

(2014) 11 BOM CK 0158

In the Bombay High Court

Case No : Criminal Writ Petition Nos. 690 and 808 of 2009

Omprakash

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 14-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 1(b)(i), 1(b)(ii), 195 — Penal Code, 1860 (IPC) - Section 172, 173, 174, 175, 176

Citation : (2015) ALLMR(Cri) 2289

Hon'ble Judges : M.T. Joshi, J.

Bench : Single Bench

Advocate : B.N. Magar, Advocate holding for J.V. Deshpande, Advocate, for the Appellant; P.J. Bharad, APP, for the Respondent

Final Decision : Dismissed

Judgement

M.T. Joshi, J.? Heard both sides. Both the present writ petitions between the same parties have arisen out of the same question of law and therefore, those are being disposed of by this common judgment.

2. Whether the complaint, on the allegations that the affidavits sworn before the Superintendent of Court and filed thereafter in the court proceedings, can be the subject matter of a complaint directly by the aggrieved person or by the concerned Court on the allegations that the contents of the said affidavit are false, is the issue before this Court.

3. Both the parties i.e. the petitioner as well as respondent No. 2 are agitating certain civil claim in different civil proceedings.

4. Criminal writ petition No. 690/2009 involves an issue as to whether the affidavit filed in the appeal claiming that the petitioner had no knowledge of certain facts. This, according to the respondent No. 2, was false to the record and therefore, he filed a complaint before the learned Chief Judicial Magistrate for the offences punishable under section 177, 181, 191, 193 and 209 of the I.P.

Code.

The learned Chief Judicial Magistrate held that in view of the bar of the provisions of section 195 of the Code of Criminal Procedure, the complaint would not be maintainable. In the Revision, the learned Additional Sessions Judge, however, held that the complaint would be maintainable. Therefore, the present writ petition by the original accused.

5. In Criminal Writ Petition No. 808/2009, an affidavit before the trial court allegedly suppressing certain facts of executing the sale-deed is the cause for filing similar complaint. In that case, the learned Judicial Magistrate First Class held that the complaint would not be maintainable. Therefore, the accused i.e. the present petitioner was discharged. The learned Additional Sessions Judge, in the Revision, however, held that the complaint was maintainable and therefore, the order was set aside. Hence, the present writ petition.

6. At this stage, it is not required to go to the facts of the case as the learned Sessions Judge has also avoided from doing the same as only maintainability of the complaint was in issue.

7. It is an admitted fact that the respective affidavits were sworn before the Superintendent of the Civil Court and thereafter, those were filed in the respective civil proceedings by the present writ petitioner.

8. Section 195 of the Code of Criminal Procedure runs as under:-

"195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.-

(1) No Court shall take cognizance -

(a)(i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence.

Except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b)(i) of any offence punishable under any of the following sections of the Indian Penal Code, namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 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) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

[except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.]

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint;

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a Tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."

9. The distinction between the provisions of Section 195, 1(b)(i) and 1(b)(ii) is highlighted by the Supreme Court of India in the case of Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Another, and by this Court in the case of Annasaheb Ramchandra Kunnure Vs. Mrs. Parvati Parihar and Another, .

10. From the record, it is clear that the affidavit was first sworn before the Superintendent of the concerned Court and thereafter, it was filed in the concerned civil proceeding by the present writ petitioner. In that view of the matter, the alleged offences were not committed custodia legis but affidavits were allegedly prepared earlier and presented in the Court.

11. The learned counsel for the petitioner relied on the following authorities;

(I) Shri C.P. Kotwal Vs. Shri Ali Ashad, Instrument Officer, Gulf Pharmaceutical Industries, P.D. Shinde, P.I., The Commissioner of Police and The State of Maharashtra,

(II) Rajkumar Agrawal and Another Vs. State of Maharashtra and Another,

(III) Subhash Ramchandra Durge Vs. Deepak Annasaheb Gat and Another,

(IV) Harish Chandra Pathak Vs. Anil Vats and The State of U.P.,

(V) Legal Remembrancer of Govt. of West Bengal Vs. Haridas Mundra,

In the facts of the present case, the reliance of the learned counsel for the petitioner on the above authorities is misplaced in view of the clear pronouncement by the Supreme Court of India in the case of Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Another, and by this Court in the case of Annasaheb Ramchandra Kunnure Vs. Mrs. Parvati Parihar and Another, .

12. In that view of the matter, upon going through the ratio of the above authorities, I do not find any reason to interfere with the impugned orders.

13. In the result, both the writ petitions are dismissed.

14. After pronouncement of the order, Mr. J.V. Deshpande, learned counsel for the petitioners prays for extension of the interim stay to the proceedings granted earlier.

15. As the case is pending since long, the prayer is rejected.

16. It is found that R & P was called by this Court. R & P be sent back. The parties in Criminal Writ Petition No. 808/2009 are directed to appear before the learned Judicial Magistrate First Class, Vaijapur on 2nd December, 2014 and the parties in Criminal Writ Petition No. 690/2009 are directed to appear before the learned Chief Judicial Magistrate, Aurangabad on 9th December, 2014.