

(1993) 10 BOM CK 0013

In the Bombay High Court

Case No : Criminal Application No. 1142 of 1993

Kishan Bhosale

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

Date of Decision : 21-10-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195(1)

Citation : (1994) 3 BomCR 555

Hon'ble Judges : N.P. Chapalgaonker, J

Bench : Single Bench

Advocate : J.P. Akolkar, for the Appellant; K.B. Chaudhary, Assistant Public Prosecutor, for the Respondent

Judgement

N.P. Chapalgaonker, J.—This application raises a question about the scope of section 195 of the Code of Criminal Procedure, 1973. The question is whether bar created by section 195 would apply when offence is in respect of a document produced before Sub-Divisional Magistrate in support of an application for appointment as a Police Patil under the Maharashtra Village Police Act, 1967.

2. Kashinath Manikrao Surnar filed a complaint in the Court of Judicial Magistrate (First Class) at Ahmedpur, alleging that accused Kishan Hanmantrao Bhosale has submitted a fabricated school leaving certificate showing that he has passed IXth Standard examination in support of his claim for appointment as Police Patil before the Sub-Divisional Magistrate, Udgir. It is alleged that the document produced certifies that accused has taken education in that school from 15th June, 1966 to 11th June, 1967, whereas the school itself was established in the year, 1969. Therefore, it was alleged that he has committed an offence punishable under sections 463, 464, 465, 468, 470 and 420 of Indian Penal Code. The learned Judicial Magistrate (First Class), Ahmedpur, was pleased to issue process under sections 463, 464, 465, 468, 470 and 420 of Indian Penal Code. An application was moved before the learned Magistrate by the accused that he be discharged as the complaint is not filed by the Police and the

complaint by private party is not maintainable in respect of such an offence. It was rejected by the learned Judicial Magistrate (First Class), Ahmedpur, on 8th July, 1991. This order was challenged before the learned Sessions Judge, Latur, in Criminal Revision No. 89 of 1991 which the learned Additional Sessions Judge, Latur, was pleased to dismiss on 12th August, 1993. The learned Sessions Judge was pleased to hold that process of the appointment as a Police Patil is not a proceeding before the Court. This judgment and order of the learned Additional Sessions Judge, Latur, along with the order of the learned Judicial Magistrate issuing process is sought to be challenged in this Criminal Application.

3. Mrs. J.P. Akolkar, learned Advocate appearing on behalf of the accused - appellant, submitted that Sub-Divisional Magistrate is entrusted with the judicial functions by the Code of Criminal Procedure and by other statutes and, therefore, production of any document before him which is a forged one, would be production of document in proceedings before the Court. Therefore, in view of the bar created by section 195 of the Code of Criminal Procedure, 1973, learned Judicial Magistrate was not competent to take cognizance of the offence alleged in the private complaint filed by the respondent-complainant. Shri K.B. Chaudhary, learned Additional Public Prosecutor appearing for the State, defended the impugned order.

4. Section 195 of the Code of Criminal Procedure, 1973, so far as is relevant for the purpose of the decision of this application is quoted below :-

"195(1). No Court shall take cognizance-

.....

b(ii) of any offence described in section 463 or punishable u/s 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)

It, therefore, follows that the bar enacted by section 195 would be operative when the offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court.

5. Both the words "Court" and "proceeding" have not been defined in the Code of Criminal Procedure, 1973. They would take their meaning from the context in which they are used and with reference to the purpose of the provision. Section 463 of Indian Penal Code defines "Forgery" and section 471 makes fraudulent or dishonest use of forged document punishable. Section 466 and section 467 make forgery of record of Court or of public register, etc. and of valuable security, will, etc. punishable. Legislature has prohibited cognizance of offence described in section 463 and which is punishable under sections 471 and 476 of Indian Penal Code, in case, it is committed in respect of a document produced or given in evidence in proceeding in the Court except on a complaint filed by such Court.

The intention is obvious. This is to safeguard innocent persons from baseless and vexatious prosecutions which are likely to be moved by motive of revenge. Therefore, legislature thought it fit to leave it for Presiding Officers of the Court to decide whether prosecution should be launched or not. Since commission of such offence is really a fraud on the Court. Looking to this purpose behind barring cognizance of certain crimes except on the complaint in writing of that Court, scope of the term "proceeding in any Court" will have to be examined.

6. Stroud's Judicial Dictionary has defined "Court" as "a place where justice is judicially administered". To be a Court, the person or persons who constitute it must be entrusted with judicial functions, that is, of deciding litigated questions according to law. The power to decide such questions must have been derived from the State. It is true that the term "Court" as employed in section 195 of the Code of Criminal Procedure, 1973 is not to be taken in a very narrow sense to confine it to embrace only Civil, Criminal or Revenue Courts. It includes other Tribunals also which have all the trappings of the Court.

7. In the case of Rama Rao and Another Vs. Narayan and Another, , Supreme Court was pleased to hold that the definition of "Court" in section 3 of the Indian Evidence Act or in section 20 of the Indian Penal Code will not circumscribe amplitude of term "Court" as used in section 195 of Criminal Procedure Code and was pleased to hold that expression "Court" is not restricted to Courts Civil, Revenue or Criminal; it includes other tribunals also. Learned Judges were pleased to add that mere duty to act judicially either expressly imposed or arising by necessary implication does not by itself make a tribunal "Court" within the meaning of section 195 of the Code of Criminal Procedure.

8. The term "proceeding" is a very comprehensive term and generally speaking means prescribed course of action for enforcing legal right and hence it necessarily embraces the requisite steps by which a judicial action is invoked. It is defined in Shorter Oxford Dictionary "as doing a legal action or process, any act done by the authority of a Court of law". Division Bench of Calcutta High Court was pleased to observe in the case of Satyahari Choudhury Vs. The State, , that in section 496 of Criminal Procedure Code, 1898, the words "proceedings before a Court" are used in wider sense and not in the restricted sense of judicial proceedings alone as compared to the use of the same term elsewhere.

9. Words "proceedings before a Court" understood in its wider sense would mean anything done in the process of hearing and deciding a dispute before an authority empowered by law. An authority who is designated to act as a Court may have non-judicial functions entrusted to it and while discharging such administrative functions, it cannot be said that he is acting as a Court. A District Judge may be authorized to make an appointment of a member of his staff. Whatever happens during the course of such appointment is not a proceeding before the Court though the District Judge while deciding a case assigned to him is a Court. District Magistrates or Sub-Divisional Magistrates have been entrusted judicial functions under various statutes and while discharging their judicial

functions under those statutes, they act as courts. But when they are discharging some administrative functions entrusted to them by the statute, they cannot be said to be acting as courts and any act done by them or the procedure followed by them is not a judicial proceeding.

10. Section 5 of the Maharashtra Village Police Act, 1967, authorizes State Government to appoint one or more Police Patil for village or group of villages and the powers can be exercised by District Magistrates or Sub-Divisional Magistrates wherever so delegated. Taluka Executive Magistrates and Sub-Divisional Magistrates have also been authorized to act as disciplinary authorities in respect of Police Patil. Appointment of Police Patil by Sub-Divisional Magistrate is an administrative function which Sub-Divisional Magistrate discharges as delegate of the State Government and procedure to appoint Police Patil including advertising the post, receiving applications, having interviews, considering claims and making appointments can never be termed as "proceeding before the Court" as it is not the discharge of judicial function by the Sub-Divisional Magistrates.

11. Mrs. Akolkar relied on the judgment of the Supreme Court in the case of Legal Remembrancer of Govt. of West Bengal Vs. Haridas Mundra, , and submitted that bar of section 195 of the Code of Criminal Procedure, 1973, would be applicable to the case at hand as per the ratio laid down by the Supreme Court in that case. The point which the learned Judges of the Supreme Court were required to decide was whether a document filed by a person in a proceeding before a Court but before that person became party to that proceeding would attract the bar of section 195 of the Code of Criminal Procedure, 1973, if an offence u/s 463 punishable u/s 471 or 476 of Indian Penal Code is alleged to have been committed in respect of that document. Supreme Court laid down that the scope of section 195(1)(c) of the Code of Criminal Procedure, 1973, is restricted to cases where the offence is alleged to have been committed by the party to a proceeding after he became such a party and not before. Therefore, bar u/s 195(1)(c) would be operative only when, firstly the matter is before a Court; secondly, the matter is a proceeding and thirdly, the document disputed must have been filed by a person who is a party to the proceedings. Unless all these three conditions are satisfied, the bar would not be operative and the cognizance of the offence can be taken on a complaint filed by a private person. The word "proceeding" in this context has a specific meaning. It refers to the matter in respect of the adjudication of the rights of the parties and it is to be decided by an authority entrusted with the job and given jurisdiction to decide such dispute. Appointment of a Police Patil or appointment of any other ministerial staff is not adjudication of the rights of the parties nor it is a criminal prosecution. It is simply an administrative act which the Sub-Divisional Magistrate does as a public servant entrusted with the duty under the statute. Therefore, submission of Mrs. Akolkar that the learned Magistrate had no jurisdiction to entertain the complaint and take cognizance thereof will have to be rejected.

12. Mrs. Akolkar further submits that no private person is competent to file a complaint in respect of an offence of the nature alleged in the complaint filed by the respondent. Section 190 of the Code of Criminal Procedure, 1973 empowers the Magistrate to take cognizance of any offence upon receiving a complaint of facts which constitutes such offence or upon police report of such facts. Subject to the exceptions as provided by the Code, all cognizable offences can be either reported to the Police or can be complained before the Magistrate. Whenever the legislature wanted to create a bar for taking cognizance in respect of a certain offence unless the complaint is made by specific aggrieved person or by a public servant or by a Court then such specific provisions have been made in the Code. Since the present offence complained is not covered by any such exception the cognizance by the learned Magistrate was not at all an error. Revision was rightly dismissed by the learned Session Judge. No interference is called for in this Criminal Application. Criminal Application is rejected summarily.