

(2016) 04 BOM CK 0150

In the Bombay High Court

Case No : Criminal Writ Petition No.674 of 2015

Narayan

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 06-04-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 227

Citation : (2016) ALLMRCri 3917

Hon'ble Judges : Z.A. Haq, J.

Bench : Single Bench

Advocate : Shri N.D. Khamborkar, Advocate, for the Petitioner; Shri R.S. Nayak, APP, for the Respondent

Final Decision : Dismissed

Judgement

Z.A. Haq, J.— Heard learned advocates for the respective parties.

2. Rule. Rule made returnable forthwith.

3. The petitioner has filed this petition challenging the order passed by the learned Magistrate on 20th February, 2015 rejecting the application (Exh.63) filed by the petitioner praying that he be discharged from the prosecution for the offences punishable under Sections 120B, 200, 409, 420, 468, 471, 477A, 201 and 511 and Section 34 of the Indian Penal Code. The petitioner has also challenged the order passed by the Sessions Court dismissing the revision filed by the petitioner challenging the above order.

4. On complaint filed by Vijay Gupta, the learned Magistrate directed investigation and after final report came to be submitted, directed registration of the First Information Report against 9 persons (including the petitioner). The petitioner was working as Education Officer (Secondary), Zilla Parishad, Bhandara at the time of commission of the alleged offence. The petitioner had filed the application (Exh.63) before the Magistrate contending that the petitioner cannot be prosecuted without sanction by the State Government as required by

Section 197 of the Code of Criminal Procedure and as there was no sanction of the State Government, the prosecution of the petitioner is illegal. The petitioner prayed that he be discharged from the prosecution. The learned Magistrate by the order dated 20th February, 2015 rejected the application (Exh.63) filed by the petitioner. The petitioner, being aggrieved by the order passed by the learned Magistrate, had filed Revision Application No. 15 of 2015, which is dismissed by the Sessions Court.

The petitioner, being aggrieved in the matter, has filed this writ petition.

5. Shri N.D. Khamborkar, learned advocate for the petitioner has relied on the judgment given in the case of Anil Kumar v. M.K. Aiyappa, reported in (2013) 10 SCC 705 and has submitted that the sanction under Section 197 of the Code of Criminal Procedure is necessary at the precognizance stage and the learned Magistrate could not have directed the investigation under Section 156(3) of the Code of Criminal Procedure without there being sanction from the State Government to prosecute the petitioner. It is submitted that the learned Magistrate has committed an error in overlooking the established law that the Government servants cannot be prosecuted without there being sanction as required by Section 197 of the Code of Criminal Procedure. It is submitted that the learned Sessions Judge has also failed to appreciate these aspects and therefore, the order passed by the learned Sessions Judge is also unsustainable. It is prayed that the impugned orders be set aside, the application (Exh.63) filed by the petitioner be allowed and the petitioner be discharged from the prosecution.

6. The learned A.P.P. has supported the impugned order and has prayed that the petition be dismissed.

7. With the assistance of the learned advocate for the petitioner and the learned A.P.P., I have gone through the documents placed on record of the petition. The accusations against the petitioner are to the effect that the bills submitted for the claim of the other eight accused (Headmaster and teachers working in the school) for reimbursement of the Leave Travel Concession were approved by the petitioner having knowledge that the bills were false, fraudulent and bogus. The learned Magistrate and the learned Additional Sessions Judge have rightly considered all the relevant aspects and have concluded that whether the petitioner acted in official course of duty or not will have to be decided after conducting the trial. The learned Magistrate and the learned Additional Sessions Judge have recorded that the above point can be decided only after giving opportunity to the prosecution to substantiate its contentions.

8. In my view, the conclusion of the learned Magistrate and the learned Additional Sessions Judge is proper and does not suffer from any patent illegality or perversity requiring interference by this Court under Articles 226 and 227 of the Constitution of India.

In view of the conclusions of the learned Magistrate and the learned Additional

Sessions Judge that the point as to whether the petitioner was performing his official duty or not will have to be decided only after giving an opportunity to the prosecution to substantiate its contention, the judgment relied upon by the learned advocate for the petitioner is of no assistance to him.

I see no reason to interfere with the impugned orders.

9. The petition is dismissed. In the circumstances, the parties to bear their own costs.

10. At this stage, Shri N.D. Khamborkar, learned advocate for the petitioner prays for continuation of the interim relief for four weeks. The learned A.P.P. has opposed the prayer made by the learned advocate for the applicant.

11. In view of the facts of the case, the prayer made by the learned counsel for the petitioner is rejected.