

(2012) 09 GUJ CK 0149
In the Gujarat High Court

Case No : Criminal Revision Application No. 676 of 2007

Maldhanbhai Barot

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 07-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 200, 202, 203, 204
Penal Code, 1860 (IPC) — Section 114, 120B, 381, 409, 420

Citation : (2013) CriLJ 465 : (2013) 2 Crimes 165 : (2013) 1 GLR 411

Hon'ble Judges : C.L. Soni, J

Bench : Single Bench

Advocate : B.S. Supehia, for the Appellant; K.L. Pandya, APP, J.J. Yajnik and
MTM Hakim, for the Respondent

Final Decision : Allowed

Judgement

C.L. Soni, J.—The petitioner has challenged the order dated 12.7.2005 passed by the learned Metropolitan Magistrate, Court No. 5, Ahmedabad in Inquiry Case No. 33 of 1999 whereby the complaint filed by the petitioner is dismissed u/s 203 of the Code of Criminal Procedure, 1973.

1.1 The petitioner filed the complaint on 2.7.1999 against respondent Nos. 2 and 3 alleging that the respondent Nos. 2 and 3 are father and son and they created forged documents for the purpose of getting admission in Ayurvedic College. It is stated in the complaint that though respondent No. 3 had passed 12th Standard in Science Stream in four trial, still, he presented false certificate of passing the examination within two trial only. It is the further case of the petitioner that the respondent No. 2, by misuse of his position, got admission of respondent No. 3 on the basis of forged certificate. Thus, respondent Nos. 2 and 3 conspired for creation of fabricated and forged certificate in collusion with each other, got the admission in Gulab Kunvarba Ayurvedic College at Jamnagar on the basis of such forged certificate and by making misrepresentation on the basis of such forged certificate. The complainant has thus alleged commission of offence under

sections 381, 409, 465, 471A, 114 and Sec. 120B of the Indian Penal Code [hereinafter referred to as "the IPC" for short] against respondent Nos. 2 and 3.

On the complaint, the learned Magistrate passed order dated 2.7.99 u/s 202 of the Code of Criminal Procedure (hereinafter referred to as "the Code" for short) directing the investigation to be made by the police officer.

2. It appears that pursuant to the said directions, the PI CID Crime, Ahmedabad City Unit made investigation and submitted his report dated 2.3.2000. According to the police investigation, the offence of issuance of false certificate had taken place in the School at Ghatlodia, Ahmedabad and such false certificate was utilized for admission at Ayurvedic College Jamnagar and for the forged certificate as also for admission on the basis of such forged certificate, along with the respondent Nos. 2 and 3, other persons were also involved.

3. Learned Magistrate, however, dismissed the complaint u/s 203 of the Code on two grounds, one is to the effect that except respondent No. 3, other accused persons were Government servants and no prior sanction is taken for filing the complaint and the second is that the bogus certificate was issued for the purpose of getting admission in the College at Jamnagar and same were obtained during the service as Director at Gandhinagar and therefore offence did not appear to have taken place in the jurisdiction of the learned Magistrate.

4. I have heard learned advocate Mr. B.S. Supehia for the petitioner and Mr. K. L. Pandya, learned A.P.P. for the State and learned advocate Mr. MTM Hakim for the respondent Nos. 2 and 3.

5. Learned Advocate Mr. Supehia for the petitioner has submitted that the learned Magistrate has committed grave error in dismissing the complaint u/s 203 of the Code on both the grounds. Learned advocate Mr. Supehia would submit that section 203 of the Code requires the learned Magistrate to consider the material on record so as to decide whether or not there is sufficient ground for proceeding with the complaint or not. Mr. Supehia submitted that once the learned Magistrate has issued direction for police investigation u/s 202 of the Code and once the police has completed investigation and placed on record its report, it was incumbent upon the learned Magistrate to consider the report placed on record and then to decide whether to proceed with the complaint or not. Learned advocate Mr. Supehia submitted that the learned Magistrate has not considered the material on record and, therefore, dismissal of the complaint on the ground of lack of jurisdiction to proceed with the complaint was bad in law.

5.1 Learned Advocate Mr. Supehia submitted that the learned Magistrate was also not justified in dismissing the complaint even on the second ground about not obtaining sanction prior to the filing of the complaint. He submitted that the offences alleged in the complaint are under sections 381, 409, 465, 471A, 114 and Sec. 120B of the IPC and such offences cannot be regarded as the offences committed by the public servant while discharging or performing any act in discharge of his official duty. In support of this argument, learned advocate Mr.

Supehia relied on the decision in the case of Parkash Singh Badal and Another Vs. State of Punjab and Others, and pointed out that Hon"ble the Supreme Court has laid down that no sanction for prosecution is necessary for the offences under sections 420, 467, 468, 470 and 120B of the IPC. Relying on this ruling of Hon"ble the Supreme Court, he submitted that in the facts of the present case also, criminal act of the respondent Nos. 2 and 3 would constitute the above mentioned offences under the IPC and as per the judgment of Hon"ble the Supreme Court, no sanction is required and, therefore, the learned Magistrate has committed grave error in dismissing the complaint on this ground. He thus urged to allow this revision application and remand the matter to the learned Magistrate to proceed with the matter in accordance with law.

6. In reply to the above said arguments advanced by the learned advocate Mr. Supehia, learned advocate Mr. Hakim appearing for respondent Nos. 2 and 3 pointed out that the complaint is filed maliciously just to wreck vengeance against respondent Nos. 2 and 3. He submitted that since the complaint is filed after a period of 10 years the order of the learned Magistrate may not be interfered.

6.1 Mr. Hakim submitted that except respondent No. 3, other persons alleged to have been involved are Government servants and the allegations in the complaint are of misuse of their power as Government servant and, therefore, sanction was very much necessary before filing the complaint and since no sanction was obtained by the petitioner before filing the complaint, the learned Magistrate has rightly dismissed the complaint by exercising power u/s 203 of the Code. Learned Advocate Mr. Hakim further pointed out that in fact, the offences also cannot be said to have taken place within the jurisdiction of the learned Magistrate because fabricated and forged certificates were alleged to have been used at Jamnagar for the purpose of obtaining admission in Ayurvedic College at Jamnagar and, therefore, till the same were utilized, no offence could be said to have been committed. He further pointed out that even otherwise, misuse of the authority is alleged against the public servant is also in relation to the position enjoyed by respondent No. 2 at Gandhinagar, and, therefore, the learned Magistrate would not have any jurisdiction to entertain the complaint, and therefore, the complaint is rightly dismissed by the learned Magistrate u/s 203 of the Code.

7. Learned A.P.P. Mr. K.L. Pandya appearing for the respondent State submitted that there is police report on record and from the material of police report, creation of certificate was from the area of Ghatlodia, Ahmedabad. He submitted that as per the complaint, offence alleged are under the IPC and the above offence could not be said to have any connection with the duty of the Government servant. Learned APP Mr. Pandya has drawn attention of this Court to the police report as also to the provisions of section 202 of the Code as well as the provisions of section 197 of the Code viz-a-viz contents of the complaint.

7.1 Having heard the learned advocates for the parties and having perused the

record, it appears that the learned Magistrate has not considered the material in the form of police report available on record before dismissing the complaint u/s 203 of the Code. Section 203 of the Code reads as under:

203. Dismissal of complaint.-If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) u/s 202, the Magistrate is of opinion that there is no sufficient ground for prosecuting, he shall dismiss the complaint, and in every such case, he shall briefly record his reasons for so doing.

7.2 As per the provisions of section 203 of the Code, the learned Magistrate is required to consider the statement of the complainant on oath and of the witnesses and the result of the inquiry or investigation u/s 202 of the Code and is to form opinion that there is no sufficient ground for proceeding with the complaint and then to dismiss the complaint. Hon''ble the Supreme Court in case of *Pramatha Nath and 2, Surendra Mohan Basu versus Saroj Ranjan Sarkar* reported in AIR 1962 SC 876, has observed as under in para 48:

(48) Under the Code of Criminal Procedure the subject of "Complaints to Magistrates" is dealt with in Chapter XVI of the Code of Criminal Procedure. The provisions relevant for the purpose of this case are Ss. 200, 202 and 203. Section 200 deals with examination of complainants and Ss. 202, 203 and 204 with the powers of the Magistrate in regard to the dismissal of complaint or the issuing of process. The scope and extent of Ss. 202 and 203 were laid down in *Vadilal Panchal Vs. Dattatraya Dulaji Ghadigaonker and Another*, . The scope of enquiry under S. 202 is limited to finding out the truth or otherwise of the complaint in order to determine whether process should issue or not and S. 203 lays down what materials are to be considered for the purpose. Under S. 203 Criminal Procedure Code the judgment which the Magistrate has to form must be based on the statements of the complainant and of his witnesses and the result of the investigation or enquiry if any. He must apply his mind to the materials and form his judgment whether or not there is sufficient ground for proceeding. Therefore if he has not misdirected himself as to the scope of the enquiry made under S. 202, Criminal Procedure Code, and has judicially applied his mind to the material before him and then proceeds to make his order it cannot be said that he has acted erroneously.

As per the law laid down by the Hon''ble Supreme Court in the said judgment, learned Magistrate is required to apply his mind to the material on record and then to form his opinion whether or not there is sufficient ground to proceed with the complaint.

7.3 In the case on hand, since neither the statement of complainant nor the statement of any witness was recorded, there was no question of considering such statements. However, learned Magistrate was certainly required to consider the result of investigation which was there on record pursuant to the direction issued by the learned Magistrate u/s 202 of the Code.

7.4 The learned Magistrate appears to have simply taken note of the investigation but has not considered the contents of the said report. As per section 203 of the Code learned Magistrate is required to consider the result of investigation and not just to take note of the investigation. Learned Magistrate has not considered the result of investigation. Result of investigation, as per the report reveals that the offence of creating bogus and forged certificate had taken place in the school at Ghatlodia, Ahmedabad. The learned Magistrate has mainly considered that the bogus certificates were utilized at Jamnagar for getting admission in Ayurvedic College. However, place of creation of false certificate is not considered on the basis of the report of the police. In view of this, order of dismissal of the complaint on the ground that the learned Magistrate has no jurisdiction, cannot be sustained.

7.5 As regards second ground on which the complaint was dismissed i.e. about filing of the complaint without prior sanction, it is required to be noted that the offences alleged in the complaint are under sections 381, 409, 465, 471A, 114 and Sec. 120B of the IPC. The allegations are of forging and creating false and bogus certificate in order to get admission in Ayurvedic College, Jamnagar. Further allegation is that in such offence, respondent nos. 2 and 3 were also parties.

8. As held by Hon"ble the Supreme Court in the case of Parkash Singh Badal and Another Vs. State of Punjab and Others, , which is relied on by the learned advocate Mr. Supehia as well as the decision of the Hon"ble Apex court in the case of Bholu Ram Vs. State of Punjab and Another, no prior sanction is required for filing complaint for the offences under sections 409, 420 and 471 of the IPC. In case of Prakash Singh (supra), the Hon"ble Supreme Court observed as under in para 50:

The offence of cheating u/s 420 or for that matter offences relatable to Sections 467, 468, 471 and 120B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence.

9. In Bholu Ram Vs. State of Punjab and Another, , Hon"ble the Supreme Court observed as under in para 60:

We express our inability to agree with the learned counsel. It is settled law that offences punishable under Sections 409, 420, 467, 468, 471 etc. can by no stretch of imagination by their very nature be regarded as having been committed by a public servant while "acting or purporting to act in discharge of official duty" (vide Parkash Singh Badal and Another Vs. State of Punjab and Others, .

10. In view of the above settled principles of law, order passed by the learned Magistrate on the ground that no sanction was taken before filing the complaint cannot be sustained.

11. The contention raised by the learned advocate Mr. Hakim that the complaint is filed at belated stage and it was filed just to wreck vengeance against the respondents cannot be considered as the alleged offences are punishable for the sentence beyond the period of three years, therefore, the ground of delay at this stage cannot be considered especially when the learned Magistrate has dismissed the complaint only on the above said two grounds. Even apart from this, the learned Magistrate has not decided the complaint on merits on the basis of any evidence, therefore, when it is found that the order of the learned Magistrate dismissing the complaint under sec. 203 of the Code is contrary to the settled principles of law, the only course open would be to remand the matter to the learned Magistrate by quashing and setting aside the impugned order and to direct the learned Magistrate to proceed with the complaint in accordance with law.

12. In light of the above, present revision application is required to be allowed and the impugned order passed by the learned Magistrate is required to be quashed and set aside. In result, this revision application is allowed. Impugned order dated 12.9.2007 passed by the learned Magistrate, Metropolitan Magistrate Court No. 5 below Exh. 1 in Inquiry Case No. 33 of 1999 is hereby quashed and set aside. The complaint is ordered to be restored to file and the learned Magistrate is directed to proceed with it in accordance with law. The learned Magistrate shall proceed with the complaint and decide it independently without being influenced by any of the observations made in this judgment. R&P to be sent back forthwith.