

(1994) 08 BOM CK 0096
In the Bombay High Court
Case No : Criminal Application No. 376 of 1994

Uttam

APPELLANT

Vs

The State of Maharashtra and others

RESPONDENT

Date of Decision : 24-08-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 202, 202(1), 203, 204
Penal Code, 1860 (IPC) — Section 34, 500

Citation : (1996) 1 BomCR 395 : (1995) 1 MhLj 95

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : N.R. Saboo, for the Appellant; S.B. Wahane, A.G.P., for the Respondent

Judgement

1. An application u/s 482 of the Code of Criminal Procedure, 1973 (for short "the Cr.P.C.") has been filed by the complainant Uttam aggrieved by the order passed by the Additional Sessions Judge, Amravati, on 19-1-1994 whereby he set aside the process issued by the Judicial Magistrate First Class, Amravati and quashed the proceedings in Criminal Case No. 1260 of 1990 Uttam v. Rajendrakumar and others.

2. Shorn of unnecessary details, the facts giving rise to the present application u/s 482 of the Cr.P.C. are that the applicant filed a complaint on 10-12-1990 u/s 500 read with Section 34 of the Indian Penal Code against the non-applicant Nos. 2 to 18 herein in the Court of Judicial Magistrate First Class. It was alleged in the complaint that the complainant as well as non-applicant Nos. 2 to 16 are the Government servants serving in the Treasury Office at Amravati. The non-applicant Nos. 2 to 16 herein on 1-2-1990 lodged a false complaint to the Treasury Officer, Amravati, containing false imputation that the complainant had come in the office on 31-1-1990 in a drunken state and abused the Treasury Officer, Additional Treasury Officer and Collector in filthy language. The said complaint was lodged by the non-applicant Nos. 2 to 16 herein against the

present applicant-complainant with common intention to defame him knowing it to be false with clear intention to cause damage to the reputation and service of the applicant.

3. On the complaint filed by the applicant-complainant u/s 500 read with Section 34 of the Indian Penal Code against the non-applicant Nos. 2 to 16 herein, the Judicial Magistrate First Class, Amravati, called a report u/s 202(1) of the Cr.P.C. from the Treasury Officer, Amravati, and thereafter perused the verification. After going through the report of the Treasury Officer u/s 202 of the Cr.P.C., the learned Judicial Magistrate First Class, Amravati found that there was sufficient material prima facie to issue the processes against the non-applicant Nos. 2 to 16 herein u/s 500 read with Section 34 of the Indian Penal Code vide his order dated 16-8-1991. The non-applicant Nos. 2 to 16 filed the revision petition before the Sessions Judge, Amravati, u/s 397 of the Cr.P.C. against the order issuing process passed by the Judicial Magistrate First Class, Amravati. The Sessions Judge vide his order dated 19-1-1994 allowed the revision petition, set aside the order of issue of process and quashed the proceedings. After hearing the learned counsel for the applicant and the learned Public Prosecutor, I am of the opinion that the order dated 19-1-1994 impugned in the present application u/s 482 of the Cr.P.C. cannot be sustained. Nobody has appeared on behalf of the non-applicant Nos. 2 to 16 despite service.

4. Section 204 of the Cr.P.C. provides as under

"204. (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be -

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this Section shall be deemed to affect the provisions of Section 87."

Issue of process is an interlocutory order and is not subject to revision u/s 397 of

the Cr.P.C. An order issuing the process on ex parte consideration of the complaint and material u/s 204 of the Cr.P.C. being only a step towards the trial, is interlocutory order,

5. In K.M. Mathew Vs. State of Kerala and another, the Apex Court has held that the order issuing process is an interim order and not a judgment,

6. It is always open to the accused person against whom the process has been issued and proceedings taken by the Magistrate taking cognizance of an offence to enter appearance before the concerned Magistrate and submit to the said Court that the complaint does not disclose any prima facie case. The accused person may always appear before the Magistrate in response to the summons and urge before the concerned Magistrate that there is neither sufficient ground nor sufficient material to proceed against him and if such an objection is taken by the accused in response to the process issued to him, it is always open to the said Magistrate to consider that matter and if satisfied, to recall the order issuing the process.

7. In Kailash Chaudhari and Ors. v. State of U. P. the Allahabad High Court has held as under (at p. 76) :

"The order issuing the process u/s 204 of the Code has been held to be an interim order and not a Judgment and, therefore, it has been ruled by the Supreme Court in K.M. Mathew Vs. State of Kerala and another, that the order taking cognizance and issuing process u/s 190 read with Section 204 of the Code can be varied, rescinded or recalled by the Magistrate and the proceedings dropped if a complaint on the very face of it does not disclose any offence against the accused.

That being the position of law, Section 397(2) of the Code would create express bar to interference in revision against an interlocutory order and that being so the High Court should not, as a matter of sound exercise of judicial discretion, invoke its inherent jurisdiction u/s 482 of the Code to quash the complaint unless the accused has first approached the Magistrate for the purpose of dismissing the complaint on the ground that there was no sufficient ground to proceed in the matter. The accused must be relegated to his remedy u/s 204 of the Code to approach the Magistrate and satisfy him that the process in the case ought not to have been issued. Needless to say that if the Magistrate is so satisfied, he may recall the order issuing the process u/s 204 and dismiss the complaint u/s 203 of the Code."

8. Applying the same principles, I am also of the view that the order of the learned Judicial Magistrate First Class dated 16-8-1991 issuing process to the non-applicant Nos. 2 to 16 herein was only an interlocutory order and not amenable to the revisional jurisdiction of the Sessions Judge, Amravati u/s 397 of the Cr.P.C.

9. In this view of the matter, the order passed by the learned Additional Sessions

Judge, Amravati, on 19-1-1994 impugned in the present application u/s 482 of the Cr.P.C. is unsustainable and liable to be set aside.

10. Consequently I allow this application u/s 482 of the Cr.P.C. and set aside the order dated 19-1-1994 passed by the Additional Sessions Judge, Amravati in Criminal Revision No. 265 of 1991. It is however made clear that it will be open to the non-applicant Nos. 2 to 16 herein to show to the Judicial Magistrate First Class, Amravati, that there are no sufficient reasons or grounds to proceed against them in the complaint and the complaint does not disclose any offence against them and if such an application is made by the accused persons - non-applicant Nos. 2 to 16 herein or if such an objection is raised by the accused persons on their appearance before the Judicial Magistrate First Class, the Judicial Magistrate First Class, Amravati, shall decide that question after considering the objection of the accused persons as to whether any prima facie case for the offence u/s 500 read with Section 34 of the Indian Penal Code is made out or not, and if satisfied, the Judicial Magistrate First Class would be competent to recall the order issuing the process. The Criminal Application u/s 482 of the Cr.P.C. is disposed of accordingly.

11. Order accordingly.