
(1978) 07 BOM CK 0021
In the Bombay High Court

Vinayak Purushottam Kalantre

APPELLANT

Vs

Vikram Balwantrao Deshmukh and Others

RESPONDENT

Date of Decision : 19-07-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 94
Penal Code, 1860 (IPC) — Section 34, 408, 420

Citation : (1979) CriLJ 71

Hon'ble Judges : Dharmadhikari, J;Aggarwal, J

Bench : Division Bench

Judgement

Dharmadhikari, J.—The petitioner in the present case had filed a private complaint against the respondents before the Judicial Magistrate, First Class, Baramati for the alleged offences under Sections 408 and 420 read with Section 34 of the I P. C. It is an admitted position that in that case the respondents before this Court were the accused persons. Thereafter by the application dated 31st of Jan. 1977 the complainant filed an application before the Magistrate requesting him to issue summonses to respondent Nos. 1 to 3 calling upon them to produce the documents enumerated in the application. This application was opposed by the respondents. Ultimately by the order dated 17th Aug. 1977 the learned Judge rejected the application filed by the complainant, as according to the learned Judicial Magistrate, First Class in view of the decision of the Supreme Court in Shyamlal Mohanlal Vs. State of Gujarat, the Court has no authority or jurisdiction to issue any such summonses against the accused persons.

2. Being aggrieved by this order passed by the Judicial Magistrate, First Class, the present petition is filed by the original complainant. The main contention raised before us by the learned Counsel for the complainant is that the subsequent decision of the Supreme Court reported in Shyamlal Mohanlal Vs. State of Gujarat, is not binding upon this Court as in the said decision the Supreme Court has not considered the view taken by the larger Bench in its earlier decision reported in The State of Bombay Vs. Kathi Kalu Oghad and Others, . According to the learned Counsel in the earlier case it was held by the

Supreme Court that any document which was earlier executed by the person before he was made an accused could be called for by the Court and is also admissible in evidence, whereas in the subsequent case viz in Shyamlal's case the Supreme Court has taken the view that u/s 94 of the Code of Criminal Procedure no summons could be issued to the accused persons even for production of such a document. Therefore, according to the learned Counsel the subsequent view of the Supreme Court runs counter to the earlier view taken by the larger Bench of the same Court in The State of Bombay Vs. Kathi Kalu Oghad and Others, In substance it is, therefore the contention of the Counsel that we should follow the earlier view of the Supreme Court because according to him the view taken in Shyamlal's case is not a good law.

3. Obviously it is not possible for us to accept this contention. In the latter decision viz. in Shyamlal Mohanlal Vs. State of Gujarat, it is held by the Supreme Court that Section 94 of the Old Cr. P, C. corresponding to Section 91 of the new Cr.P.C. 1974 does not apply to the accused person at all. Obviously, therefore where it is intended to require an accused person to produce a document which is incriminatory in nature a summons cannot be issued. Such a question was not directly posed before the Supreme Court when the matter was decided in The State of Bombay Vs. Kathi Kalu Oghad and Others, . Further, it is not possible for this Court to ignore the later decision of the Supreme Court which is directly on the point only because the learned Counsel thinks that the earlier decision of the Supreme Court was not brought to its notice, As a matter of fact the scope and area of consideration in Shyamlal's case as well as in The State of Bombay Vs. Kathi Kalu Oghad and Others, were wholly distinct and different Later decision of the Supreme Court reported in Shyamlal's case is obviously to the point and is, therefore, binding upon this Court. In the present case it is not disputed before us that the respondents are the accused persons and it is also not disputed that the original complainant wanted the Court to issue summons to them u/s 91 of the Cr.P.C. for the production of incriminatory documents. In these circumstances, in our opinion, the learned judicial Magistrate was right in taking the view that the summonses could not be issued in view of the law pronounced by the Supreme Court in Shyamlal's case.

4. It was also contended by the learned Counsel that in later decision viz. in Shyamlal Mohanlal Vs. State of Gujarat, the Supreme Court has also not considered its earlier decision reported in M.P. Sharma and Others Vs. Satish Chandra, District Magistrate, Delhi and Others, . In our opinion there is no substance in this contention also. As a matter of fact the case reported in Shyamlal Mohanlal Vs. State of Gujarat, was nothing but an appeal filed by the aggrieved party against the decision of the Gujarat High Court in State of Gujarat Vs. Shyamlal Mohanlal, In this decision of Gujarat High Court a specific reference was made to the earlier decision of the Supreme Court in M.P. Sharma and Others Vs. Satish Chandra, District Magistrate, Delhi and Others, . The view taken by the Gujarat High Court in Shyamlal's case is upheld by the Supreme Court. In this view of the matter in our opinion there is no substance in this

application and the application fails.

5. Rule is discharged.