
(2014) 10 BOM CK 0158

In the Bombay High Court

Case No : Criminal Application Nos. 416 and 518 of 2014 and Criminal Writ
Petition No. 2135 of 2014

Madhavlal Narayanlal Pittie

APPELLANT

Vs

Shekhar Narayan Shetty and Others

RESPONDENT

Date of Decision : 07-10-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482 — Penal Code, 1860 (IPC) -
Section 420, 465, 468, 471

Citation : (2015) ALLMR(Cri) 1588

Hon'ble Judges : M.L. Tahaliyani, J.

Bench : Single Bench

Advocate : Ashok K. Wanwari and Bhun Chhapgar, Advs., for the Appellant; A.A. Kumbhakoni, Senior Counsel i/b. V.V. Purwant, for the Respondent

Judgement

M.L. Tahaliyani, J.—The Criminal Application No. 416 of 2014 is filed by the complainant in Criminal Case No. 310/PW/2010 pending in the Court of Additional Chief Metropolitan Magistrate, 40th Court, Girgaon, Mumbai. He had filed an FIR against unknown persons for the offence punishable under sections 465, 468, 471 and 420 of IPC, which was registered as FIR No. 111 of 2009 at Malbar Hill Police Station on 28.11.2009. The allegations in the FIR against unknown persons were that certain persons got Obituary of the complainant published in some local newspapers, showing that the Obituary was published by Vivek Pittie, son of the Applicant. Therefore, the FIR for forgery and cheating was lodged.

2. During the course of investigation it was revealed that Respondent No. 1 Shekhar Shetty had some property dispute with the Applicant and that he had a forged death certificate of the Applicant and had deployed his employee Respondent No. 2, Mr. Suyog Nar to get the obituary published. The Obituary was published through one Shri Padhye. who was working for Print Media. It was revealed that the death certificate, photograph and other papers were handed over to Mr. Padhye by Respondent No. 2 at the instance of Respondent No. 1.

Statement of said Padhye was recorded. The statement of father of Respondent No. 2 revealed that the Respondent No. 2 had made an extrajudicial confession before his father that he had handed over papers to Padhye at the instance of Respondent No. 1. After the completion of investigation, charge sheet was filed against both of them for the said offences.

3. The learned Magistrate accepted the plea of Respondent No. 1 and discharged him on the ground that there was no material to frame charge against him. The Revision Application before the Sessions Court filed by the Applicant also failed. Hence the present application under section 482 of Cr.P.C. has been filed by the Applicant. The State has also filed a writ petition being W.P. No. 2135/2014 against the order of the Sessions Court confirming the order of the Magistrate. Both, the application and the writ petition, are being decided by the common order.

4. Heard learned Counsel Mr. Wanwari on behalf of the Applicant in Criminal Application No. 416/2014, Senior Counsel Mr. Kumbhakoni on behalf of the Respondent No. 1 and learned Additional Public Prosecutor Mr. Konde-Deshmukh on behalf of the State. As far as Respondent No. 2 is concerned, he is a formal party and is facing trial before the Trial Court.

5. Before I deal with the issue raised in the present application and Petition, let me state here that there is no material against the Respondent No. 1 except the extrajudicial confession made by the Respondent No. 2 before his father. The contention of the learned Counsel Mr. Wanwari is that said extrajudicial confession is sufficient enough to frame charge against the Respondent No. 1. Learned Senior Counsel Mr. Kumbhakoni. on the other hand submitted that the extra judicial confession made by Respondent No. 2 could be used against the Respondent No. 1. But it requires corroboration to give finding with regard to the culpability of the Respondent No. 1. Various judgments were cited before me by both the sides, it is now well settled by a catena of judgments that the confession, judicial or extrajudicial, of the co-accused can be taken into consideration and is a piece of evidence. It is also equally settled law that the said confession needs corroboration for reaching a conclusion of conviction. The point argued at length by Mr. Wanwari is that despite these judgments the Trial Court could not have discharged Respondent No. 1 because a strong suspicion is enough to frame a charge. It is submitted by Mr. Wanwari that it is another thing that the Respondent No. 1 may get a judgment of acquittal at the end of Trial Court. However, that does not prevent the Trial Court from framing a charge on the basis of extra judicial confession. It is submitted that the considerations for framing charge and deciding the guilt or otherwise are always different.

6. No doubt the considerations at the initial stage when the charge is framed are different as compared to the considerations at the time of giving final judgment. However, the Court cannot ignore the fact that if the material on which the prosecution relies will not end into conviction, and if, that is obvious at the time of framing of charge the accused shall not be made to go through ordeal of

facing trial.

7. In the present case the Respondent No. 1 got anticipatory bail and therefore, he was not in police custody at all. Respondent No. 2 was arrested and he was remanded to police custody for a few days. The allegations against Respondent No. 1 are that he handed over the papers of Respondent No. 2. Therefore, interrogation of Respondent No. 2 could not have helped the police to find out the source of alleged forged death certificate. The investigation with Corporation revealed that death certificate of the Applicant was not issued by the Municipal Corporation, Greater Mumbai. However, the police could not collect any evidence as to what was the source of death certificate handed over by Respondent No. 2 to the witness Padhye. The submissions of Mr. Wanwari are to be taken into consideration in view of the over all investigation done by the police and material collected against Respondent No. 1. It appears that unfortunately police did not challenge the order of granting anticipatory bail and they did not bother to get custody of the Respondent No. 1 for interrogation to find out the source of alleged forged death certificate. No doubt, if the circumstances create a strong suspicion, a charge could be framed. But that should be cumulative effect of the circumstances and the material against the accused. In the present case it is absolutely clear that the prosecution has no other evidence except the alleged extrajudicial confession made by Respondent No. 2 before his father. The learned Additional Sessions Judge has commented upon the voluntariness and otherwise of the said confession. It may be mentioned here that it was not necessary to give any finding in that regard. It was also not necessary to see whether the statement made by Respondent No. 2 was on his own accord or it was made after the interrogation on the part of his father. What was necessary to be examined at that stage was, whether an extra judicial confession on its own was sufficient to frame charge against Respondent No. 1. After having gone through the judgment cited before me by the learned Counsel for the parties, I have come to the conclusion that if it is more than certain that such a confession cannot form basis of conviction, there was no point in framing charge and asking the Respondent "No. 1 to face the trial. For all these reasons I pass the following order:--

"I) Criminal Application No. 416 of 2014 and Criminal Writ Petition No. 2135 of 2014 are dismissed.

II) In view of the disposal of original Criminal Application No. 416 of 2014, the Criminal Application No. 518 of 2014 does not survive and is accordingly, disposed of."