

(2018) 08 BOM CK 0121

In the Bombay High Court

Case No : Criminal Writ Petition No. 709 Of 2017

Shamsundar Sudam Divte.

APPELLANT

Vs

Uddhav Limbaji Kothule And Anr.

RESPONDENT

Date of Decision : 27-08-2018

Acts Referred:

Constitution of India, 1950 &mdashl Article 226, 227

Code of Criminal Procedure, 1973 — Section 182, 200, 202, 203, 397, 482

Indian Penal Code, 1860 — Section 34, 182, 211, 500

Citation : (2018) 08 BOM CK 0121

Hon'ble Judges : MANGESH S. PATIL, J

Bench : Single Bench

Advocate : D.D.Deshmukh, S.R.Shirsath, A.R.Kale

Final Decision : Dismissed

Judgement

1. Heard.Â Rule.Â The Rule is made returnable forthwith.Â The learned advocate Mr. S.R.Shirsath waives service for Respondent No.1 and the

learned APP waives service for Respondent No.2.

2. With the consent of both the sides the matter is heard finally.Â

3. This is a petition under Article 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure.Â

4. The facts leading to the filing of this Writ Petition may be summarized as under :

Respondent No.1 filed a private complaint bearing Summary Criminal Case No.1244 of 2016 in the Court of the Chief Judicial Magistrate at Beed

against the petitioner, his brother, mother and sister alleging that deceased Aasarabai was his sister.Â She was married to the father of the petitioner

by name Sudam but since she could not beget any issue Sudam solemnized

second marriage with the mother of the petitioner who was arrayed as accused No.3.Â Therefore Aasarabai deserted her husband and started residing with Respondent No.1 who is her brother.Â It was thereafter alleged that out of her Stridhan she had purchased six acres of land from Gut No.128 of village Pimpargavan from her husband and was exclusively possessing it. Â She was getting it cultivated through Respondent No.1 and his brother. The petitioner is a son of Sudam from his second wife. It was then alleged that Aasarabai was suffering from Asthama, Diabetes and Blood pressure.Â Therefore she disposed of the land purchased by her by couple of sale deeds.Â The petitioner and the other accused were annoyed with her.Â Aasarabai died of her illness on 29.10.2013.Â She was buried and even the petitioner and the other accused were informed about her death before the burial.Â

5. However with an ill intention to harass Respondent No.1 the accused persons lodged a false complaint with the Sub Divisional Police Officer

alleging that Respondent No.1 and his brother and brother's wife had committed murder of Aasarabai and with a view to destroy the evidence had

buried her.Â The Sub Divisional Police Officer directed the matter to be investigated.Â The dead body was exhumed.Â A post mortem was

conducted.Â The viscera was chemically analyzed and ultimately it was found that she had died of illness. Accordingly the Sub Divisional Police

Officer disposed of the complaint lodged by the petitioner and the other accused persons.Â It was thus alleged that a false information was lodged

with the Sub Divisional Police Officer with an intention to cause inquiry and it had also resulted in publication of a news item as a result of which the

reputation of Respondent No.1, his brother and brother's wife was harmed and thus the accused had committed the offences punishable under

Sections 182, 211 and 500 read with Section 34 of the IPC.Â

6. The learned Magistrate followed the procedure under Section 200 of the Cr.P.C. and also directed an inquiry under Section 202 of the Cr.P.C.Â

After such inquiry, by the order dated 08.07.2016 the learned Magistrate directed the process to be issued against the petitioner but dismissed the

complaint in respect of the other accused, presumably under Section 203 of the Cr.P.C.Â

7. Being aggrieved and dissatisfied by the direction to issue process the

petitioner preferred Criminal Revision No.109 of 2016 in the Sessions Court at Beed. After hearing the parties, by the impugned judgment and order dated 12.04.2017 the learned Additional Sessions Judge dismissed the revision. Hence this Writ Petition.

8. The learned advocate for the petitioner vehemently submitted that there was no sufficient basis for directing the process to be issued. A civil dispute in the form of Regular Civil Suit No.258 of 2010 has been pending in respect of the land owned and possessed by Aasarabai. The doubt about the death of Aasarabai was raised bona fide and it had been inquired into. There was nothing to indicate that the petitioner knowingly had lodged any false complaint. The inquiry was duly conducted by the Sub Divisional Police Officer and after it was transpired that Aasarabai had died a natural death that the inquiry was closed. Therefore merely because a doubt was raised by the petitioner, one could not have readily attributed him with necessary malice to malign the reputation of Respondent No.1. It was purely a civil dispute and taking advantage of the complaint filed by the petitioner, the present complaint has been lodged by Respondent No.1 to pressurize the petitioner to give up his right in the land. There was no prima facie material to take cognizance and the process ought not to have been issued. The learned Additional Sessions Judge failed to appreciate these facts and circumstances and has dismissed the revision. The order is perverse and arbitrary and this Court should invoke the powers under Section 482 of the Cr.P.C. in setting right the illegality. In support of his submission he would place reliance on the decision in the case of V.Y.Jose and another Vs. State of Gujarat and another ; (2009) 3 SCC 78. Reliance was also placed by the learned advocate on the decision in the case of Santosh Bakshi Vs. State of Punjab & others ; (2014) 13 SCC 25 and submitted that in order to constitute an offence punishable under Section 182 of the Cr.P.C. the information must be given by a person who knows or believes such statement to be false and further the information must have been given with an intention to cause or knowing it to be likely to result in causing injury or annoyance to a person.

9. The learned advocate for Respondent No.1 supported the orders passed by the Magistrate as well as the learned Additional Sessions Judge. He submitted that no perversity or illegality was committed by them in passing the

impugned orders.Â The Magistrate has duly followed the procedure and after inquiring into the allegations has come to a plausible conclusion.Â He has considered the facts and circumstances as well as law. The allegations in the complaint as well as the statements of the witnesses and other material was considered in the proper perspective and the process was issued judiciously.Â Consequently the learned Additional Sessions Judge could not have invoked the power under Section 397 of Cr.P.C. since there was no perversity or arbitrariness in the order passed by the Magistrate.Â He would further submit that only a prima facie satisfaction of the Magistrate regarding presence of grounds for proceeding was sufficient and the ingredients for constituting the offences in respect of which the process was directed to be issued could be easily made out.Â Â He further referred to the decision in *Fiona Shrikhande Vs. State of Maharashtra* and another ; (2013) 14 SCC 44.

10. I have carefully gone through the papers with the able assistance of the learned advocates of both the sides.Â As can be noticed, the learned Magistrate has followed the procedure under Section 200 of the Cr.P.C. and further postponed issue of process and conducted necessary inquiry under Section 202 of the Cr.P.C. After considering the entire material in the form of complaint, statement under verification and the statements of the witnesses and by referring to couple of decisions of the Supreme Court he recorded satisfaction about their being prima facie material revealing commission of the offences punishable under Sections 182, 211 and 500 of the IPC against the petitioner and directed the process to be issued against him. Conspicuously, he apparently refused to issue the process against the other accused and directed them to be discharged which can be regarded as dismissal of the complaint under Section 203 of the Cr.P.C. to their extent.Â

11. It is important to note that unlike Section 203 of the Cr.P.C. which requires the Magistrate to briefly record the reasons for dismissal of the complaint, Section 204 of the Cr.P.C. does not require a Magistrate to record the reasons when he decides to take cognizance of an offence and it only requires that he should form an opinion that there is sufficient ground for proceeding.Â Still, since he discharges a judicial function it is expected that a Magistrate directing the process to be issued under Section 204 of the Cr.P.C. should cursorily refer to the objective material which he

considers to form the opinion and obviously such an opinion should have some objective material as the basis.Â

12. A reference to the decision in the case of Fiona Shrikhande (supra) in this regard would be fruitful. It has been laid down that at the stage of

issuance of process the Magistrate has to arrive at a prima facie satisfaction as to the grounds for proceeding, by reading complaint as a whole and

without adverting to the defence of the accused and even without going into the merits of the case.Â He has to examine prima facie the truth and

inherent probabilities apparent on the allegations made in the complaint.Â More importantly it has also been laid down that once the Magistrate

exercises his discretion and forms opinion regarding existence of grounds for proceedings, the higher Court should not substitute its own discretion for

that of the Magistrate.

13. Bearing in mind the above proposition laid down by the Supreme Court if one examines the facts and circumstances of the matter in hand,

admittedly, the petitioner had lodged a complaint with the Sub Divisional Police Officer alleging about Respondent No.1 having committed murder of

Aasarabai.Â The body had to be exhumed, a post mortem was done and it was transpired that she had died a natural death.Â It is specifically

alleged that by lodging such a complaint with the Sub Divisional Police Officer, the petitioner had intended to cause injury or harm to Respondent No.1

and had caused the Sub Divisional Police Officer to carry out the inquiry which has obviously harmed the reputation of Respondent No.1, his brother

and brother's wife.Â The ingredients for constituting the offences punishable under Sections 182, 211 and 500 of the IPC can easily be made out.Â

14. True it is that a person cannot be allowed to take a short cut of a criminal proceeding to twist the arm of the advisory when they are involved in a

civil litigation. It is also true that admittedly a civil proceeding is going on between the petitioner and Respondent No.1. However, when on the facts

and circumstances discussed herein above it is apparent that there was sufficient basis for forming an opinion to proceed against the petitioner in

respect of the offences punishable under Sections 182, 211 and 500 of the IPC, at this juncture it cannot be concluded that Respondent No.1 has filed

the complaint with some ulterior motive.

Rather, such a defence is not available to be raised / considered at this stage of

the proceeding as laid down in the case of Fiona Shrikhande (supra).Â

15. In the circumstances, in my considered view, there was no illegality committed by the Magistrate in directing the process to be issued and even there is no illegality committed by the learned Additional Sessions Judge in refusing to intervene in the revisional jurisdiction.

16. The Writ Petition is dismissed.Â The Rule is discharged.