

Manoj Vs. the State of Maharashtra and Another

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Court : Mumbai Aurangabad

Decided On : Mar-14-2014

Judge : Abhay M. Thipsay

Appeal No. : Criminal Application No. 3792 of 2012

Appellant : Manoj

Respondent : The State of Maharashtra and Another

Judgement :

1. The applicant is the husband of the non-applicant no.2 herein. He is facing prosecution vide Regular Criminal Case No. 154 of 2011, pending before the Judicial Magistrate (First Class), Sakri [District : Dhule]. The said case arises on a complaint filed by the non-applicant no. 2 herein. The learned Magistrate has, by an order dated 22-8-2011, issued process against the applicant, requiring him to answer to the charge of offences punishable under Sections 193 of the IPC, 465 of the IPC and 471 of the IPC. Being aggrieved thereby, the applicant has filed this Application invoking the inherent powers of the court and praying that the proceedings of the said Criminal Case be quashed.

2. For the sake of convenience and clarity, the applicant shall hereinafter be referred as "**the accused**", and the non-applicant no.2 as "**the complainant**".

3. I have heard Mr. R.S. Deshmukh, the learned Counsel for the accused. I have heard Mr. R.N. Dhorde, the learned Senior Advocate for the complainant. I have

heard Mr. P.N. Muley, the learned Additional Public Prosecutor for the State.

4. I have been taken through the Application, and the annexures thereto. I have also gone through the original record and proceedings of the trial court.

5. The case of the complainant, as revealed from the complaint, is, in brief, as follows:

That, the complainant married the accused on 30-5-2002. They have a daughter - Ms. Pooja. That, the complainant was not being treated properly by the accused and his relatives / family members. That, on 20-4-2009, the brother of the complainant was to get married at Sakri. The accused, therefore, sent the complainant and Pooja to Sakri on 17-4-2009 for attending the marriage ceremony. That, the accused deliberately did not go for the marriage of complainant's brother which was to be performed on 20-4-2009.

Later on i.e. on 25-8-2009, the accused lodged a report at Sakri Police Station, against the father of the complainant, alleging that the complainant's father had raped Pooja while she was staying at Sakri along with the complainant. Based on this report, a case in respect of offences punishable under Section 376 of the IPC, read with Sections 511 of the IPC and 506 of the IPC was registered against the complainant's father. (The said case was pending at the time when the complaint in R.C.C. No. 154/2011 came to be filed by the complainant before the Judicial Magistrate (First Class), Sakri, but has since been decided.) That, the complainant was driven out of the matrimonial house, by the applicant and his mother-in-law, on 31-7-2009. The complainant, on 16-10-2009, instituted proceedings under the Protection of Women from Domestic Violence Act (vide Criminal Misc. Application No. 263/2009), and for maintenance under Section 125 of the Code of Criminal Procedure, 1973 (vide Criminal Misc. Application No. 261/2009), in the court of Judicial Magistrate (First Class), Sakri. In those proceedings, the accused filed his affidavits in lieu of the examination in chief. The accused had also annexed some documents to the said affidavits and had produced the same along with it in the court. That, the accused had, in his affidavit, inter alia, stated as follows:

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Translated in English, it would read thus:

œAs the marriage of the applicant's brother Kamlesh was to be performed at Sakri, on 20-4-2009, I had sent the applicant and daughter Pooja to Sakri on 15-4-2009. As I had election duty, I could not remain present.?

That, the accused had also annexed two documents to his affidavit.

6. The grievance of the complainant is that, the claim of the accused, that, he could not attend the marriage of her brother due to election duty, is false and that, the documents submitted by him to show that, were also false. It appears that the complainant made some enquiries and sought certain information from the concerned authorities and learnt that the accused, who works as a Clerk in the office of Chief Metropolitan Magistrate, Mumbai, was present in the office on the said two dates i.e. 20-4-2009 and 21-4-2009, on which dates, as per the documents submitted by the accused, he was required to be present elsewhere for election duty. That, thus, the accused had fabricated false evidence by tampering with the original matter in the said letters, and had given false evidence by showing that evidence to be true.

It is on these allegations, that the complaint alleging offences punishable under Sections 191 of the IPC, 420 of the IPC, 463 of the IPC, 465 of the IPC, 470 of the IPC and 471 of the IPC, came to be lodged. The learned Magistrate, as aforesaid, however, issued process in respect only of the offences punishable under Sections 193 of the IPC, 465 of the IPC and 471 of the IPC.

7. Mr. R.S. Deshmukh, the learned Counsel for the accused, contended that, there was absolutely no basis for claiming that the documents in question were forged. I have examined the documents from the original record of the proceedings before the Magistrate. One is a letter dated 8th April 2009, sent by the Additional Assistant Election Officer, to the accused, indicating that he would be required to remain present for training in connection with the election, at 10.00 a.m. on 20th and 21st April 2009, at Dharmaprakash Shrinivasayya High School. The overwriting with respect to the dates, 20th and 21st, is clearly visible. According to Mr. Deshmukh, this overwriting has been made by the concerned authority i.e. the

authority issuing the letter itself, and that, the letter is actually a genuine one. He has placed reliance on a letter dated 23-11-2011 addressed to the accused by the Additional Assistant Election Officer, confirming that the letter dated 8th April 2009 had been issued from the same office (i.e. office of the Election Officer). Based on this letter, it is submitted that there is no basis for claiming the letter dated 8-4-2009 to be a forgery.

8. Mr. R.N. Dhorde, the learned Senior Counsel for the complainant, on the other hand, contended that the letter dated 23-11-2011 cannot be relied upon to hold the letter dated 8th April 2009, produced by the accused before the Magistrate in his evidence, to be genuine. He pointed out that, the letter dated 23-11-2011 seeks to certify that the applicant had indeed been called for training on 20th and 21st April 2009, only on the basis of a xerox copy of the letter dated 8th April 2009, submitted by the accused to the said office. It is submitted that, there has been no independent verification in that regard.

9. It also appears that the complainant has been able to obtain a letter from the Registrar and Metropolitan Magistrate, Esplanade, Mumbai, to the effect that the District Collector and the District Election Officer had communicated to the office of the Chief Metropolitan Magistrate, by a letter dated 20th April 2009, that, the employees working in the office of the Chief Metropolitan Magistrate were exempted from doing the election duty. The complainant has also produced a letter issued by the office of the Chief Metropolitan Magistrate, showing that the accused was marked as present in the office on 20th and 21st of April 2009. It is on the basis of this material, it is claimed that the accused has committed forgery by changing / altering the original dates to 20th and 21st in the letter dated 8th April, 2009.

10. The Magistrate has issued process in respect of an offence punishable under Section 193 of the IPC also. He could not have done so, in view of the express bar created by Sub-Clause (i) of Clause (b) of Sub-Section (1) of Section 195 of the Code. That, the cognizance of the offence punishable under Section 193 of the Code could not have been taken by the Magistrate, is not disputed by Mr. Dhorde, the learned Advocate for the complainant. His contention, however, is that, there

was no bar to take the cognizance of the offences punishable under Sections 465 of the IPC and 471 of the IPC. According to him, therefore, the prosecution with respect to the accusation of the said offences is not liable to be quashed.

11. Admittedly, the documents alleged to be forged were produced and given in evidence in the proceedings before the Magistrate. The question, therefore, arises is whether the bar created by Sub-Clause (ii) of Clause (b) of Sub-Section (1) of Section 195 of the Code would be applicable with respect to the taking of cognizance of the offences punishable under Sections 465 of the IPC and 471 of the IPC is concerned.

12. Mr. Dhorde contended that, the prohibition contained in Clause (b)(ii) of Sub-Section (1) of Section 195 of the Code would not apply to a case where the forgery has been committed before the document was produced in evidence. According to him, the bar would apply only where a document already produced before the court is forged. In support of his submissions, he placed reliance on the decision of the Supreme Court of India, in **Sachidanand Singh and another Vs. State of Bihar and another (AIR 1998 SC 1121(1))**. Indeed, in that case, after considering several other previous decisions of the Supreme Court of India, and more particularly, those in the case of **Patel Laljibhai Somabhai Vs. The State of Gujarat (AIR 1971 SC 1935)**, and in the case of **Gopalkrishna Menon Vs. D. Raja Reddy (AIR 1983 SC 1053)**, Their Lordships concluded that the bar contained in Section 195(1)(b)(ii) of the Code is not applicable to a case where forgery of the document was committed before the document was produced in a court.

13. In the view that I am taking, it is not necessary to discuss, or attempt to try to analyze the previous decisions on the issue, which have been discussed and considered by Their Lordships of the Supreme Court of India, except observing that the view on this aspect, as reflected from the reported judgments, does not seem to be uniform. In my opinion, so far as the present case is concerned, the matter has to be looked at from a different angle.

14. Admittedly, the cognizance of an offence punishable under Section 193 of the IPC could not have been taken by the Magistrate on the basis of the complaint

lodged by the complainant. That, the cognizance of the said offence could not have been taken except on a complaint made by the court in which the false evidence was given is not - and cannot be - disputed. Now, Section 193 of the IPC prescribes punishment for giving false evidence (as described in Section 191 of the IPC), and also for fabricating false evidence (as described in Section 192 of the IPC). Section 192 of the IPC makes it clear that, fabricating false evidence, inter alia, includes making of a false entry, or making of a document containing a false statement. Here, the case of the complainant is that, the accused had given false evidence to the effect that he could not attend the marriage of the complainant's brother because of the election duty assigned to him on 20th and 21st April 2009. It may not be out of place to observe here that, the false evidence is not with respect to the fact of the accused not attending the same, but with respect to the reason by which he could not attend the marriage. It is not the case of the complainant that, the accused had attended the said marriage, but her challenge is only to the aspect that the reason for not attending the marriage, as given by the accused, is false. It is also the case of the complainant that, it is to support the reason for his not attending the marriage, that the accused had allegedly tampered with the document and produced the same as evidence in support of his claim.

15. A bare reading of the complaint makes it clear that the allegation against the accused is of giving and fabricating false evidence. The alleged forgery is only incidental “ so to say “ in as much as what was allegedly intended was to fabricate evidence and in the process of this fabricating, the forgery had been committed. Now, the question is, when the cognizance of the offence of fabricating false evidence, which is punishable under Section 193 of the IPC, could not have been taken on the basis of the complainant's complaint, whether on the same facts and for the same act, cognizance of offences punishable under Sections 465 and 471 of the IPC could be taken on the complainant's complaint.

16. In my opinion, the bar created by Sub-Clause (i) of Clause (b) of Sub-Section (1) of Section 195 of the Code cannot be allowed to be circumvented by claiming that the accused, though cannot be prosecuted on the allegation of having committed an offence punishable under Section 193 of IPC, can be prosecuted on

the allegation of having committed offences punishable under Sections 465 and 471 of IPC, as the bar under Sub-Clause (ii) of Clause (b) of Section 195 (1) of the Code is not applicable.

17. Undoubtedly, in Sachidanand Singh's case (Supra), Their Lordships of the Supreme Court of India have held that bar of Section 195(1)(b)(ii) would be attracted only if the forgery would be committed while the document in question would be in the custody of the Court. However, here the forgery is a part of the offence of fabricating and giving false evidence. The only object of the forgery, as per the version of the complainant herself, was to give the forged document in evidence for the purpose of supporting the cause for the absence of the accused at the time of the marriage of the complainant's brother. The significance of the forgery was only to this extent and, therefore, it cannot be treated separately from the offence of giving fabricating false evidence, cognizance of which, admittedly, could not have been taken except on a complaint made by the concerned Court.

18. Since the Magistrate could not have issued process against the accused with respect to the offence punishable under Section 193 of the IPC, on the same facts and for the same act, he could not have issued process with respect to the offence punishable under Sections 465 and 471 of the IPC also. The body of the offence punishable under Section 193 of the IPC and the body of the offence punishable under Sections 465 and 471 of the IPC is the same in the instant case. In other words, exactly the same facts constitute the offence punishable under Section 193 of the IPC and also the offences punishable under Sections 465 and 471 of the IPC. At the cost of repetition, it may be observed that the provisions of Section 195 of the Code cannot be permitted to be circumvented by saying that the Court was not proceeding against the accused with respect to the offence punishable under Section 193 of the IPC but was merely proceeding with respect to the offence punishable under Section 465 and 471 of the IPC and by claiming that there was no bar to take cognizance of the said offences as the forgery in question had been committed before the document was produced in the Court, or given in evidence.

19. There are also some other aspects of the matter, which need to be taken in consideration. There is no satisfactory material to show that the document in

question is indeed forged and this aspect is sought to be indicated only by the fact that there is overwriting with respect to the original dates in the said document. An overwriting would not necessarily indicate that the same has not been done by the Authority who purportedly issued the said letter. Admittedly, the relations between the parties are strained to the highest order. The accused has alleged that his daughter was raped by the complainant's father and the father of the complainant has been convicted by the trial Court on the charge of rape. The complainant is somehow disputing the guilt of her father. Obviously, she intends to show that the allegation levelled against her father was a preplanned one and that in order to execute the plan, the accused remained absent during the marriage ceremony of her brother. The suggestion of the complainant is that this absence was deliberate, and with the object of later leveling a false charge of rape against the father of the complainant. The absence of the accused during the marriage ceremony is not in dispute, but only the reason for his absence is sought to be disputed by showing that the same was false. On this basis, an inference is expected to be drawn by the Court that, therefore, the absence of the accused was deliberate and preplanned; and ultimately all these findings are sought to be used in creating a doubt about the truth of the allegations of rape levelled against the complainant's father.

20. Considering all relevant aspects of the matter, this appears to be a case where the inherent powers of the Court must be used to quash the prosecution in question.

The Application is allowed.

The proceedings of Regular Criminal Case No. 154/2011 are quashed.

The Application is disposed of in the aforesaid terms.

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