

(2001) 11 BOM CK 0026

In the Bombay High Court

Case No : Criminal Application No. 482 of 1998

Madhukar Vishwanath Sonawane

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 08-11-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 340, 340(1)
Penal Code, 1860 (IPC) — Section 191, 193, 211, 482

Citation : (2002) 2 MhLj 414

Hon'ble Judges : R.K. Batta, J

Bench : Single Bench

Advocate : V.D. Bhavsar, for the Appellant; D.B. Yengal, Additional Public Prosecutor and S.N. Pagare, for the Respondent

Final Decision : Allowed

Judgement

R.K. Batta, J.—On 15-11-1977, respondent No. 2 (hereinafter referred as complainant) had filed a complaint against respondent No. 3 (hereinafter referred as original accused) u/s 7(1)(d) of the Protection of Civil Rights Act, 1976. The present applicant was a witness in the said case. The police had, after investigation into the said complaint, sent official report requesting for "A" Summary. The Chief Judicial Magistrate sent the same to S.D.P.O., Yavatmal for his recommendations upon which the police requested for "C" Summary. The Chief Judicial Magistrate did not accept the said report and took cognizance of the offence. The private complaint filed by complainant Anand Wasekar was registered as Criminal Case No. 630/1978 and the police case was registered as Criminal Case No. 1321 of 1978. Both the said cases were consolidated. After trial, the Magistrate ordered acquittal of the original accused Shankar Jadhav. The original accused thereafter filed an application u/s 340 of Criminal Procedure Code on 9-1-1981 against complainant Anand Wasekar and witness Madhukar Sonawane and prayed that they be prosecuted for giving false evidence, learned Magistrate vide order dated 17-2-1982 dismissed the said application. Thereafter the original accused Shankar Jadhav filed a Miscellaneous Criminal Appeal No. 16

of 1982 against the said order of the learned Magistrate before the Court of Session u/s 341 of Criminal Procedure Code. The learned Sessions Judge, Yavatmal vide judgment dated 29-11-1982 allowed the appeal and directed that the complaint be filed in pursuance of which complaint u/s 191 read with Sections 193 and 211 of Indian Penal Code was filed before the J.M.F.C., Yavatmal on 3-2-1983 which complaint was registered as Criminal Case No. 8 of 1983. The Chief Judicial Magistrate framed charge on 3-2-1993. On 8-3-1995, the witness Madhukar Sonavane filed an application for dismissal of the complaint which was rejected by the learned Chief Judicial Magistrate vide order dated 15-2-1996. Against this order, Criminal Revision Application No. 33 of 1996 was filed which was dismissed by learned Sessions Judge, Yavatmal. This is how the applicant witness Madhukar Sonavane has approached this Court for quashing Criminal Case No. 8 of 1983 as also the charge framed therein and the order dated 15-2-1996 passed by Chief Judicial Magistrate as also the order dated 20th October, 1997 passed by learned Sessions Judge in Criminal Revision Application No. 33 of 1996.

2. Initially the original accused Shankar Jadhav who had filed proceedings u/s 340 of Criminal Procedure Code as a result of which further proceedings started and the orders sought to be impugned were passed was not even made party in this revision. By order dated 4th September, 2001, the present applicant was allowed to join the said Shankar Jadhav as party/respondent No. 3. The said respondent No, 3, namely, the original accused was served, but no one appeared on his behalf.

3. Learned Advocate on behalf of the present applicant/witness argued before me that, no notice in respect of the proceedings u/s 340 of Criminal Procedure Code was issued either by the Magistrate or by the Sessions Court and without hearing the applicant, the learned Sessions Judge had ordered the filing of the complaint under Sections 191, 193 and 211 of Indian Penal Code. He also urged before me that the Court has no jurisdiction to entertain complaint at the instance of a private party since the same has been barred u/s 195(1)(b) of Criminal Procedure Code. He also urged that the proceedings are pending for almost two decades and as such the same be quashed. He placed reliance on number of authorities to which I shall make reference at a later stage. Learned Advocate appearing on behalf of the respondent No. 2 namely the original complainant also prays for quashing of the proceedings.

4. Learned A.P.P. urged before me that the notice u/s 340(1) of Criminal Procedure Code to the affected party is mandatory. Section 340 of Criminal Procedure Code reads as under :--

"340. Procedure in cases mentioned in Section 195 When upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in Clause (b) of Sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the

case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary -

- (a) record a finding to that effect;
 - (b) make a complaint thereof in writing;
 - (c) send it to a Magistrate of the first class having jurisdiction;
 - (d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and
 - (e) bind over any person to appear and give evidence before such Magistrate.
- (2) The power conferred on a Court by a Sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under Sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of subsection (4) of Section 195.
- (3) A complaint made under this section shall be signed, --
- (a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;
 - (b) in any other case by the presiding officer of the Court.
- (4) In this section, "Court" has the same meaning as in Section 195.

Section 341 of Criminal Procedure Code provides for appeal and reads as under:--

"341. Appeal. -- (1) Any person on whose application any Court other than a High Court has refused to make a complaint under Sub-section (1) or Sub-section (2) of Section 340, or against whom such a complaint has been made by such Court, may appeal, to the Court to which such former Court is subordinate within the meaning of Sub-section (4) of Section 195 and the superior Court may thereupon, after notice to the parties Concerned, direct the withdrawal of the complaint, or, as the case may be, making of the complaint which such former Court might have made u/s 340, and if it makes such complaint, the provisions of that section shall apply accordingly.

(2) An order under this section, and subject to any such order, an order u/s 340, shall be final, and shall not be subject to revision."

Proceedings u/s 340 can be initiated on an application made to the Court or the same can be initiated suo motu by the Court if the Court is of the opinion that it is an expedient in the interests of justice that an enquiry should be made into any offence referred to in Clause (b) of Sub-section (1) of Section 195 of Criminal Procedure Code which appears to have been committed or in relation to

the proceedings in that Court. There is no restriction as to the persons by whom an application can be made and an application u/s 340 can be made even by an Advocate. It has been held by this Court in Bhagwandas Narandas Vs. D.D. Patel and Co., that even a stranger to the proceedings during which offence is committed can apply u/s 476 of Criminal Procedure Code (Old) (which now corresponds to Section 340 of Criminal Procedure Code).

5. Learned Advocate for the applicant had urged before me that no notice in respect of the proceedings u/s 340 of Criminal Procedure Code had been issued either by the Magistrate or by the Sessions Court and without hearing the applicant as also respondent No. 2, the learned Sessions Judge had ordered filing of the complaint under Sections 191, 193 and 211 of Indian Penal Code.

6. Learned Advocate for the applicant has relied upon Kishun Prasad Vs. State of Bihar, ; Lake Nath Sahi v. Emperor reported in Criminal Law Journal Reports (Vol. IV) 219 and S. Kuppuswamy Chettiar Vs. Subbaraya Chettiar, . The ruling in S. Kuppuswamy Chettiar v. Subbaraya Chettiar (supra) states that in proceedings u/s 476 of Criminal Procedure Code, it is desirable that notice should go to the public prosecutor rather than to the Government Pleader as he is appropriate Law Officer to deal with the questions relating to prosecutions i.e. perjury and similar offences.

7. In Lake Nath Sahi v. Emperor (supra), the High Court while dealing with Section 476 of Criminal Procedure Code (Old) has laid down that is unusual and not a proper procedure for the Appellate Court which did not hear the evidence, to order the prosecution for perjury of a witness for making false statements in his deposition in the lower Court on materials in support of the prosecution which were not before the lower Court and which the witness had no opportunity of explaining while in the box.

8. In Kishun Prasad v. State of Bihar (supra), it has been laid down that where the Sessions Court filed a complaint against a witness for perjury on the basis of an observation in his appellate judgment without giving him an opportunity of being heard, the complaint filed was illegal and without jurisdiction and had to be quashed, In this case reliance has been placed on B.K. Pal Chaudhry Vs. The State of Assam, , wherein it has been held that:--

"In a case governed by Sub-section (5) of Section 479-A the terms of both Sub-sections (1) and (5) have to be complied with. The combined effect of these sub-sections is to require the court intending to make a complaint, to record a finding that in its opinion a person appearing as a witness has intentionally given false evidence and that for the eradication of the evils of perjury and in the interests of justice, it is expedient that such witness should be prosecuted for the offence and to give the witness proposed to be proceeded against, an opportunity of being heard as to whether a complaint should be made or not."

Though Section 340 does not speak of any notice and provides for preliminary inquiry, if any, yet the principles of natural justice do require that a reasonable

opportunity by issuing show cause notice should be given before coming to final conclusion for prosecution in terms of Section 340(1) of Criminal Procedure Code. The Apex Court has also laid down that such opportunity should be given.

9. In the case under consideration an application u/s 340 had been filed by the original accused namely respondent No. 3 u/s 340. The Magistrate had dismissed the said application without giving any notice to the applicant and respondent No. 2. Though it is stated by the Advocates for the applicant and respondent No. 2 that no notice was given by the Sessions Judge yet, the record of the Criminal Appeal No. 16 of 1982 shows that notices were in fact issued, but the applicants have not remained present. Therefore, in the facts and circumstances, there is no merit in the first contention of the learned Advocate for the applicant.

10. Learned Advocate for the applicant had next argued that the Court has no jurisdiction to entertain the complaint at the instance of private party since the same is barred u/s 195(1)(b) of Criminal Procedure Code. In this connection, reliance was placed on Patel Laljibhai Somabhai Vs. The State of Gujarat, and Nirmaljit Singh Hoon Vs. The State of West Bengal and Another, . This argument is in fact misconceived since the complaint in this case has been filed by the Sessions Judge, Yavatmal in terms of Section 340 of Criminal Procedure Code. Section 195(1)(b) is not attracted in the facts and circumstances of this case.

11. The next submission made by the learned Advocate for the applicant and learned Advocate for the respondent No. 2 is that the proceedings are pending for almost two decades now and as such the proceedings be quashed. Notice of this application was given to respondent No. 3, but he has not put in appearance. The record of Criminal Case 8/83 shows that so far 166 hearings have taken place in this matter and it appears that the recording of evidence has not yet started. Keeping this position in view, it is considered appropriate that the proceedings in Criminal Case No. 8 of 1983 be quashed.

12. For the aforesaid reasons, the proceedings in Criminal Case No. 8 of 1983 are hereby quashed and the application is allowed in aforesaid terms.