
(1978) 06 BOM CK 0042
In the Bombay High Court

State of Maharashtra

APPELLANT

Vs

Dnyanoba Bhikoba Dagade

RESPONDENT

Date of Decision : 12-06-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 53

Citation : (1979) CriLJ 277

Hon'ble Judges : Jahagirdar, J

Bench : Single Bench

Judgement

Jahagirdar, J.—These two petitions, invoking the revisional jurisdiction of this Court, raise an interesting question as to the interpretation of Section 53 of the Code of Criminal Procedure, 1973. Though the point of law arising in the petitions is the same, the facts in the petitions are somewhat different and must, therefore, be separately narrated before appreciating the question of law involved.

2. In Criminal Revision Application No. 295 of 1977, the respondent (hereinafter referred to as "the accused") was charged with an offence punishable u/s 376 of the Indian Penal Code, in the Court of the Judicial Magistrate, First Class at Khandala, of Satara District. The case was registered as C. R. No. 64 of 1976 of the Khandala Police Station. On an application made on 14th Oct. 1976 by the Police Sub-Inspector of Khandala Police Station, the learned Judicial Magistrate, by an order of the same date, directed that the accused should submit himself to the medical officer to enable him to take the blood of the accused for analysis. It is admitted that this order was passed by the Magistrate without hearing the accused. The accused, therefore, made an application on 16th Oct. 1976, pointing out what he characterised as the illegality of the order of the 14th Oct. 1976, and for cancelling the said order. After hearing the Assistant Public Prosecutor, the learned Magistrate refused to set aside the order passed by him on 14th Oct. 1976, by holding that he was bound by the order passed by him earlier, unless it was set aside by the higher authorities. In other words, he

regarded himself functus officio in so far as order for the examination of the blood of the accused was concerned.

3. This order of the Magistrate, passed on 3rd Nov. 1976, was challenged by the accused in a revision application, being Criminal Revision Application No. 84 of 1976. filed in the Court of the Sessions Judge at Satara. The Revision Application was opposed by the State, by contending firstly that no revision was permitted under the Criminal Procedure Code, 1973, against an order which was interlocutory in nature. According to the State, the order passed by the learned Magistrate on 14th Oct. 1976, as well as on 3rd Nov. 1976, was interlocutory and they were not amenable to the revisional jurisdiction of the Sessions Court, On merits, it was contended on behalf of the State that Section 53 of the Code of the Criminal Procedure allowed the Magistrate to pass an order of the type which was done in the instant case.

4. The learned Additional Sessions Judge, Satara, by his judgment and order dated 9th May 1977, negatived the contentions raised on behalf of the State, and allowed the Revision Application No. 84 of 1976. While so doing, the learned Additional Sessions Judge, relying upon certain judgments of the Supreme Court, held that the impugned order was not an interlocutory order, and further that Section 53 of the Code of Criminal Procedure did not empower the Magistrate to pass the impugned order. It is this order of the learned Additional Sessions Judge that is the subject-matter of challenge in Criminal Revision Application No. 295 of 1977.

5. Criminal Revision Application No. 296 of 1977, relates to a case registered at C. R, No. 276 of 1976 in Satara City Police Station. In that case there are 4 accused who have been charged with offences punishable u/s 376 and Section 506 both read with Section 34 of the Indian Penal Code. In this case too, on an application made by the Police Sub-Inspector, the learned Chief Judicial Magistrate of Satara, by his judgment and order dated 25th January 1977, directed all the 4 accused to present themselves before the registered medical officer of the General Hospital, Satara, and allow the said Medical Officer to collect their blood. This order was challenged by the accused in Criminal Revision Application No. 13 of 1977, which was allowed by the learned Additional Sessions Judge, by his judgment and Order dated 9th May 1977, Judgment which is joint with the judgment in the case mentioned above. Criminal Revision Application No. 296 of 1977 seeks to challenge this particular order.

6. For the reasons mentioned by the learned Additional Sessions Judge in his judgment, I hold that the orders passed by the Magistrates in both the cases were not interlocutory orders, and therefore, they were amenable to the revisional jurisdiction of the learned Additional Sessions Judge. There is, therefore, no jurisdictional error in the order passed by the learned Additional Sessions Judge. Mr. Gangakhedkar, the learned Public Prosecutor, appearing in these two petitions, has also not seriously challenged the judgment of the learned Additional Sessions Judge on that point.

7. Mr. Gangakhedkar, however, seriously canvassed the view of Section 53 of the Criminal Procedure Code permitting the Magistrate who is seized of the case to pass the order requiring the accused to submit themselves to the medical examination by a Doctor for the purpose of collecting their blood. As the learned Additional Sessions Judge has, in his judgment, pointed out, the basic question is whether there is any express provision in any law empowering the magistrate to compel the accused to submit to the medical officer for the extraction of blood? Article 21 of the Constitution provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law. If extraction of blood is not permitted or is not provided by law, then the blood of any citizen cannot be extracted; if the extraction of blood is permitted in accordance with particular procedure alone, then that procedure alone, and no other procedure, can be followed; if the extraction of blood by a particular person is permitted by any law, then that person alone can extract the blood and none other. Any law which interferes with the fundamental rights guaranteed by the Constitution must be strictly interpreted and the provisions of the same must be strictly complied with. Bearing this in mind, the provision contained in Section 53 of the Criminal P. C., 1973, must be noted:

53. (1) When a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of a police officer not below the rank of sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose.

(2) Whenever the person of a female is to be examined under this section, the examination shall be made only by, or under the supervision of, a female registered medical practitioner.

This is a new section inserted in the Criminal P. C. of 1973, and was not found in the earlier Code. The section shows that the police officer not below the rank of a sub-inspector can request a registered medical officer to medically examine a person who is arrested. In the entire section, there is no mention at all whatsoever of the Magistrate who is trying a case in which a person arrested is tried or is to be tried. I am doubtful whether the provisions of this section can be invoked sometime after the person has been arrested and has been released on bail. I am also doubtful whether this section compels a person arrested to allow a medical officer to extract his blood, though it may allow the medical practitioner to otherwise medically examine him. In other words, I am not sure whether the medical examination, mentioned in Section 53, includes the extraction of the blood of a person arrested. It is however, not necessary for me to decide these two questions on the facts of the present case. It is abundantly clear that the two

Magistrates, who passed the impugned orders, had no authority under the provisions of Section 53 to compel the accused to allow the medical practitioner to extract blood from their persons.

8. As I have already mentioned above, there will be an infringement of Article 21 of the Constitution if the person who is not authorised by law to order extraction of blood orders extraction of blood in any manner which is not again authorised by law. In the instant case, Section 53 of the Criminal P. C, 1973, does not authorise the Magistrate to pass an order compelling the accused to submit themselves to the medical examination by a medical practitioner for the purpose of extraction of blood from their persons. The orders passed by the two Magistrates in the present petitions were patently illegal and without jurisdiction, and were rightly set aside by the learned Additional Sessions Judge.

9. In the result, these petitions must fail. Rule is discharged in each of the petitions.