
(2017) 11 BOM CK 0080
In the Bombay High Court
Case No : 182 of 2012

Ratnakar Dinkarrao Bohate & Ors.

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 14-11-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#), [Section 195 \(1\) \(b\) \(1\)](#) - Saving of inherent powers of High Court - Prosecution for contempt of lawful authority of public servants, for offences

Citation : (2017) 11 BOM CK 0080

Hon'ble Judges : A.S. Chandurkar

Bench : SINGLE BENCH

Advocate : Anil Mardikar, S.G. Joshi, A. Madiwale

Judgement

1. By this application filed under Section 482 of the Code of Criminal Procedure Code, 1973, a challenge is raised to the order dated 6th January, 2012 in Criminal Revision No. 64 of 2010 whereby the said proceedings filed on behalf of the present applicants have been dismissed and the order passed by the learned Magistrate refusing to discharge the applicants has been confirmed.

2. Facts, in brief, are that according to the Administrative Officer of the Bhandara District Milk Producers' Co-operative Federation, the present applicants had filed proceedings before the Industrial Court, Bhandara, being ULP No. 82 of 2001. It was stated that a letter dated 9th April, 2007 was received in the matter of filling various posts. In view thereof, as per Resolution No.6 dated 11th April, 2007, it was informed that work should be allotted as per the entitlement of the employees. However, in the proceedings before the Industrial Court, a forged letter was got prepared and filed so as to make a show that, that letter had Outward No. 49/2007 dated 11th April, 2007. According to the complainant, the signature, seal and outward number was not of the Federation. On that basis, a report came to be lodged on 9th May, 2007. According to the complainant, the applicants herein were in the employment of the Federation and they were

responsible for preparation of that document. In view of that report, offence under Sections 468 and 471 read with Section 34 of Indian Penal Code [for short, "the Penal Code"] came to be registered against the applicants.

3. The applicants herein moved an application below Exh.13 seeking discharge. This application was rejected by the learned Judicial Magistrate on 20th October, 2010. The Revision Application filed by the applicants was also dismissed. Being aggrieved, the present Application has been filed.

4. Shri Anil Mardikar, learned Senior Counsel for the applicants, submitted that the learned Magistrate as well as the learned Judge of the Sessions Court failed to take into consideration the effect of the provisions of Section 195 of the Code. According to the learned Senior Counsel, on a reading of the complaint, it was clear that the grievance of the complainant was with regard to offence being committed under Section 193 of the Penal Code. If an offence under said provision was alleged to have been committed as the alleged document had been filed in the proceedings before the Industrial Court, in view of provisions of Section 195 (1) (b) (1) of the Code, cognizance of that offence at the instance of the complainant could not be taken. The prescribed procedure was required to be followed. It was submitted that this ground was specifically urged before the Courts, but by observing that offence was made under Sections 468 and 471 of the Penal Code, said contention was not considered. He referred to the order passed by the Industrial Court dated 29th August, 2007, in which, on the basis of evidence of the Managing Director, it was observed that the documents filed in Complaint No. 82 of 2007 were genuine. This aspect of the matter was also not considered, thereby causing prejudice to the rights of the applicants. Relying upon the judgments of Honourable Supreme Court in Durgacharan Naik & others Vs. State of Orissa [AIR 1966 SC 1775] and Kailash Mangal Vs. Ramesh Chand (dead) through legal representative [(2015) 15 SCC 729] , it was submitted that the provisions of Section 195 of the Code could not be evaded by seeking to apply some other Section when such offence was not made out. It was, therefore, submitted that on an overall consideration of the matter, the applicants were entitled for being discharged.

5. Shri A. Madiwale, learned Addl. Public Prosecutor for the non-applicant, supported the impugned order. According to him, no offence under Section 193 of the Penal Code was made out and Process had been rightly issued with regard to offence punishable under Sections 467 and 468 of the Penal Code. He submitted that provisions of Section 195 of the Code did not come into picture and both the Courts had rightly refused to discharge the applicants herein. He further submitted that it was rightly observed by the Sessions Court that unless evidence was led by the parties, the applicants were not entitled to seek discharge on the basis of the material on record. He relied on the judgment of learned Single Judge in Dadasaheb Shankar Yadav Vs. Chandrakant Jijaba Yadav & another [1999 (1) Mh.L.J. 34] to urge that unless the Court found the document to be fabricated, the bar under Section 195 of the Code was not

attracted. It was, therefore, submitted that the application deserves to be rejected.

6. I have heard the learned counsel for the parties at length and I have perused the documents placed on record.

7. According to the complaint dated 9th May, 2007, it was the grievance of the complainant that in Complaint No. 82/2007 filed before the Industrial Court, a forged letter bearing a false outward number and not having the signature or seal of the authorized person came to be filed. That document was sought to be shown as having been issued by Federation. After the Process was issued against the present applicants for offences punishable under Section 468 and 471 read with Section 34 of the Penal Code, they had applied for discharge as per application below Exh.13. According to the applicants, the offence related to fabrication of documents and bringing on record false evidence. Same was punishable under Section 193 of the Penal Code and, therefore, the proceedings could not have been initiated on the basis of a private complaint. The learned Chief Judicial Magistrate, Bhandara, merely by observing that the application moved by the applicants was without any substance rejected the same. A specific ground, being Ground No.5 was raised by the applicants before the Sessions Court on the count that the offence alleged to have been made out was under Section 193 of the Penal Code and, therefore, the bar under Section 195 of the Code was attracted. However, said contention does not appear to have been specifically considered even by the Sessions Court.

8. In *Durgacharan Naik & others* [supra], it has been held by the Honourable Supreme Court that the provisions of Section 195 of the Code cannot be evaded by changing the nature of offence, especially when the offence as alleged does not apply. This position has been reiterated in the subsequent decision in *Kailash Mangal* [supra]. I find that this ground having been specifically raised before the learned Chief Judicial Magistrate as well as before the Sessions Court, the same was required to be considered as it went to the jurisdiction of the Court while proceeding with the complaint. The impugned orders do not reflect consideration of this challenge though the same was specifically raised. On this count, I, therefore, find that the matter deserves to be remitted to the Sessions Court for reconsideration of these aspects. In so far as reliance sought to be placed on the decision in *Dadasaheb Shankar Yadav* [supra] is concerned, its application or otherwise would be a matter to be urged before the Sessions Court. I find, the impugned orders are vitiated on account of failure to consider the challenge as specifically raised.

9. In view of aforesaid, the following order is passed:- [a] The order dated 6th January, 2012 passed by learned Sessions Judge, Bhandara, in Criminal Revision No. 64 of 2010 is set aside.

[b] The proceedings are remitted to the Sessions Court for their re-consideration in accordance with law. It is clarified that the observations made in this order are

only for deciding the present proceedings and the Sessions Court shall decide the Revision Application on its own merits without being influenced in any manner by any observations made in this order. Respective contentions are kept open. The Revision Application shall be decided expeditiously.

10. Application is partly allowed in aforesaid terms. No costs.