondent-complainant.

2. The complainant alleges that he is in possession of Survey No, 1A situated at Latur on the basis of an agreement for sale dated 7th October 1972 executed in his favour by accused No. 3. On 22nd July 1973 at about 1 p. m., he had been to the said land for irrigation purposes along with others. Some time thereafter, 15 accused came at the well in the land. According to the complainant, accused No. 3 abused him and stated that he would not allow the complainant to install an engine on the well. There was standing crop of maize in the field adjacent to the well on the eastern side. Accused Nos. 1 and 2 pushed him aside and they along with accused Nos. 4 to 9 started uprooting the standing crop of maize. At that time, the complainant's servant Laxman prevented them from doing so. Accused Nos. 1 and 2 pushed Laxman and accused Nos. 4 to 9 beat him with slaps, kicks and fist blows. Accused Nos. 3 and 10 to 15 were standing on the well. The complainant alleged that they threatened him to murder if he did not vacate from the said land. According to the complainant, the accused have caused damage to the crop in his field worth Rs. 200/-. The complainant further alleged

that 4 to 5 persons passing by the road including Sudani Mali, Shrinivas Deshpande, Raosaheb of Khulgapur and Harzu came there and intervened. The complainant also alleged that he filed a civil suit for injunction against accused No. 1 as he had obstructed his agricultural operations in April 1973 and as a result temporary injunction was granted in his favour against accused No. 1. The complainant further alleged that accused Nos. 3, 4 and 6 have leased the same land for a period of five years on 4th April 1973 to accused No. 9 and they in turn have filed a suit for injunction against him. However, their application for temporary injunction was rejected on 16th July 1973.

3. In support of his case, the complainant examined himself and his two witnesses. They were cross-examined at length on behalf of the accused. On the basis of the evidence before him, the learned Magistrate framed charges under Sections 447, 323 and 427 read with Section 34 I.P.C. The learned Magistrate was not impressed by the submission on behalf of the accused that the complainant had failed to make out a prima facie case against the accused. The other submissions that a civil litigation is pending between the parties, accused No. 12 is in possession, the complainant was not put in possession, the complainant being an Advocate for accused No. 3 had obtained the signatures of accused No. 3 on blank papers and then used the same for the purpose of creating the alleged agreement for sale, and that there were material contradictions in the evidence of the complainant and his witnesses did not find favour with the learned Magistrate and he proceeded to frame the charges against the accused as indicated above.

4. Mr. Mandlik for the petitioners accused submitted that the evidence on record does not disclose a prima facie case against the accused and in any event at least against accused Nos. 10 to 15 no case is made out and, therefore, the impugned order is liable to be quashed as against all the accused or accused Nos. 10 to 15. On the other hand, it is submitted that the impugned order is an interlocutory order and the present application is not maintainable. This contention is well founded and the petition is liable to be dismissed.

5. The history of Article 227 of the Constitution of India and its scope were considered by their Lordships of the Supreme Court in Waryam Singh and Another Vs. Amarnath and Another, . This decision confirms the view that the power of judicial superintendence was to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors. Again, under Article 227 the power of judicial interference of the High Court is limited to seeing that the Courts and Tribunals function within the limits of their authority. The powers are independently of the provisions of other laws conferring revisional jurisdiction on the High Court. Now, Section 397 (1) of the Code of Criminal Procedure, 1973 (old Section 435) provides that the High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court within its jurisdiction for the purpose of satisfying itself or himself as to the

correctness, legality or propriety of any proceedings of such inferior Court and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he may be released on bail or on his own bond pending the examination of the record. This sub-section is essentially a measure to correct by revision what may be incorrect or illegal or improper in the finding recorded or sentence passed or order made which the record on examination discloses. Another purpose is to examine the irregularity of any proceedings before an inferior Court. The scope of Sub-section (1) now stands curtailed by the introduction of Sub-section (2) with regard to interlocutory orders. Sub-section (2) says:

(2) The powers of revision conferred by Sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or, other proceeding.

Under the old Code, the nature of the order and the stage of the proceedings were not relevant and important. The correctness or legality or propriety of an interlocutory order or finding could be scrutinized. There were no limitations on the revisional powers of the High Court or Sessions Court in respect of interlocutory orders. The new provision specifically takes away the power of revision of the High Court or the Sessions Court in the case of interlocutory orders passed in any appeal, inquiry, trial or other proceedings. In other words, the revisional power of the High Court or the Sessions Court is now intended to be confined to matters which are concluded and final so far as the inferior Criminal Court whose finding or order is questioned is concerned. The newly added Sub-section (2) is in the nature of a prohibitory injunction, prohibiting the High Court or the Sessions Court from exercising the powers of revision conferred under Sub-section (1) in respect of interlocutory orders. The Legislature has taken care to clarify that such interlocutory orders might arise from any appeal, inquiry, trial or other proceedings. The High Court or the Sessions Judge is clearly barred from exercising revisional powers touching interlocutory orders. The considerations leading to the introduction of Sub-section (2) are:

At present, the High Court can interfere in revision in respect of interlocutory orders also. When petitions are filed in this regard, the proceedings in the lower court are in most cases stayed in the lower court and this holds up matters until the disposal of the revision petition. It may be that at one stage it was considered that the facility of having a wrong or unjust order struck down by the High Court was a guarantee against even the slightest injustice at any stage of a criminal proceeding. But experience has shown, particularly during recent years, that this facility has been so extensively abused that it has become a major factor delaying disposal of criminal cases not only for months but for years. There are instances where cases have been held up for as long as five years by reason of the stay order during the pendency of a revision petition against some interlocutory order or the other. This facility is availed of mostly by the rich men,

industrialists, corrupt officials and the like, who are able to delay disposal of cases against them almost indefinitely. Meanwhile, some of the witnesses die or lose interest in the case and sometimes even the prosecution loses its keenness. These revision petitions against interlocutory orders, therefore, not only delay justice but sometimes defeat it.

(See the Gazette of India Extraordinary, Part II, Section 2 dated 10-12-1970, page 1327).

6. In our judgment, under the new scheme of the Code of Criminal Procedure, 1973, when the High Court is specifically debarred from exercising revisional jurisdiction in respect of interlocutory orders, it cannot by resorting to Article 227 of the Constitution of India, do what it is prohibited from by Sub-section (2) of Section 397. It may be that in exceptional cases the High Court, in exercise of its power of superintendence under Article 227 over Subordinate Courts to keep them within the limits of their authority, may issue its writ, order or direction under Article 227, but nonetheless a little use is to be made of that power in the context of interlocutory orders of Criminal Courts.

7. The petitioners have also invoked the inherent powers of this Court to quash the impugned order. Section 482 Cr. P.C. 1973 (old Section 561-A) says that nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. This section emphasizes that the High Court has the widest jurisdiction to pass orders to secure the ends of justice and for that purpose to entertain applications not contemplated by the Code. (See *The State of Bombay Vs. Nilkanth Shripad Bhav and Another*, It is also settled that it cannot be invoked in respect of any matter covered by the specific provisions of the Code. It cannot be used if its exercise would be repugnant or conflicting with any of the specific provisions of the Code. (See *Pampapathy Vs. State of Mysore*, The powers u/s 482 are nevertheless to be exercised sparingly, carefully and with caution only unless the ends of justice are put in jeopardy and where its exercise is justified by the tests laid down in the section itself. In the present scheme of codification and amendment of the law relating to Criminal Procedure in the light of the introduction of Sub-section (2) of Section 397, it would not be unsafe to take a positive view that in so far as interlocutory orders are concerned, the remedial measure provided by Section 561-A of the old Code (Section 482 of the new Code) is rendered ineffective. By involving the jurisdiction of this Court under Article 227 of the Constitution of India or the powers of this Court u/s 482 Cr. P.C. 1973, the provisions of Section 397 Cr. P.C. 1973 cannot be circumvented or bypassed. We are of the opinion that the present application is not maintainable for the reasons indicated above.

8. In the result, the application is dismissed. Rule is discharged. There will be no order as to costs.