

(2018) 08 BOM CK 0119

In the Bombay High Court

Case No : Criminal Application No. 926 Of 2017

Santosh S/O Rangnath Kotalwar And Others

APPELLANT

Vs

Manikrao S/O Apparao Shetkar

RESPONDENT

Date of Decision : 27-08-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 177, 182, 191, 193, 418
Code of Criminal Procedure, 1973 — Section 397, 468, 482

Citation : (2018) 08 BOM CK 0119

Hon'ble Judges : VIBHA KANKANWADI, J

Bench : Single Bench

Advocate : Thorat Chandrakant R, A. S. Shivpuje

Final Decision : Allowed

Judgement

1. Present application has been filed by the original accused persons for quashing and setting aside order of issuance of process against them and

quashing and setting aside the complaint filed by the respondent against them.Â The parties are hereinafter referred to by their nomenclature before

the Trial Court.

2. Complainant filed a private complaint against the present applicants bearing S. T. C. C. No. 742/2016 before learned J. M. F. C., 4th Court, Udgir,

Tq. Udgir, Dist. Latur contending that he is the member of one Sarvodaya Sah. Gruhnirman Sanstha. Plot No. 41A was allotted to him in the

society.Â He was issued with the form No. 8 by inserting his name in the municipal record.Â However, some of the persons who were not members

of the society took objection regarding the disbursement of the plot to the complainant.Â The said dispute was raised before District Sub Registrar

CoÂoperative Societies Latur. The said authority did not give an opportunity to

the complainant to put forth his say and unilaterally passed an order to cancel the allotment of the said plot to the complainant.Â Such directions were given to the Administrator of the society.Â In fact, the district Sub-Registrar had no authority to cancel the disbursement of the plot in favour of the complainant.Â The complainant had then challenged the said order before Co-Operative Court, Nanded.Â In that case, parties were directed to maintain status quo by order dated 25.10.2013.Â However, the accused Nos. 1 to 37 gave false application and information to the Chief Officer, Nagar Parishad, Udgir, on 25.10.2013 and prayed for cancellation of the reservation of plot in the name of the complainant. In fact, no such decision was taken by the society to cancel his membership.Â Accused Nos. 1 to 37, in conspiracy has given a false application to the Chief Officer, Nagar Parishad, Udgir and on the basis of false information, the accused persons instigated Govt. servant to use their powers in canceling the entry in Form No. 8.Â In spite of giving knowledge of the incident to police on 11.11.2013, the F. I. R. was not taken and therefore, he had filed the private complaint.

3. It appears that after the presentation of the complaint, verification of the complainant was taken and thereafter, after hearing the complainant, the learned Magistrate has held that only prima facie case is made out for issuance of process punishable under Section 182 read with Section 34 of I. P. C. and therefore, the summons was accordingly issued only under that Section.Â The said order and entire proceeding is under challenge in this application.

4. It was contended by the applicants that the learned Magistrate has not taken the facts into consideration before applying his mind for issuance of process.Â It was submitted that intentionally certain facts were not brought before the learned Magistrate.Â A special general meeting of the society was held on 9.6.1972 and it was resolved to collect money from the members for construction work of the house on the basis of the plots of the society.Â The complainant was member of the society.Â As per resolution dated 21.7.1970, it was also resolved in the said meeting that members who will commit default in payment of installment as per the schedule, their membership would be canceled.Â Respondent had failed to deposit the amount and therefore, as per general meeting of the society held on

30.9.1972, the membership of the complainant was canceled and was communicated to him. The complainant did not make any kind of communication with the society. Therefore, membership fees of Rs. 700/- was given back to him by cheque bearing No. 19208. The applicants contended that there were only 41 plots. There was absolutely no plot bearing No. 41A. In fact, the Administrator appointed on the society from 5.3.2012 to 7.1.2014 Shri B. M. Mane had not followed any procedure before allotting the plot No. 41A to the complainant and therefore, the dispute / appeal was filed before Registrar, Co-operative Societies, Latur in respect of allotment of the plot. After hearing the parties, the learned Dy. Registrar has come to the conclusion that layout was not sanctioned in respect of plot No. 41A and therefore, it was illegal to allot the plot which was from the green belt and was not sanctioned at all. In fact, the said Administrator had moved the communication to the Town Planner, Latur, and submitted the proposal for the modification of the earlier layout plan by showing the plot No. 41A. The Town Planner communicated the Administrator that it was not permissible to allot the plot from the open space, as per the development rules and therefore, sanction for the Plot No. 41A can not be considered. Thereafter, there was communication made by Dy. Registrar Cooperative Societies, Latur, on 29.10.2013 in respect of allotment of plot to the complainant. Thereafter, due to the illegal activities, the Administrator was suspended from his work. Under the said circumstance, applicants had given an application to cancel the allotment of Plot No. 41A in favour of the complainant. The Chief Officer of the Municipal Council thereafter, deleted the name of the complainant from the assessment list of the Municipal Council. However, he restored the name of the complainant on 12.11.2014 on the ground that there was status quo order by the Co-operative Court. Administrator was made party to the dispute No. 211/2013 and it was pending. Under such circumstance, the learned Magistrate ought not to have issued process under Section 182 read with Section 34 of the I. P. C. against them.

5. The application has been objected by the legal representative of the complainant. It has been stated by him, that the complainant has expired and he was an old freedom fighter. He was the member and plot holder of the housing society, which was registered in the year 1965. The

Managing Committee had allotted the plots vide Resolution No. 3 on 21.7.1970. However, the committee failed to allot a plot to him. On

14.8.2009 when there was annual general body meeting, it was resolved to allot plot from green belt of the applicant society. In the administrative

meeting dated 24.8.2012 vide resolution No. 2 he was allotted plot No. 41A admeasuring East-West 50 feet and South-North 60 feet total area

of 3000 Sq. Ft. The name of the complainant was mutated in the Municipal register. He has paid the taxes in respect of the same.

However, false information was given to the SubRegistrar and certain orders have been obtained by the applicants. He had also tried to apply for

permission to construct. But, thereafter, the said application was misplaced. An application was filed before Assistant Registrar, Co-operative

Societies, Udgir, on 27.4.2015, against the present applicants. Assistant Registrar has given a reply to the respondent on 14.5.2015 stating that if the

Chairman / Secretary of the Society has given false information to the respondent, the respondent has a right to take legal action against such

applicants. It is stated that he has challenged the Judgment and order dated 19.9.2017 passed by learned Judge, Cooperative Court, Latur, in dispute

bearing No. 237/2014 before Maharashtra State Co-operative Court Appellate Bench, Aurangabad, in Appeal NO. 143/2017. The said Judgment

passed by the Co-operative Court has been stayed.

6. Heard learned Advocate Mr. C. R. Thorat appearing for the applicants. None for the Respondent No. 2. It has been submitted on behalf of

the applicants, that the learned Magistrate has come to the conclusion that no prima facie case has been shown by the complainant for issuance of

process under Sections 177, 182, 191, 193 and 418 read with Section 34 of the I. P. C. However, it was wrongly held that these applicants have

furnished wrong information to the public officer with a view to make him believe such information to be true and correct and therefore, took

cognizance of offence punishable under Sections 182 read with 34 of I. P. C. Learned Magistrate failed to consider that the punishment prescribed

for the offence punishable under Section 182 of I. P. C. is only for 6 months. That information was supplied to the authority way back on

21.10.2013. But, the complaint is filed on 11.3.2015. Therefore, the said complaint was totally time barred and therefore, as per Section 468 of

the Cr. P. C., the learned Magistrate ought not to have taken cognizance of the matter. He further submitted that the dispute which was filed by the complainant before the Co-operative Court has been dismissed. The disputant had been directed to hand over the vacant possession of the plot within 2 months to the society. In fact the applicants have not acted on their own. Certain misdeeds were committed by the then Administrator and therefore, the dispute was filed which was answered in favour of the applicants. On the basis of that order which came to be passed on 30.10.2013, the applicants had given an application before the concerned authorities to delete the so called allotment in the name of the complainant. There can not be said to be a mens rea for furnishing false information to the Govt. authorities.

7. It is to be noted that the complainant had come with a positive case that plot No. 41AA was allotted to him and thereafter, on the complaint filed by the accused persons, the cancellation order was passed and when the complainant had filed dispute before the Co-operative Court, order of maintaining status quo was issued. In order to appreciate as to whether any false information was given by the accused persons or not, the documents are required to be perused. Allotment order was given by Administrator of the society on 13.6.2012 in favour of the complainant. The allotment of plot No. 41AA with its dimensions and boundaries was stated in that allotment letter. Thereafter, it appears that the accused persons had given complaint / application on 7.10.2013 challenging the allotment in favour of the complainant. Enquiry was held and the District SubRegistrar Co-operative Societies, Latur, had canceled the allotment of the plot No. 41AA in favour of the complainant by his order dated 29.10.2013. The said order specifically contemplates that the enquiry was made on the basis of complaint application. The complaint application can not be equated with information. It was specifically stated in the order of cancellation of the plot that the Administrator had not got sanctioned the new layout from the Town Planner and without getting any sanction he had nominated the plot and allotted it. It was specifically mentioned in that order that the said order of cancellation should be informed to all. On 21.10.2013 the Administrator of society then informed the said fact to the Town Planner. Administrator of the society wrote a letter to Town Planner and prayed that the sanction should be allotted to the transfer of the said

plot. He also submitted that the Chief Officer, Nagar Parishad, Udgir has given sanction. However, on 30.10.2013 the Town Planner informed the

Administrator that the proposed change in the layout can not be made. It was also stated that as per the earlier layout, all the open plots are vesting

with Municipal Council, Udgir, and out of that open plot a new plot has been created i.e. 41A and therefore, such permission can not be granted.

Thereafter, a guidance was sought by District SubRegistrar Cooperative Societies, Latur, from Town Planner as to whether administrative action

can be taken against the Administrator for his illegal act of allotting open land. Thereafter, on 6.1.2014 it appears that the Administrator who was

appointed for the society was suspended. Further, it appears that in the meantime, on 24.10.2013, the complainant approached the Co-operative

Court and obtained ex parte order. The opponents i.e. Co-operative society and the District Deputy Registrar were directed to maintain status quo

in respect of cancellation of allotment of disputed plot No. 41A. This order was passed on 25.10.2013. Therefore, in view of that order, the

Chief Officer, Municipal Council, Udgir had passed an order of restoration of the name of the complainant. That order was passed on 12.11.2014.

It has been finally decided on 19.9.2017 and it has been dismissed and the original complainant has been asked to hand over the possession of the plot

No. 41A within 2 months from the date of the Judgment to the respondent society. No doubt, this order was not before the learned Magistrate

when he has passed the order of issuance of process.

8. Taking into consideration the abovesaid facts, it was the contention of the complainant that accused Nos. 1 to 37 had given an application on

25.10.2013 to the Chief Officer stating that the plot allotment has been canceled by the District SubRegistrar Latur and thereafter, there is no right,

title or interest of the complainant over the said plot. On the basis of this fact, the learned Magistrate has passed the order of issuance of process

under Section 182 of the Indian Penal Code. But, it appears that the learned Magistrate has failed to take the note of the orders. The order of

maintaining status quo was granted by the Cooperative Court on 25.10.2013 and before it was communicated it can not be said that the accused Nos.

1 to 37 had knowledge about the passing of that order. On the same date i.e. 25.10.2013, that application was filed before the Chief Officer.

Administrator had given information to Town Planner. Therefore, it can not be stated that any false information was supplied by applicants to Town

Planner.Â Applicants had no mens rea to commit any offence.Â Mere communication of order with prayer to take action, can not be considered as

giving of false information.Â There was no such document on record before the learned Magistrate to show that on or before 25.10.2013, the

accused persons were having knowledge about the order of passing of statusÂquo by the CoÂoperative Court.Â Perusal of the order of Cooperative

Court dated 25.10.2013 which show that only the learned Advocate for the disputant was heard.Â It is not the case of the complainant that after he

had filed the dispute on 24.10.2013, he had given an intimation about the same to the accused person that he would be moving the Court on the next

day for certain interim or adÂinterim prayers.Â Therefore, without considering the facts of the case, it appears that the learned Magistrate had

passed the order of issuance of process under Section 182 read with Section 34 of I. P. C. and therefore, such order can not be allowed to be

sustained.Â Though the present applicants could have challenged the order of issuance of process against them under Section 397 of Cr. P. C. before

the Sessions Court, however, it is to be noted that when there is inherent defect in the proceeding and it would be a futile exercise to allow the

continuation of prosecution against the applicants.Â The inherent powers of this Court under Section 482 of Cr. P. C. are required to be exercised in

this case in view of principles laid down in State of Haryana and Ors. V/s Bhajanlal and Ors., [1992 Supplement Â?1 Supreme Court Cases, 335].

9. Since complaint was also filed for other offences also, it can not be said to be barred by limitation only for one offence.

10. For above said reasons, I proceed to pass following order;

(i)Application is hereby allowed.

(ii)The order passed by J. M. F. C. 4th Court, Udgir on 12.9.2016 in S. T. C. C. No. 742/2016 for issuance of process for the offences punishable

under Section 182 read with 34 of I. P. C. is hereby quashed and set aside as against the present applicants.

(iii)Further, the entire proceedings of S. T. C. C. No. 742/2016 pending before the concerned Court as against the present applicants is quashed and

set aside.

(iv) Record and proceedings be sent back to the concerned Court.