
(2013) 11 BOM CK 0016

In the Bombay High Court

Case No : Criminal Writ Petition No. 411 of 2013

Shriram Balkrushnaji Auti

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

Date of Decision : 28-11-2013

Acts Referred:

Citation : (2013) 11 BOM CK 0016

Hon'ble Judges : Abhay M. Thipsay, J

Bench : Single Bench

Advocate : A.D. Shinde, for the Appellant; P.N. Muley APP for Respondent 1 and Mr. V.D. Gunale Advocate for R/2, for the Respondent

Final Decision : Dismissed

Judgement

Abhay M. Thipsay, J.—Heard Mr. A.D. Shinde, the learned counsel for the petitioner. Heard Mr. P.N. Muley, the learned APP for the respondent no. 1. Heard Mr. V.D. Gunale, the learned counsel for the respondent no. 2. The petitioner is the original complainant. He had filed a complaint against the respondent no. 2 herein—who is a Tahsildar, alleging commission of offences punishable under sections 166 of IPC, 218 of the IPC and 219 of the IPC, by her. The learned Magistrate, after examining the petitioner on oath, dismissed the complaint holding, primarily, that cognizance of the alleged offences could not be taken without a sanction of the State Government as contemplated u/s 197 of the Code of Criminal Procedure (Hereinafter referred to as "Code"). The petitioner challenged the order of dismissal of his complaint by filing an application for Revision but, the Additional Sessions Judge-1 who heard the revision, dismissed the same. Being aggrieved thereby, the petitioner has approached this Court invoking its Constitutional Jurisdiction.

2. I have gone through the complaint and the orders passed by the Magistrate and the learned Additional Sessions Judge, Jalna.

3. The substance of the complaint lodged by the petitioner is as follows:-

That, the petitioner is owner and possessor of agricultural land bearing gat No. 521. That, there were some disputes between the petitioner and one Rasul Khan Pathan, and as the said Rasul Khan Pathan was obstructing the petitioner's right, the petitioner had filed a civil suit against him. In the said civil suit, decree, by granting perpetual injunction, in favour of the petitioner and restraining the said Rasul Khan Pathan from interfering with the petitioner's possession has been passed. That, inspite of this decision of the Civil Court, the respondent no. 2 who was, at the material time, working as Tahsildar, Jafrabad, passed an order showing possession of the said Rasul Khan Pathan in respect of the said agricultural land. Thus, by giving such a decision, the respondent no. 2 is alleged to have committed offences punishable u/s 166, 218 and 219 of the Indian Penal Code.

4. It is contended on behalf of the respondent no. 2 that the acts committed by her, do not amount to any offence. It is contended that there is absolutely no element of criminality in the alleged acts. There may be substance in this contention but, I do not wish to go into this aspect of the matter. It is because, it clearly appears to me that in any case, the cognizance of the alleged offences could not have been taken in view of the bar created by Section 197 of the Code.

5. That, the respondent no. 2 falls in the category of public servants who are afforded protection by Section 197 of the Code, is not in dispute. In other words, that the respondent no. 2 is not removable from her office save and except by or with the sanction of the State Government, is not in dispute.

6. The question that remains is whether the offences alleged to have been committed by the respondent no. 2 are such as would be covered by the protective umbrella of Section 197 of the Code. In other words, whether the offences in question can be said to have been committed by the respondent no. 2, while acting or purporting to act in discharge of her official duty, is the question needing determination.

7. Clearly, the acts attributed to the respondent no. 2 which are said to be constituting the aforesaid offences, have been committed by her while acting, or at least while purporting to act in discharge of her official duty. It was the official duty of the respondent no. 2 to decide the question that was before her-i.e. whether the name of the said Rasul Khan Pathan should be taken in the relevant record, under the column-"cultivation"; and the same has been decided by her in official capacity.

8. By no stretch of imagination, it can be contended that for the alleged offences sanction u/s 197 of the Code, would not be necessary.

9. The learned counsel for the petitioner relied upon a decision rendered by a learned Single Judge of this Court in case of Uttam Kahane Vs. Chandramohan Hangekar, G.B. Nannor and S.M. Supekar, . This decision was relied upon by him in support of a proposition that "where a public servant refuses to obey the orders passed by a court of law, he cannot claim that he would be protected by

the provisions of Section 197 of the Code." I am afraid, this proposition cannot be brought into play in the present case. It is nobody's case that the respondent no. 2 had disobeyed any direction or order passed by any Court of law. The substance of the accusations is that inspite of the verdict of a Civil Court, she took some decision in her official capacity which was contrary to the finding arrived at by the Civil Court. This cannot be construed as disobedience to the order passed by any Court.

10. It is clear that cognizance of the alleged offences could not have been taken by the Magistrate without a sanction as contemplated u/s. 197 of the Code of Criminal Procedure. Since no such sanction had been obtained, the order of dismissal of the complaint is proper and legal. The petition is rejected.