

**(1986) 07 BOM CK 0050**

**In the Bombay High Court**

**Case No :** Criminal Application No. 131 of 1985

Shriram Krishnappa Asegaonkar

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

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**Date of Decision :** 24-07-1986

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 190(1), 195, 199, 2, 204  
Penal Code, 1860 (IPC) — Section 417A, 420, 468, 477A

**Citation :** (1987) 1 BomCR 59 : (1986) MhLj 1004

**Hon'ble Judges :** B.G. Deo, J

**Bench :** Single Bench

**Advocate :** S.V. Manohar, for the Appellant; S.V. Bobde, for non-applicant No. 2 and Tyade, A.G.P., for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

B.G. Deo, J.—This is an application u/s 482, Cri.P.C. for quashing the process issued by the Judicial Magistrate, Pusad against the applicant for the offences punishable under sections 420, 468, 477-A read with section 109, I.P.C. on 25-2-1985 on a complaint lodged by non-applicant No. 2-Satish Bayas. The impugned order reads thus:

"On perusal of the certified copies of the judgments of Divisional Joint Registrar dated 9-8-1979 a copy of High Court Order dated 20-10-1979, there appears prima facie case against the accused person. Hence I pass the following order :

Order

"Register case under sections 420, 468, 477-A read with section 109 of I.P.C. Issue process of P.F. Return on 15-6-1984".

2. Applicant Shriram Asegaonkar is the original accused No. 1 while one V.S. Kale, Secretary, Vividha Karyakari Sahkari Society, Sawargaon, District Yavatmal is the original accused No. 2 who has not challenged the order of issue of process against himself and the applicant.

3. Briefly stated the facts alleged are as follows :

4. The accused applicant who is quite an influential person in the co-operative field, got himself elected as a Member, Director of the Board of Directors of the District Central Co-operative Bank, Yavatmal, on the basis of his alleged membership of the Co-operative Society Karla-Manikdoha, of which he was not allegedly a member. It is alleged that he manipulated the records of the Society with the help of accused No. 2, the Secretary of the said Society and wrongly arranged to show that he is a member of that Society and for that purpose it is said, the applicant got the Secretary accused No. 2 to forge the documents, account books entry, receipt of the share, by erasing the name of one Wamanrao Ganpat Khodke who was a member at the relevant time and by substituting the name of the applicant in place of Shri Khodke. It was by this manipulation the applicant was able to contest the election to the Board of Directors to which he was eventually elected. A complaint was made by a Co-Director about this fraud which resulted in an enquiry u/s 78 of the Maharashtra Co-operative Societies Act, 1960. The Divisional Joint Registrar of the Co-operative Society after hearing the applicant-accused in the said enquiry, came to the conclusion that a fraud was practised by the Secretary of the Society at the instance of the applicant and passed an order removing the applicant from the Directorship of the Yavatmal District Central Co-operative Bank, Yeotmal, holding inter alia that the charges against the applicant were substantially proved. An appeal made to the State Government by the applicant was rejected so also, the writ petition before the High Court of Bombay at Nagpur Bench, met with the same fate. The matter went to the Supreme Court which refused to interfere with the order of the High Court with the result that the finding and the order passed by the Divisional Joint Registrar Co-operative Society became final.

5. The present complaint was filed before the learned Judicial Magistrate, Pusad, on 24th May, 1984, who after recording the statement of the complainant and perusing the judgment of the Divisional Joint Registrar, found a prima facie case against the applicants and directed issue of process by the impugned order. This order has been challenged in this application u/s 482, Cri.P.C. on the ground that there was abuse of the process of law.

6. I have heard Shri S.V. Manohar for the applicant and Shri S.A. Bobde for the non-applicant No. 2. Shri Tayde Assistant Government Pleader for the State at length.

7. Shri S.V. Manohar challenged the order firstly on the ground that the complainant is a mere citizen of Pusad and a stranger to the co-operative field and had no locus standi to file the complaint as no harm was occasioned to his mind, body or reputation by the alleged cheating and thus if anybody was competent to complain about the said cheating it was the Co-operative Society Karla-Manikdoha and the Board of Directors. Secondly, on the ground of delay inasmuch as the elections of the Board of Directors were held in the year 1978 while the complaint was filed on 24th May, 1984 i.e. after a period of six years

without explaining the inordinate delay and, therefore, on the ground of delay along no cognizance should have been taken by the complainant of the complaint and lastly that the allegations in the complaint do not make out a prima facie case for the offences under sections 420, 468 and section 477-A of the Indian Penal Code against the applicant.

8. So far as the first ground is concerned, suffice it to say that in all the prosecutions, the State is the prosecutor and when a Magistrate takes cognizance of an offence on a complaint u/s 190(1)(a) of the Criminal Procedure Code, it is in the interest of the public at large. That is why any one can put the criminal law in motion, unless the statute prescribes for an eligibility of the complainant as can be gathered from the provisions contained in sections 195 to 199 of the Criminal Procedure Code. In *A.R. Antulay Vs. Ramdas Srinivas Nayak and Another*, , while upholding the cognizance taken by a Special Judge on a private complaint about the offences committed by a public servant as enumerated in section 6(1)(a) and (b) of the Criminal Law Amendment Act, 46 to 52, the Supreme Court observed that locus-standi of the complainant is a concept foreign to criminal jurisprudence, save and except that where the statute creating an offence provided for the eligibility of the complainant by necessary implication the general principle gets excluded by such statutory provisions. Their Lordships of the Supreme Court then referred to sections 195 to 199 of the Criminal Procedure Code and observed that these specific provisions clearly direct that in the absence of any such statutory provisions a locus-standi of the complainant is a concept foreign to Criminal Law Jurisprudence.

9. The offence in the instant case i.e. the offences u/s 420 and sections 468 and 477-A do not by any provisions of law require that a complaint has to be filed by a person aggrieved by the said offences and by no other. The first ground, therefore, that the complainant a stranger to the co-operative field and a layman could not have filed a complaint does not, therefore, merit any serious consideration and has to be rejected.

10. In this connection, it was further contended that the complainant was not cheated by the accused and that, therefore, having regard to the definition of cheating the complainant could not have complained about the offence u/s 420 for want of damage or harm to his mind, body, reputation or property. The offence of cheating takes place when a deception is practised on any person, not necessarily the complainant, causing harm to the person deceived in body, mind, reputation or property. On the allegation in the complaint a definite harm was caused to the reputation of the Co-operative Society Karla-Manikdoha when the accused posed to be it's member by practising fraud on the Society with the help of accused No. 1 and benefited by becoming a Member-Director of the District Central Co-operative Bank, Yevotmal, which position he would not have gained but for the fraudulent deception. This offence could be complained of by any person not directly connected with the affairs of the aforesaid society or the bank, in the absence of any specific statutory bar.

11. In *Madhadeolal v. Emperor*, 1908 CLJ 342, a Division Bench of the Calcutta High Court has held that the prosecutor in criminal case is really the crown and the complainant merely sets the machinery of the Laws in motion, and, in a case of cheating it has been held therein that it is not necessary that complainant should have been the person deceived. In that case a Pleader was deceived by writing a letter of cancellation of contract and the complaint was filed by servant of a firm, which became aware of the deception. It was held that the accused was rightly convicted of the offence of attempt of cheating.

12. The definition of the word "complaint" occurring in section 2(a) of the Code of 1973 indicates that a complaint can be made by any person orally or in writing to a Magistrate with a view to his taking action under the Code that the some person whether known or unknown has committed an offence. The definition specifically excludes a police report in respect of commission of a non-cognizable offence where according to the definition the Police Report shall be deemed to be a complaint and the Police Officer making the report a complainant. There is, therefore, no doubt that the complaint of offence of cheating punishable u/s 420, I.P.C. can be filed by any person to set the law in motion and that it is not necessary that such a complaint should be filed by only the person deceived.

13. The next challenge to the impugned order is on the ground of delay of six years in lodging the complaint, without explaining the delay. The concept of limitation for taking cognizance of petty offences punishable upto six months, one year and three years was introduced for the first time in the Criminal Procedure Code, 1973, in sections 467 to 473. The Legislature has advisedly not prescribed any limitation for the offences which are punishable for more than three years. There is, therefore, no substance in the contention that the delay of six years without any explanation should have not-suited the complainant as the offences complained of in this case are punishable with imprisonment for seven years. The complainant, therefore, was not obliged to explain the delay. Further, the fact of delay can be taken into consideration for judging the veracity or otherwise of the complainant while deciding the case on merits. The second ground of attack, therefore, also fails.

14. The last contention canvassed by the applicant's Counsel Shri S.V. Manohar was that the complaint does not make out a prima facie case for the offences under sections 420, 468 and 477-A read with section 109 of the Indian Penal Code and the learned Magistrate was in error of issuing the process merely on the basis of the judgement of the Divisional Joint Registrar dated 9-8-1979, especially when the complainant himself had no personal knowledge of the facts and no other documents were produced nor any other witnesses named in the complaint were examined. It was also contended that mere fact that the accused was the beneficiary of the fraud would not show that he had abetted the offence under sections 420, 468 and 477-A of the Indian Penal Code.

15. All that is required at the time of issuing process u/s 204 of the Criminal Procedure Code, is the satisfaction of the Magistrate taking cognizance of the

offence that there are sufficient grounds for proceeding with the case. The complaint, statement of the complainant and the documents before the Magistrate included the judgment of the Divisional Joint Registrar clearly show that the applicant-accused had with the help of accused No. 2 practised a fraud by forging the documents to show that he was a member of Karla Manikdoha Society and benefited himself by becoming a member-Director of the District Central Co-operative Bank Yeotmal, from which position he was removed when the fraud was unearthed on enquiry and the said order of removal was upheld upto the Supreme Court. Nothing more was required for the Magistrate to record his satisfaction for issuing the process against the applicant. It cannot be said that no case was at all made out in the complaint for the alleged offences. The defence and the grievance of the applicant can always be looked into a later stages of the trial and it will be open to the Magistrate to discharge or acquit the accused on merits. In *Hareram Satpathy Vs. Tikaram Agarwala and Others*, while considering whether the High Court was justified in going into the merits of the case in exercise of its powers u/s 482, Cri.P.C. Their Lordships of the Supreme Court observed that the Magistrate is restricted to finding out whether there is a prima facie case or not for proceeding against the accused and cannot enter into a detailed discussion of the merits or demerits of the case and the scope of the revisional jurisdiction is very limited and the High Court cannot launch on a detailed and meticulous examination of the case on merits and set aside the order of Magistrate directing issue of process against certain persons. In *Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others*, , it has been held that at the stage of issuing process the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient ground for proceeding against the accused and it is not the province of the Magistrate to enter into a detailed discussion of the merits or demerits of the case nor can High Court go into this matter in its revisional jurisdiction which is a very limited one. It has been further held that once the Magistrate has exercised his discretion it is not for the High Court or even the Supreme Court to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations are totally foreign to the scope and ambit of an inquiry u/s 202 which culminates into an order u/s 204. Cri.P.C.

16. The Supreme Court has given four types of cases where an order of the Magistrate issuing process against the accused can be quashed. The first is that :- Where there is no case against the accused or the complaint which does not disclose the essential ingredients of an offence which is alleged against the accused. The second type of the case is where the allegations made in the complaint are patently absurd and inherently improbable. The third type is where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary and fourth is of a complaint suffering from fundamental legal defects

such as want of sanction or absence of a complaint by legally competent authority and the like. If this is the position in the revisional jurisdiction it is much more so in case of exercise of inherent jurisdiction u/s 482, Cri.P.C. which has to be used sparingly and only in cases where there is blatant abuse of process of law or to secure ends of justice. In J.P. Sharma v. Vinod Kumar Jain and others, 1986(3) S.C.C. 57 it has been held that the High Court cannot exercise it's power u/s 482, Cri.P.C. to quash a criminal complaint and the proceedings, if prima facie offences are made out on the basis of the allegations made in the complaint without going into the truth or otherwise of the allegations.

17. In the instant case the learned Magistrate was satisfied on the basis of the judgment of the Divisional Joint Registrar that the offences under sections 420, 468 and 477-A of the Indian Penal Code were prima facie made out against the applicant S.K. Asegaonkar and the discretion exercised by the learned Magistrate not being capricious or arbitrary and it being not a case of no evidence at all there is no scope for interfering in the said order under it's inherent powers by this Court u/s 482, Cri.P.C.

18. The application, therefore, is hereby dismissed.