
(1999) 07 BOM CK 0102

In the Bombay High Court

Case No : Criminal Writ Petition No. 729 of 1993

Ravindra B. Sachadey

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 20-07-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195
Penal Code, 1860 (IPC) — Section 193, 21, 219, 228

Citation : (1999) 101 BOMLR 418

Hon'ble Judges : S.S. Parkar, J;N.J. Pandya, J

Bench : Division Bench

Final Decision : Allowed

Judgement

N.J. Pandya, J.—An interesting question is thrown up by this petition in proceeding pending before the Assistant Charity Commissioner, Greater Bombay Region, Bombay, is that an application u/s 195 of Cr.P.C. came to be given by the opponent of the change report A.C.C. IV/4148 of 1992. The opponent filed this application u/s 195 of the Cr.P.C. on averments that the reporting trustees had submitted the change report purported to be the signatures of persons some of whom are dead.

2. May be at the stage of which an application u/s 195 of the Cr.P.C. was given was not proper because unless there is a conclusion recorded by the authority to act u/s 195 of the Cr.P.C. to the effect that prima facie any offence is made out but that was not the approach of the Assistant Charity Commissioner.

3. He simply said by his order dated 30th March, 1993 that the reliefs sought by the application is not within the purview of the Bombay Public Trusts Act, 1950 and hence he rejected the application.

4. Change report, in relation to a trust which has been registered, is very much an inquiry pertaining to the registered trust and especially when it happens to be in relation to the change in the board of trustees it directly affects the

management of the trust. The importance of that inquiry can never be underestimated.

5. Otherwise, if one looks at Sections 19, 21, 22 as also 22A of the Bombay Public Trusts Act, 1950 the inquiries have a far reaching effect with regard to a property, the establishment of trust, its day-to-day running, management as also the application of all trust funds in relation to the object for which the trust is created.

6. The Act also indicates, as Section 73 clearly shows, that the Inquiry Officer has powers of Civil Court. Section 74 lays down that all inquiries and appeals under this Act shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the IPC. It is an admitted position that the Charity Commissioner and his subordinates are public servants within the definition of Section 21 of the IPC.

7. In this background when application u/s 195 of the Cr.P.C. is made, the straight way to say that it is not in the purview of the said Act, is clearly wrong appreciation of law and non-exercise of the jurisdiction vested in the authority.

8. The learned Advocate appearing for the respondents makes a submission that the order in question can be appealed against and unless the remedy of appeal is availed, this Court should not interfere with the same. Incidentally, it may be mentioned that the change report in question was reported by Assistant Charity Commissioner. The reporting trustee had filed an appeal before the Charity Commissioner as Appeal No. 68/97 which came to be dismissed on 31st May, 1999, copy thereof is at pages 39 to 46 in compilation given today.

9. In the course of a decision certain observations have been made with regard to the change report itself, particularly with regard to the signatures of some of the parties. The authorities being thus totally under a wrong notion as to the law and must consider the application u/s 195 of the Cr.P.C. as was expected.

10. In view of the aforesaid statutory provision of the Bombay Public Trusts Act, it is clearly within the purview of the Charity Commissioner and the authorities functioning under him as per the provisions of the said Act.

11. Therefore, it is obvious that an application u/s 195 of the Cr.P.C. has to be considered on its own merits and in accordance with law by the Charity Commissioner or any of the authorities functioning under him exercising powers under the said Act. The change report inquiry relating to it is definitely an inquiry under the provisions of the Act. The application, therefore, is maintainable u/s 195 of the Cr.P.C. and has to be inquired on its merits and in accordance with law by the authorities that be under the Act. The learned Advocate for the respondents have pointed out that the report has been decided even at the appellate stage by 31st May, 1999 and, therefore, the very grievance of the party should not be raked at this late stage. In any other matter we might have seriously consider this aspect but when it pertains to administration of justice,

the stream of which must remain unsullied and it is duty of all concerned connected with the administrative of justice to see that ins purity is maintained, the passage of time, in our opinion, cannot be considered in any manner whatsoever. Strictly speaking, appeal having been decided on 31st May, 1999, it is hardly two months back. The passage of time also is not of that importance. However, in our opinion, in the instant case no importance can be given even if there was substance in the submission as to passage of time. We, are therefore, inclined to allow the petition.

12. Hence, we allow the petition and set aside the said order dated 30th March, 1993. We direct the Assistant Charity Commissioner to consider the application on its own merits and in accordance with law. As the matter is pending since the year 1993, the learned Assistant Charity Commissioner shall take up the said application for inquiry and dispose the same in accordance with law pursuant to the aforesaid directions as early as possible and shall decide the same latest by 31st March, 2000. As the parties are represented, it is not necessary for the Assistant Charity Commissioner to issue any fresh notice. Parties shall appeal before the Assistant Charity Commissioner on 30th August, 1999 and take date for further proceeding in the matter. It is expected by the parties to co-operate with the Assistant Charity Commissioner so that the aforesaid deadline can be adhered to. Rule is made absolute accordingly.