

(2014) 06 BOM CK 0003

In the Bombay High Court

Case No : Criminal Writ Petition No. 969 of 2011

Ramkrushna

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 26-06-2014

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 22, 72
Criminal Procedure Code, 1973 (CrPC) — Section 195, 195(1)(b)(i), 195(1)(b)(i)(ii),
195(1)(b)(ii), 195(b)(ii)
Penal Code, 1860 (IPC) — Section 191, 192, 193, 194

Citation : (2014) ALLMR(Cri) 4104

Hon'ble Judges : V.M. Deshpande, J

Bench : Single Bench

**Advocate : S.J. Salunke, Advocate for the Appellant; V.D. Godbharle, A.P.P,
Advocate for the Respondent**

Judgement

V.M. Deshpande, J.—By the present Writ Petition, the petitioners are questioning the correctness of the judgment and order, passed by the learned Additional Sessions Judge, Osmanabad in Criminal Revision Application No. 66 of 2010, dated 5.10.2011, by which the learned Additional Sessions Judge, Osmanabad was pleased to dismiss the Revision filed by the present petitioners.

The petitioners are also questioning the order, passed by the Judicial Magistrate, First Class, Osmanabad, dated 4.5.2010 in Criminal Miscellaneous Application No. 83 of 2009, whereby the learned Judicial Magistrate, First Class, Osmanabad was pleased to issue process against the present petitioners for the offences punishable under Sections 191, 192, 417, 420, 465, 468, 471 r/w 34 of the Indian Penal Code.

According to the petitioners, petitioner No. 1 is the Secretary and petitioner No. 2 is the Joint Secretary of one Kamaleshwar Shikshan Prasarak Mandal, Pimpalgaon (K), District Osmanabad, which is a registered Trust. The said Trust is running educational institutions.

2. A change was reported to the Assistant Charity Commissioner, Osmanabad under Section 22 of the Bombay Public Trust Act, 1950. The said change was registered as Change Report No. 41 of 2004. The said report, before the Assistant Charity Commissioner, shows that 11 members were shown as incoming trustees. The names of the present petitioners were shown as Secretary and Joint Secretary as incoming trustees. According to the petitioners, the said inquiry report was submitted in view of the proceedings of the General Body Meeting of the Trust, dated 14.12.2003. The name of the present respondent No. 2 amongst others was shown as outgoing trustee.

The said Inquiry Report No. 41 of 2004 was accepted by the learned Assistant Charity Commissioner, Osmanabad on 17.2.2004.

The present respondent No. 2 and one Dhnandeo Bhosale challenged the action of the learned Assistant Charity Commissioner accepting the change report before the Joint Charity Commissioner, Latur. The Joint Charity Commissioner, Latur vide judgment and order, dated 26.11.2008 allowed the proceedings filed before it and the said authority set aside the order, passed by the Assistant Charity Commissioner and the matter was remanded back to the Assistant Charity Commissioner for fresh inquiry. The present petitioners and other incoming trustees questioned the correctness of the judgment and order, passed by the Joint Charity Commissioner, Latur by filing the proceedings under Section 72 of the Bombay Public Trust Act before the District Court at Osmanabad. The said proceedings were registered as Miscellaneous Application (Trust) No. 218 of 2008 and the learned District Judge-3, Osmanabad set aside the judgment and order, passed by the Joint Charity Commissioner, Latur.

The present respondent No. 2 and one Dnyandeo Bhosale filed a Second Appeal before this court against the judgment and order of the District Judge, Osmanabad bearing Second Appeal No. 497 of 2009. The said Second Appeal is pending before this court for its adjudication. It is further pointed out that in view of the judgment and order, passed by the District Judge-3, Osmanabad, the names of the incoming trustees and office bearers of the Trust, in view of the Inquiry Report No. 41 of 2004, are taken in Schedule I of the Trust.

3. According to the petitioners, respondent No. 2 on 25.2.2009 filed a complaint before the Chief Judicial Magistrate, Osmanabad against the present petitioners. The said case came to be registered as Criminal Miscellaneous Application No. 83 of 2009. In the said complaint, it is alleged that respondent No. 2/complainant is the President of the Trust in the first Managing Body and the petitioner No. 1 was the Joint Secretary; whereas petitioner No. 2 Harischandra came on record with the help of forged document.

Petitioner No. 1 for his own benefit showed that there was a General Body Meeting on 14.12.2003 and on the basis of the same, a forged and fabricated change report bearing No. 41 of 2004 was filed in the office of the Assistant Charity Commissioner, Osmanabad. In the said change report, petitioner No. 1

has shown all his family members as the members of the Governing Body and it was shown that the present respondent No. 2 is not in the Governing Body.

4. According to the complainant, it was obligatory on the part of the Assistant Charity Commissioner to hold an inquiry and notice ought to have been given to the outgoing trustees, however, the petitioners in collusion with each other, in order to show that there is no necessity of issuing notice to respondent No. 2/ complainant and others, purchased two stamp papers of Rs. 20A in the name of respondent No. 2 and Dnyandeo Bhosale, who is cited as one of the witness in the complaint and got typed the following matter on the said stamp papers.

5. According to the complainant/respondent No. 2, the afore said matter, which was written on the stamp papers of worth Rs. 20/- purchased in the name of respondent No. 2 and said Dnyandeo Bhosale, was written falsely and the signatures appearing on the said stamp papers of respondent/complainant and Dnyandeo Bhosale are forged one. The complainant further alleged that the said stamp papers were taken in the office of Trust authority and on 23.1.2004 the petitioners made false affidavits.

6. The complaint further reveals that the petitioners submitted the afore said two forged and bogus affidavits in the Change Inquiry Report No. 41 of 2004, which are at Exhs. 10 and 11. With these basic facts the complaint was lodged.

7. The verification statement of respondent No. 2 was recorded by the learned Chief Judicial Magistrate. The learned Chief Judicial Magistrate on 4:5.2010 took the cognizance of the said complaint filed by respondent No. 2 and issued process against the present petitioners. The said order was confirmed by the Revisional Court.

8. Shri S.J. Salunke, learned counsel for the petitioners mainly submitted that respondent No. 2 is incompetent and has no locus to file complaint against the petitioners in respect of the documents pertaining to the court record. According to him, the mandatory provisions under Section 195 r/w Section 340 of the Code of Criminal Procedure are not followed. According to him, provisions of Section 195(1)(b)(i) and (ii) of the Code of Criminal Procedure are attracted in the present case. Those are reproduced herein 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)

(b)(i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), 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

....."

9. Thus, according to the learned counsel for the petitioners, only competent court i.e. the Assistant Charity Commissioner or any officer authorized by the said Assistant Charity Commissioner is entitled to file the complaint. According to the petitioners, therefore, the complainant/respondent No. 2 was not entitled to lodge the complaint as lodged by him. It is the submission of the learned counsel for the petitioners that since the complaint is filed by an incompetent person, the Magistrate ought not to have taken cognizance of such complaint.

A submission was made by the learned counsel for the petitioners that, the procedure in respect of filing of the complaint under Section 195 of the Code of Criminal Procedure is prescribed in Section 340 of the Code of Criminal Procedure. However, it is his submission that the same will not come in picture in the present case, since the complaint itself is not filed by the competent court. He submitted that swearing a false affidavit is giving a false and fabricated evidence.

To buttress the said submission, he placed reliance on a reported decision in the case of Kunnummal Raghavan Vs. M. Narayana Menon, . He further placed reliance on a reported judgment in the case of Premjit Kaur vs. Harsinder Singh (1982 (2) SCC 167) to point out that Section 195(1)(b)(i) of the Code of Criminal Procedure applies in cases of offences under Sections 191 and 192 of the Indian Penal Code, which are punishable under Section 193 of the Indian Penal Code.

The learned counsel for the petitioners submitted that the question of competence of respondent No. 2 to file complaint before the trial court was not raised before the learned Revisional Court and it is being raised for the first time before this court. He submitted that it being a question of law, which goes to the root of the matter, he be permitted to raise the said question, and in fact, he has already raised the said ground in the body of the Writ Petition.

Learned counsel for the petitioners further submitted that the Revisional Court has committed mistake in dismissing the Revision by observing that there is a material against the present petitioners for issuing process.

10. Per contra, Shri Satej S. Jadhav, learned counsel for respondent No. 2 submitted that in view of the reported decision of Hon''ble Apex Court reported in the case of Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Another, , the argument of the learned counsel for the petitioners needs to be rejected and the present petition must result into dismissal.

11. In view of the conflicting views, as observed by the Apex Court in the case of Surjit Singh and others Vs. Balbir Singh, and Sachida Nand Singh and Another

Vs. State of Bihar and Another, regarding interpretation of Section 195(1)(b)(ii) of the Code of Criminal Procedure, Iqbal Singh Marwah's case was referred to the Larger Bench.

In Iqbal Singh Marwah's case, a will was presented before the court. The learned Magistrate held that, as the question, whether the will was a genuine document or forged one, was in issue before the District Judge in a probate proceedings where the will had been filed, Section 195(1)(b)(i)(ii) of the Code of Criminal Procedure operated as a bar for taking cognizance of the offences under Sections 192, 193, 463, 464, 471, 475, 476 of the Indian Penal Code, and therefore, the complaint was dismissed. The complainant filed a Revision before the Sessions Court. The learned Sessions Court relying upon Sachida Nand Singh's case held that the bar contained in Section 195(1)(b)(ii) of the Code of Criminal Procedure would not apply where the forgery of a document was committed before the said document was produced in court. The said finding was questioned before the Delhi High Court, however, following the law laid down in Sachida Nand Singh's case (cited supra), the Delhi High Court dismissed 482 petition.

12. The Hon"ble Apex Court in the case of Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Another, observed as under:-

"25. In view of the discussion made above, we are of the opinion that Sachida Nand Singh has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) Cr.P.C. would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court i.e. during the time when the document was in custodia legis.

26. In the present case, the will has been produced in the Court subsequently. It is nobodys case that any offence as enumerated in Section 195(b)(ii) was committed in respect to the said will after it had been produced or filed in the Court of District Judge. Therefore, the bar created by Section 195(1)(b)(ii) Cr.P.C. would not come into play and there is no embargo on the power of the Court to take cognizance of the offence on the basis of the complaint filed by the respondents. The view taken by the learned Additional Sessions Judge and the High Court is perfectly correct and calls for no interference."

13. On the guidelines and principle laid down in Iqbal Singh Marwah's case, it is clear that in the present case, the affidavit and the documents on a stamp paper were not made when the document was in custodia legis. Therefore, the submission advanced by the learned counsel for the petitioners that, the respondent No. 2 was not competent to file the complaint and it was only the Assistant Charity Commissioner or the person authorized by him entitled to file the complaint, has to be rejected.

14. Issuance of process is a discretion of the Magistrate. If the learned Magistrate, after considering the contents of the complaint is of the view that a case is made out for issuance of process, then the superior courts normally

should be slow in interfering with the discretion exercised by the court which issued the process. The learned Revisional Court has concurred with the order passed by the learned Magistrate of issuing process, since even according to the Revisional Court, the complaint discloses enough material for issuance of process. Before this court also, the learned counsel for the petitioners was unable to satisfy on merits of the matter. Hence, I refrain myself from exercising extraordinary writ jurisdiction in favour of the petitioners, and hence, the petition needs to be dismissed and it is accordingly dismissed. Rule discharged. No costs.