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Harishchandra Vs. Kishor

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Court : Mumbai Nagpur

Decided On : Apr-27-2016

Judge : Z.A. Haq

Appeal No. : Criminal Revision Application No. 162 of 2012 & Criminal Writ Petition No. 714 of 2013

Appellant : Harishchandra

Respondent : Kishor

Judgement :

Oral Judgment:

1. The applicant in Criminal Revision Application No.162/2012 is hereinafter referred to as "the applicant" and the non-applicant in Criminal Revision Application No.162/2012 is hereinafter referred to as "the non-applicant".

2. Heard Shri Ramesh Mohod, Advocate for the applicant and Shri A.R. Prasad, Advocate for the non-applicant.

3. The applicant filed complaint under Section 200 of the Code of Criminal Procedure praying that the non-applicant be punished for the offence punishable under Section 211 of the Indian Penal Code, on the following accusations :

The applicant who is Graduate in Arts and having experience of agricultural operations was employed as Diwanji with the non-applicant, however, as the requests made by the applicant about his needs were not taken cognizance of by the non-applicant, the applicant had left the employment of the non-applicant in October 2010 and taken up employment as Diwanji with Shri Vijaykumar Jain who owned agricultural field adjoining to the field of the non-applicant. Due to this, the non-applicant was not happy.

On 16-12-2010 at 5.00 p.m., when the applicant was working in the field of Shri Vijaykumar Jain, policemen arrested the applicant. It was made known to the applicant that report was lodged against the applicant and the non-applicant had given statement to the police that 14 bags of Soyabean seeds worth Rs.20,000/- were stolen fraudulently from his field and the non-applicant suspected that the applicant had committed the theft. The applicant was kept in custody in the police station from 6-00 p.m. and he was produced before the learned Magistrate, Katol on 17-12-2010 at 11-00 a.m. The charge-sheet was submitted before the Court on 27-01-2011 against some other persons and it was pointed out by the police that the applicant was not concerned with the offence and discharge report was submitted in favour of the applicant. The learned Magistrate accepted the report and discharged the applicant from the offence, on 27-01-2011.

On the above accusations, the applicant contended that the non-applicant had filed false complaint against the applicant with the intention of causing harm and injury to the applicant. The applicant prayed that the non-applicant be prosecuted and punished for offence under Section 211 of the Indian Penal Code.

4. The learned Magistrate recorded statement of the applicant and after being satisfied that the applicant has made out prima-facie case, by the order dated 01-04-2011, directed issuance of process for offence under Section 211 of the Indian Penal Code.

The non-applicant, being aggrieved by the above order, filed Criminal Revision Application No.57/2012 before the Sessions Court. The learned Additional Sessions Judge, relying on the judgment given by this Court in the case of Subhash Ramchandra Durge vs. Deepak Annasaheb Gat and another reported in

2000 Cri.L.J. 4774, concluded that the complaint filed by the applicant praying that the non-applicant be prosecuted and punished for offence under Section 211 of the Indian Penal Code, was not maintainable at the behest of the applicant-private person. The learned Additional Sessions Judge recorded that the complaint for offence under Section 211 of the Indian Penal Code has to be filed by the concerned Court. In view of the above conclusions, the learned Additional Sessions Judge recorded that the order passed by the learned Magistrate directing issuance of process for offence under Section 211 of the Indian Penal Code, was not sustainable.

The learned Additional Sessions Judge, however, recorded that considering the allegations made by the applicant against the non-applicant in the complaint, prima-facie it appeared that the non-applicant can be prosecuted for offence under Section 500 of the Indian Penal Code and accordingly modified the order passed by the learned Magistrate and concluded that the process has to be issued against the non-applicant for offence under Section 500 of the Indian Penal Code.

The applicant, being aggrieved by the order passed by the learned Additional Sessions Judge, setting aside the order passed by the learned Magistrate, has filed this revision application.

The non-applicant, being aggrieved by the order passed by the learned Additional Sessions Judge to the extent it directs issuance of process for offence under Section 500 of the Indian Penal Code, has filed Criminal Writ Petition No.714/2013.

As the same order is challenged in these two matters, both matters are disposed by this common judgment.

5. The point which is required to be dealt with is :

"Whether the complaint filed by the applicant against the non-applicant praying that the non-applicant be tried and convicted for offence under Section 211 of the Indian Penal Code is maintainable at the behest of the applicant or such complaint is required to be filed by the Court or by such officer of the Court as that Court may

authorise in writing in that behalf."

6. Shri Ramesh Mohod, Advocate for the applicant has submitted that the learned Additional Sessions Judge has committed an error in concluding that the complaint filed by the applicant is not maintainable in view of the provisions of Section 195(1)(b)(i) of the Code of Criminal Procedure. The learned Advocate has relied on the judgment given by the Hon'ble Supreme Court in the case of M.L. Sethi vs. R.P. Kapur and another reported in AIR 1967 SC 528 and has submitted that one of the condition necessary to attract the bar of Section 195(1)(b) of the Code of Criminal Procedure is that the offence under Section 211 of the Indian Penal Code has to committed in pending proceeding. It is submitted that the bar of Section 195(1) (b) of the Code of Criminal Procedure would not be attracted if there was no proceeding before the Court when the offence under Section 211 of the Indian Penal Code is committed. It is submitted that the non-applicant committed the offence on 16-12-2010 and on that date, there were no proceedings before Court. It is submitted that the learned Additional Sessions Judge has failed to appreciate this aspect and therefore, the impugned order passed by him is unsustainable.

The learned Advocate for the applicant has opposed the challenge raised on behalf of the non-applicant to the order passed by the learned Additional Sessions Judge directing issuance of process under Section 500 of the Indian Penal Code and has submitted that on the basis of the material on record if the Court finds that some other offence is made out, it is always open to the Court to prosecute and convict the accused for that offence also. It is prayed that the Criminal Revision Application No.162/2012 be allowed and the Criminal Writ Petition No.714/2013 be dismissed.

7. Shri A.R. Prasad, learned Advocate for the non-applicant has submitted that the learned Additional Sessions Judge has rightly adverted to the points and the conclusions of the learned Additional Sessions Judge that the complaint filed by the applicant against the non-applicant for offence under Section 211 of the Indian Penal Code is not maintainable, cannot be faulted with. It is submitted that the conclusions of the learned Additional Sessions Judge are in line with the law laid down in the following judgments:

1) Judgment given by the Hon'ble Supreme Court in the case of Kamlapati Trivedi vs. State of West Bengal reported in (1980)2 SCC 91.

2) Judgment given by the Hon'ble Supreme Court in the case of Subhash Ramchandra Durge vs. Deepak Annasaheb Gat and another reported in 2000 Cri.L.J. 4774.

It is submitted that the learned Additional Sessions Judge has acted beyond jurisdiction in directing issuance of process for offence under Section 500 of the Indian Penal Code. The learned Advocate has submitted that there is no material on the record to show that the non-applicant can be prosecuted for offence under Section 500 of the Indian Penal Code. It is further submitted that the learned Additional Sessions Judge could not have modified the order passed by the learned Magistrate and could not have directed issuance of process for offence under Section 500 of the Indian Penal Code while deciding the revision application filed by the non-applicant. Shri A.R. Prasad, Advocate has submitted that the effect of the order directing issuance of process against the non-applicant for offence under Section 500 of the Indian Penal Code is that the learned Additional Sessions Judge has acted as Court of first instance while exercising the revisional jurisdiction and this is not permissible.

It is prayed that the Criminal Revision Application No.162/2012 be dismissed and Criminal Writ Petition No.714/2013 be allowed.

8. I have examined the documents filed by the parties on record, with the assistance of the learned Advocates representing the respective parties and have gone through the judgments relied upon.

The point which is required to be adverted to is dealt with in the judgment given in the case of M.L. Sethi vs. R.P. Kapur and another. In this case, a report was filed on 10-12-1958 with the police authorities complaining about commission of offences punishable under Sections 420, 109, 114 and 120-B of the Indian Penal Code, on the basis of which investigation was started. The accused was arrested on 18-07-1959 in connection with the report dated 10-12-1958 and was presented before the Court on 25-07-1959. However, this proceeding culminated in

discharge of the accused by the order passed by the High Court of Allahabad on 10-12-1962. But before the arrest of accused on 18-07-1959 and the filing of the charge-sheet on 25-07-1959, on 11-04-1959 the accused had filed complaint before the Court of Judicial Magistrate First Class, Chandigarh against the informant, for offences under Sections 204, 211 and 385 of the Indian Penal Code. In these proceedings, an order directing issuance of summons was passed. The order directing issuance of summons was maintained by the Sessions Court and the High Court. The orders were challenged before the Hon'ble Supreme Court. The challenge was that the complaint for offence under Section 211 of the Indian Penal Code was not maintainable at the behest of private person in view of the bar created by Section 195(1)(b) of the Code of Criminal Procedure.

While dealing with the challenge, the Hon'ble Supreme Court considered the facts of the case and recorded that as per the complaint filed for offence under Section 211 of the Indian Penal Code, when the offence was committed, there were no proceedings before any Court and therefore, the bar created by Section 195(1)(b) of the Code of Criminal Procedure was not attracted.

9. According to the applicant, the offence under Section 211 of the Indian Penal Code is committed by the non-applicant on 16-12-2010 when he got the report lodged and gave false statement against the applicant. According to the applicant, the cause of action for filing the complaint against the non-applicant arose on 16-12-2010 when the applicant was detained in custody because of the false report made by the non-applicant. On 16-12-2010 no proceedings were pending before the Court.

Section 195(1)(b)(i) and (ii) of the Code of Criminal Procedure read as follows :

"195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence - (1) No Court shall take cognizance -

(a)(i) ....

(ii) ....

(iii) ....

(b)(i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or.

(iii) ...."

The Hon'ble Supreme Court has dealt with the point in paragraph No.11 of the judgment given in the case of M.L. Sethi vs. R.P. Kapur and another (cited supra) as follows :

"In the interpretation of this Cl. (b) of sub-s. (1) of S. 195, considerable emphasis has been laid before us on the expression "in, or in relation to", and it has been urged that the use of the expression "in relation to" very considerably widens the scope of this Section and makes it applicable to cases where there can even in future be a proceeding in any Court in relation to which the offence under S. 211, I.P.C., may be alleged to have been committed. A proper interpretation of this provision requires that each ingredient in it be separately examined. This provision bars taking of cognizance if all the following circumstances exist, viz., (1) that the offence in respect of which the case is brought falls under S. 211 I.P.C.; (2) that there should be a proceeding in any Court; and (3) that the allegation should be that the offence under S. 211 was committed in, or in relation to, such a proceeding. Unless all the three ingredients exist, the bar under S. 195 (1) (b) against taking cognizance by the Magistrate, except on a complaint in writing of a Court, will not come into operation. In the present case also, therefore, we have to see whether all these three ingredients were in existence at the time when the Judicial Magistrate at Chandigarh proceeded to take cognizance of the charge under S. 211, I.P.C. against the appellant."

The Hon'ble Supreme Court recorded that on the date on which offence punishable under Section 211 of the Indian Penal Code was committed as alleged, there were no proceedings in any Court and, therefore, the bar created by Section 195(1)(b) of the Code of Criminal Procedure would not be attracted. In that case, complaint praying that the accused be punished for offences punishable under Sections 204, 211 and 385 of the Indian Penal Code was filed on 11th April, 1959 and till that time the accused was neither arrested nor produced before the Court.

10. In the present case, complaint is filed praying that the accused be prosecuted and punished for the offence punishable under Section 211 of the Indian Penal Code on 19th March, 2011 and prior to that the complainant was arrested on 16th December, 2010 on the basis of the report lodged against him, the complainant was produced before the Magistrate on 17th December, 2010, the charge-sheet was filed before the Court on 27th January, 2011 and the police submitted the proposal on the basis of which the complainant was discharged on 27th January, 2011. Thus, in the present case, the complaint is filed after the proceedings in relation to which the offence is alleged to have been committed, culminated.

In the judgment given in the case of M.L. Sethi vs. R.P. Kapur and another (cited supra), in paragraph No.13 it is laid down as follows:

"13. In this case, as we have already indicated when enumerating the facts, the complaint of which cognizance was taken by the Judicial Magistrate at Chandigarh was filed on April 11, 1959, and at that stage, the only proceeding that was going on was investigation by the Police on the basis of the First Information Report lodged by the appellant before the Inspector-General of Police on December 10, 1958. There is no mention at all that there was at that stage any proceeding in any Court in respect of that F.I.R. When examining the question whether there is any proceeding in any Court, there are three situations that can be envisaged. One is that there may be no proceeding in any Court at all. The second is that a proceeding in a Court may actually be pending at the point of time when cognizance is sought to be taken of the offence under S. 211 I.P.C. The third is that, though there may be no proceeding pending in any Court in which or in relation to which the offence under S. 211 I.P.C. could have been committed, there

may have been a proceeding which had already concluded and the offence under S. 211 may be alleged to have been committed in, or in relation to, that proceeding. It seems to us that in both the latter two circumstances envisaged above, the bar to taking cognizance under S. 195(1)(b) would come into operation. If there be a proceeding actually pending in any Court and the offence under S. 211 I.P.C. is alleged to have been committed in relation to that proceeding, S. 195(1)(b) would clearly apply. Even if there be a case where there was, at one stage, a proceeding in any Court which may have concluded by the time the question of applying the provisions of S. 195(1)(b) arises, the bar under that provision would apply if it is alleged that the offence under S. 211, I.P.C., was committed in or in relation to, that proceeding. The fact that the proceeding had concluded would be immaterial, because S. 195(1)(b) does not require that the proceeding in any Court must actually be pending at the time when the question of applying this bar arises."

11. The point which falls for consideration is covered by the proposition laid down in the judgment given in the case of M.L. Sethi vs. R.P. Kapur and another (cited supra). The applicant alleges that non-applicant committed offence under Section 211 of Indian Penal Code by giving false statement and the applicant was arrested and produced before Court. Thus, the proceedings were taken up in Court, before the applicant filed the complaint. Therefore, the bar created by Section 195(1)(b) of the Code of Criminal Procedure will be attracted and the learned Magistrate could not have taken cognizance of the complaint praying that the accused be convicted for the offence under Section 211 of the Indian Penal Code, on the complaint of the applicant. The order passed by the Sessions Court on this aspect is proper and does not require any interference.

12. However, the learned Additional Sessions Judge has committed an error in directing the issuance of process against the non-applicant for the offence under Section 500 of the Indian Penal Code. The learned Additional Sessions Judge while exercising the revisional jurisdiction could not have directed the issuance of process for the offence under Section 500 of the Indian Penal Code. In the circumstances of the case, after the learned Additional Sessions Judge prima facie found that the averments made in the complaint make out some other offence, the

learned Additional Sessions Judge could have remitted the matter to the learned Magistrate for applying his mind on the point as to whether the process is required to be issued against the non-applicant for some other offence.

13. In my view, the interests of justice would be sub-served by passing the following order:

(i) The order passed by the learned Additional Sessions Judge setting aside the order passed by the learned Magistrate directing the issuance of process against the accused for the offence punishable under Section 211 of the Indian Penal Code is maintained.

(ii) The order passed by the learned Additional Sessions Judge directing the issuance of process against the accused for the offence punishable under Section 500 of the Indian Penal Code is modified.

The matter is remitted to the learned Magistrate for considering as to whether the averments made in the complaint filed by Harishchandra Nagorao Mohod make out any other offence against Kishor Vitthalrao Padole and to pass appropriate orders.

(iii) Criminal Revision Application No.162/2012 filed by Harishchandra Nagorao Mohod is dismissed.

(iv) Criminal Writ Petition No.714/2013 filed by Kishore Vitthalrao Padole is partly allowed.

(v) In the circumstances, the parties to bear their own costs.

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