
(2016) 09 BOM CK 0147

In the Bombay High Court

Case No : Criminal Application No. 3398 of 2016

Ramesh Marutirao Jadhav

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 27-09-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Maharashtra Police Act, 1951 — Section 161

Citation : (2017) 1 AIRBomRCri 346 : (2017) ALLMRCri 2135

Hon'ble Judges : A.V. Nirgude and V.L. Achliya, JJ.

Bench : Division Bench

Advocate : Mr. Amol S. Sawant, Advocate, for the Applicant; Mrs. P.V. Diggikar, APP, for the Respondent-State

Final Decision : Dismissed

Judgement

V.L. Achliya, J. - Rule. Rule returnable forthwith. By the consent of the parties heard finally at the stage of admission.

2. The applicant herein has preferred this application under Section 482 of Cr.P.C. for quashing Regular Criminal Case No. 38/2013 pending in the Court of Judicial Magistrate First Class, Udgir, Dist. Latur on the ground that Section 161(1) of Maharashtra Police Act operates as a bar to entertain the case against the applicant.

3. Before appreciating the submissions advanced, it is necessary to consider in brief the facts leading to filing of charge-sheet against the applicant. On 03/01/2012 one Laxman Kendre, Police Inspector attached to police station Udgir, (Rural) Tq. Udgir, Dist. Latur, filed complaint against the applicant pursuant to the order dated 31/12/2011 received from Superintendent of Police, Latur. In the complaint filed, the complainant has alleged that during the period 22/01/2009 to 09/11/2009 the applicant was posted as Police Inspector, Police Station Udgir, Dist. Latur. During his tenure as Police Inspector he was found to be indulged into commission of various illegal acts amounting to offence. On

receipt of the complaint preliminary enquiry was conducted through Shri Ramesh Kaltewar, the then Deputy Superintendent of Police, Udgir, who has found prima facie substance in the allegations made in the complaint. He submitted report to the Superintendent of Police, Latur. On due consideration of the report of the preliminary enquiry, the Superintendent of Police Latur directed the complainant to lodge complaint against the applicant. On the basis of the complaint lodged the offence under Sections 201, 213, 409, 420, 467, 468, and 471 of IPC came to be registered against the applicant vide crime no. 01/2012. After the registration of the offence investigation was conducted. During the course of investigation statements of various persons were recorded which includes some of the police personnel working with the police station Udgir, as well as Panchas whose signatures were obtained in back date and few other persons. All of them supported the allegations made in the complaint alleged against the applicant and disclosed various illegal acts amounting to offence committed by applicant during his posting as police station incharge of police station Udgir. On completion of the investigation the charge sheet was prepared and filed in the Court of JMFC. Being aggrieved the applicant has preferred this application for quashing the criminal proceedings mainly on the ground that the proceeding against the applicant is not maintainable in law as the same is filed beyond statutory period of 6 months as provided under Section 161 of Maharashtra Police Act.

4. Before filing the present application the applicant had approached this Court under Section 482 of Cr.P.C. seeking quashment of FIR vide Criminal Application No. 154/2012. The said application was rejected by this Court vide order dated 03/04/2012. In the application filed the applicant had taken the plea that complaint lodged against him is barred by limitation i.e. limitation as provided under Section 161 of Maharashtra Police Act, 1951. The application was rejected by observing that the investigation can not be stalled in exercise of power under Section 482 of Cr.P.C.

5. Mr. Amol Sawant the learned counsel for the applicant has submitted that as per the FIR the first act which is alleged to be an offence attributed against the applicant committed on 28/03/2009 and subsequent act alleged to be committed on 13/04/2009. Charge sheet has been filed on 01/02/2013 which is beyond the statutory period of six months provided under Section 161 of Maharashtra Police Act and therefore the cognizance of offence ought not have been taken by the learned Magistrate. He has further submitted that even no previous sanction from the State Government was obtained for entertaining the prosecution within extended period of 2 years from the date of commission of offence as provided under provisions to Section 161(1) of the said Act. He has further submitted that the applicant was posted as police officer with police station Udgir and the acts alleged amounting to criminal offence referred in charge-sheet being very much connected with discharge of his duty as a police officer the applicant is entitled for protection under Section 161 of the Maharashtra Police Act.

6. According to learned counsel, Section 161 of the said Act lays down prohibition to entertain such prosecution instituted beyond six months of the act complained of. He has further submitted that even no sanction to extend the period upto two years to institute such criminal proceedings was obtained from the State Government before lodging the prosecution against the petitioner. In this back ground it is contended that the prosecution as instituted against the applicant is not maintainable and liable to be quashed. He has further submitted that the applicant has retired from service in 2005 and continuation of such criminal proceeding would lead to humiliation and harassment to the applicant and it would amount to gross abuse of process of Court.

7. On the other hand the learned APP for the State submitted that protection under Section 161 of Maharashtra Police Act is not available to the applicant. He has submitted that the offence for which the applicant is charged can not be termed as act committed in discharge of duty or as an authority as a police officer. So also the offence as registered against the applicant can not be termed as act under the colour or in excesses of such duty or authority as police officer. It is therefore contended that the application filed is without any basis and merits and liable to be rejected.

8. On appreciation of submissions advanced, the material question which falls for our consideration is whether in the facts of the present case protection of Section 161 (1) is available to the applicant. Section 161 of the Maharashtra Police Act (erstwhile known as Bombay Police Act, 1951) reads as under :

161. Suits or prosecutions in respect of acts done under colour of duty as aforesaid not to be entertained, or to be dismissed if not instituted [within the prescribed period]

(1) In any case of alleged offence by [the Revenue Commissioner, the Commissioner], a Magistrate, Police Officer or other person, or of a wrong alleged to have been done by [such Revenue Commissioner, Commissioner], Magistrate, Police Officer or other person, by any act done under colour or in excess of any such, duty or authority as aforesaid, or wherein it shall appear to the Court that the offence or wrong if committed or done was of the character aforesaid, the prosecution or suit shall not be entertained, or shall be dismissed, if instituted, more than six months after the date of the act complained of:

[Provided that, any such prosecution against a Police Officer may be entertained by the Court, if instituted with the previous sanction of the State Government within two years from the date of the offence.]

In suits as aforesaid one month's notice of suit to be given with sufficient description of wrong complained of

(2) In the case of an intended suit on account of such a wrong as aforesaid, the person intending to sue shall be bound to give to the alleged wrong-doer one month's notice at least of the intended suit with sufficient description of the

wrong complained of, failing which such suit shall be dismissed.

Plaint to set forth service of notice and tender of amends

(3) The plaint shall set forth that a notice as aforesaid has been served on the defendant and the date of such service, and shall state whether any, and if any, what tender of amends has been made by the defendant. A copy of the said notice shall be annexed to the plaint endorsed or accompanied with a declaration by the plaintiff of the time and manner of service thereof.

9. Plain reading of Section 161 contemplates filing of suits or prosecution in respect of acts done under colour or in excess of any duty or authority conferred on the officers mentioned in the said provision. If we consider the case, set out in the application and the submissions advanced, it is the contention of the applicant that as the applicant was posted as police officer and acts alleged amounting to offence being committed in discharge of the duties as a police officer the protection under Section 161 is available to the applicant and the prosecution instituted beyond the period of 6 months from the commission of alleged act, the prosecution is not maintainable. It is the contention of the applicant that Section 161 of the said Act is a protective umbrella which prevents police officers from facing unwarranted prosecution. The said provision has been incorporated in the statute with paramount consideration that police officer shall discharge their duty without any fear. It is contended that it is nowhere the case of the complainant that he has not registered the offence against the accused persons, after the person was caught with charas. So also it is nowhere the case of the prosecution that he has not registered the case in respect of Sandal wood which was seized. He has submitted that the owner of Sandal wood has never made any grievance in respect of the genuineness of the Sandal wood. The Sandal wood was released as per the order passed by the Judicial Magistrate. There is no evidence to show that amount of Rupees 60,000/- was found with the accused and still same has not been recorded in the panchanama.

10. In our view no case is made out to invoke powers under Section 482 of Cr.P.C. to quash the proceedings. The offence as registered against the applicant for which he is charge sheeted have no nexus with the acts done in discharge of duty or in the colour or in excess of any such duties of authority as a police officer.

11. Charge-sheet filed against the applicant reflects that it is transpired during the investigation that on 28/03/2009 three persons namely Sohel Shaikh Bablu Baig and Nabi Baig were found near Nalegaon Naka at Udgir by the Police panchas headed by applicant. Out of those three persons one person by name Sohel Shaikh was found to be carrying one bag in which 1 Kg. 200 Grams of charas was found. During his personal search one mobile, currency notes of denomination of 500 to the tune of Rupees 60,000/- to 70,000/- recovered. From the other accused person Bablu Shakil Mirza one bag containing 400 Grams of charas was found. In the personal search of other accused Nabi Shaikh 400

Gram of charas was found. The applicant has kept cash amount recovered from Sohail Shaikh with him. He has not shown the same in panchnama nor deposited the same in police station. There are statements made to this effect made by the police personnel against the applicant, who were members of police accompanied with applicant and present at the time of personal search and seizure. Similarly it is transpired during the course of investigation that on 13/04/2009 one Scorpio jeep with two persons which was intercepted, was brought to police station in which the Sandal wood was lying. Out of those two persons one Dadarao Dande the person indulged into smuggling of Sandal wood was handcuffed and detained at police station for two days. It was revealed that the applicant has sold the original sandal wood and replaced the quantity by depositing fake Sandal wood. He kept the muddemal property with him for a period of 16 days. Though the property was seized on 13/04/2009, it was physically given in possession of concerned official on 30/04/2009 that too by replacing the original by fake one. It was further revealed that pursuant to Court order the person who approached to take the property in possession refused to accept the same for the reason that Sandal wood which was lying at police station was not the Sandal wood which was stolen from his field. There are number of witnesses examined during the course of investigation who have supported the allegations. Therefore the question before us whether the allegations as made against the applicant and the offences registered can be termed as acts as contemplated under Section 161 of the Maharashtra Police Act. The meaning of the expression "in the colour of any duty or authority as envisaged in Section 161 (1) of the Maharashtra Police Act has been considered and interpreted by the Apex Court in the case of Virupaxappa Veerappa Kadampur v. State of Mysore reported in AIR 1963 SC 849. In para 9 and 10 the Apex Court has observed as under :

(9) The expression "under colour of something" or "under colour of duty" or "under colour of office" is not infrequently used in law as well as in common parlance. Thus in common parlance when a person is entrusted with the duty of collecting funds for, say, some charity and he uses that opportunity to get money for himself, we say of him that he is collecting money for himself under colour of making collections for a charity. Whether or not when the act bears the true colour of the office or duty or right, the act may be said to be done under colour of that right, office or duty, it is clear that when the colour of the office or duty or right, the act may be said to be done under colour of that right, office or duty it is clear that when the colour is assumed as a cover or a cloak for something which cannot properly be done in performance of the duty or in exercise of the right or office, the act is said to be done under colour of the office or duty or right. It is reasonable to think that the legislature used the words "under colour" in Section 161 (1) to include this sense. It is helpful to remember in this connection that the words "colour of office" have been stated in many law lexicons to have the meaning just indicated above. Thus in Wharton's Law Lexicon, 14th Edition, we find at page 214 the following:

"Colour of office"

"When an act is unjustly done by the countenance of an office, being grounded upon corruption, to which the office is as a shadow and colour."

In Stround's Judicial Dictionary, 3rd Edition, we find the following at page 521:

Colour : " "Colour of office" is always taken in the worst part, and signifies an act evil done by the countenance of an office, and it bears a dissembling face of the right of the office, whereas the office, is but a veil to the falsehood, and the thing is grounded upon Vice, and the Office is as a shadow to it. But "by reason of the office" and "by virtue of the office" are taken always in the best part."

(10) It appears to us that the words " under colour of duty" have been used in Section 161 (1) to include acts done under the cloak of duty, even though not by virtue of the duty. When he (the police officer) prepares a false Panchnama or a false report he is clearly using the existence of his legal duty as a cloak for his corrupt action or to use the words in Stroud's Dictionary " as a veil to his falsehood." The acts thus done in dereliction of his duty must be held to have been done "under colour of the duty".

12. We have discussed in the foregoing paras the offences alleged against the applicant. The applicant is alleged to have misappropriated the cash amount to the tune of Rs.60,000/- to 70,000/- recovered from the accused during the search. It is further alleged that huge quantity of Sandal wood i.e. to the tune of 5 to 6 quintal worth about 5 to 6 lacks was seized from the accused persons involved in the case. The applicant has illegally kept the custody of Sandal wood with him for 16 days. He replaced the original Sandal wood with a fake one. It is also revealed during the investigation that he has sold the Sandal wood which was seized, to some persons and replaced the same by fake one. The person from whose field the Sandal wood was cut and stolen and obtained the order from the Court of Magistrate, refused to take custody as same was found to be different than the Sandal wood which was stolen from his field. It was also revealed during the course of investigation that one of the accused who was caught with the Sandal wood and detained at police station for 2 days, later on allowed to go to his house by accepting Rs.40,000/- as bribe. There is a statement to this effect made by the person who has paid the amount to the applicant. There are number of police personnel who have deposed against the applicant about various misconducts and activities of the applicant including preparation of false panchanama, changing the panchanama, creating panchanama in back date and forcing the subordinates to change the documents. Therefore, the offences alleged against the applicant cannot be termed as an act falling within the scope of Section 161 of Maharashtra Police Act. The act of cheating, fabrication of record, misappropriation of property alleged against the applicant cannot be termed as an act for which protection under Section 161 of the Act can be claimed. The act alleged against the applicant cannot be termed as act done under colour or in excess duty or authority as a police officer.

13. Mr. Amol Sawant, learned counsel for the applicant has referred and relied

upon the decision of the Apex Court in the case of K.K. Patel and another v. State of Gujarat and another reported in 2000 Bom. C.R. (Cri.) 505 in support of the submission that protection under Section 161 (1) of the Maharashtra Police Act is available to the petitioner. In our view the decision in said case have no bearing upon the facts of the present case. The facts of the present case are altogether different than the facts of the case relied by the learned counsel. We have already discussed in the foregoing paras that the acts alleged against the applicant noway relates to discharge of the duty as a police officer or remotely connected with the authority as a police officer.

14. The Apex Court in the case of State of Maharashtra v. Narhar Rao reported in AIR 1966, S.C. 1783 has considered the purport of expression "Act done under the colour of office" and also discussed the test to be applied to determine as to whether any such acts fall within the scope of protection available under Section 161 of Bombay Police Act 1951 (now renamed as Maharashtra Police Act). The Apex Court has observed In para (3) as under :

3] ?.....

It is manifest that in order that the accused person against whom a prosecution has been launched may get the benefit of six months period of limitation under the Section, it must appear to the Court (1) that the offence was committed under colour of any duty imposed or any authority conferred by any provisions of the Bombay Police Act or any other law for the time being in force, or (2) that the act was done in excess of any such duty or authority as aforesaid. The question arising in this case, therefore, is whether the alleged act of the respondent in accepting bribe was an act done under colour of the duty imposed or the authority conferred on the respondent by any provision of law or in excess of any such duty or authority as aforesaid. In examining this question it is necessary, in the first place, to ascertain what act is complained of any then to see if there is any provision of the Bombay Police Act or any other law under which it may be said to have been done or purported to have been done. In this connection, it is important to remember that an act is not done under colour of an office merely because the point of time at which it is done coincides with the point of time the accused is invested with the powers or duty of the office. To be able to say that an act was done under the colour of an office one must discover a reasonable connection between the act alleged and the duty or authority imposed on the accused by the Bombay Police Act or other statutory enactment. Unless there is a reasonable connection between the act complained of and the powers and duties of the office, it is difficult to say that the act was done by the accused officer under the colour of his office."

15. Applying the above quoted test laid down by the Apex Court, in the instant case, we have no hesitation to observed that the acts alleged against the applicant have no reasonable connection with the act complained of and the powers and duties of the office as of applicant as police officer. The acts of misappropriation, cheating, fabrication or false reasons cannot be termed as an

act done in discharge of duty or in colour of office or in excess of any such duty.

16. It is quite settled position in law that the exercise of powers under Section 482 of Cr.P.C. are to be used sparingly. It envisages three circumstances under which inherent jurisdiction may be exercised namely (I) to give effect to order under the Court, (II) to prevent the abuse of the process of Court and (III) to otherwise secure ends of justice. While exercising powers under Section 482 of Cr.P.C. the Court does not function as a Court of appeal or revision. It is also settled law that though no straight jacket formula can be laid down as to exercise of powers under Section 482 of Cr.P.C. but same has to be exercised sparingly, carefully and with due caution and that too when such exercise is justified to prevent the abuse of process of Court or it is expedient to do so to meet the ends of justice. The case in hand is not of such nature wherein the inherent powers under Section 482 of Cr.P.C. requires to be exercised. As observed, there is no nexus between the acts alleged against the applicant in discharge of duties as police officer and more particularly covered by acts referred in Section 161(1) of the Maharashtra Police Act.

17. In this view the institution of criminal case against applicant cannot be termed as an abuse of process of law to call for exercise of inherent powers under Section 482 of Cr.P.C. to quash the prosecution. Hence the application deserves to be rejected. Accordingly application is rejected. Rule discharged.