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Court : Mumbai

Decided On : Mar-13-1987

Reported in : 1987(2)BomCR342; 1987MhLJ478

Judge : S.W. Puranik, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 114, 342, 464 and 465; Code of Criminal Procedure (CrPC) , 1973 - Sections 195, 240 and 340

Appeal No. : Original Writ Petn. No. 131 of 1985

Appellant : R.V. Bhasin

Respondent : The State and Others

Judgement :
ORDER

1. By this petition the petitioner challenges two concurrent orders of the Courts below passed in Miscellaneous Application No. 114/N/82 by the Additional Chief Metropolitan Magistrate, Esplanade Court, Bombay dated 22-1-1983 and the order passed in Criminal Revision Application No. 50/83 passed by the Additional Sessions Judge Shri Rege Dt. 8th October 1984.

2. The facts in brief so far as they are relevant in the present proceedings may be stated as follows :

The petitioner was the accused in the complaint case instituted by the second respondent for an offence under S. 342 I.P.C. The gravamen of the allegations in the said complaint was that the complainant had gone to the office of the petitioner accused to serve him a copy of the Civil Court's injunction order. The accused after the respondent had entered his cabin directed his security guard to lock up the only door of the said cabin from outside and thus wrongfully confined the second respondent in such a manner as to prevent him from proceeding beyond the boundaries of his cabin.

3. Upon the said complaint and on recording the verification statement of the complainant the trial Court issue process under S. 342 I.P.C. along with a copy of the complaint. The copy of the complaint received by the petitioner accused contained in the heading of the complaint words 'Charge under S. 342, I.P.C.'

4. During the pendency of the said complaint case the petitioner accused submitted an application on 7-7-1981 before the trial Court that the original record of the trial Court viz. the original complaint was tampered with by the complainant and his Advocate Shri Mehta (respondent No. 3 herein). The tampering was done by adding the words 'read with S. 114, I.P.C.' in ink. According to the petitioner the second and third respondent have thus fabricated false evidence and prayed that action under S. 340 Cr.P.C. be taken for prosecution for offences of forgery etc. of which cognizance could be taken by the Court under S. 195, Cr.P.C. The trial Court, however, at that stage directed that the said miscellaneous application would be considered at the end of the trial. After the trial was over the petitioner accused was acquitted on 19-4-1982 for the offence of wrongful confinement.

5. However, the trial Court did not pass any order on the miscellaneous application presented by the petitioner. Thereafter on 26-4-1982 the petitioner accused moved the Court for taking action against the second the third respondents for tampering with the records of the Court.

6. The second and the third respondents had earlier filed their replies to the first miscellaneous application of the petitioner and after the conclusion of the trial the second and the third respondents were again noticed to appear and reply to the application. Accordingly the second and the third respondents filed their replies

again. They denied that they had done any tampering of the original complaint case after it was filed. It was their case that at the time of filing itself they had realised that the accused could be charged under S. 342 read with S. 114, I.P.C. and accordingly they had corrected the title at that time. No tampering etc. has been done subsequently.

7. It appears that the petitioner had secured a certified copy of the original complaint which shows the title under S. 342 I.P.C. only, whereas the subsequent alteration is seen on the original record. It is in the light of the circumstances that the trial Court perused the miscellaneous application of the petitioner and the replies filed by the respondents and held that apparently the alteration in the title of the complaint was done after the filing of the complaint. The learned Magistrate did not think it expedient in the interests of justice to forward a regular case for prosecuting respondents 2 and 3. The conclusion of the trial Court was that no offence of fabrication of false evidence or forgery was committed by the respondents even by altering the title of the complaint and since no offence under S. 193 or S. 464 I.P.C. was disclosed, there was no question of filing any complaint against them. He, however, also recorded a finding that the act of respondent 3, Advocate, could be termed as misconduct and considered it necessary to make a complaint to the Bar Council against him for suitable action.

8. The petitioner herein thereafter carried a revision before the learned Sessions Judge, which was registered as a criminal revision application No. 50 of 1983. He only challenged the finding of the trial Court that no offence was disclosed under S. 193 and S. 464, I.P.C. and hence there (was) no necessity of filing a regular complaint against him.

9. The third respondent viz. the Counsel for the original complainant felt aggrieved by the order of reporting to the Bar Council for an action on the ground of misconduct. He also there carried Criminal Revision Application No. 20 of 1983 challenging the said part of the order.

10. The learned Sessions Judge by his order dt. 8th October 1984 rejected Revision Application No. 50 of 1983 preferred by the petitioner and on the other hand allowed the Revision Application No. 126 of 1983 filed by the third

respondent and set aside that part of the order of the trial Court reporting to the Bar Council for action against him for misconduct. The order in both the revision applications was a common order. Thus it is these two concurrent orders of both the Courts below which are impugned in this petition.

11. Since the petitioner appeared in person, and I have given him a full hearing on the merits of the case, since Rule was issued by my learned predecessor, Shri Rammurthy appeared for the third respondent i.e. advocate Shri Mehta. The second respondent original complainant is duly served. Shri R. Y. Mirza, learned A.P.P. appeared for the State of Maharashtra (first respondent) and with the assistance of the learned Counsel I have gone through original miscellaneous criminal application, the replies filed by the respondents and the order passed by the trial Court as well as the revisional Court.

12. It was contended on behalf of the petitioner that all that is required to be done under S. 340, Cr.P.C. in respect of a case mentioned in S. 195 is that upon an application made to it or otherwise, it the Court is of the opinion that it is expedient in the interests of justice that an inquiry should be made into an offence referred to in cl. (b) of sub-s. (1) of S. 195 which appears to have been committed in or in relation to a proceeding in that Court or in respect of a document produced or given in evidence in a proceeding in that Court, such Court may after such preliminary inquiry if any as it thinks necessary, (a) record a finding to that effect; (b) make a complaint thereof in writing; (c) send it to a Magistrate of the First Class having jurisdiction; (d) take sufficient security for the appearance of the accused before such Magistrate, etc. (e) bind over any person to appear and give evidence before such Magistrate. The petitioner submitted that in the present case in view of the earlier certified copy of the original complaint and the one which was before the trial Court, the said Court had come to the conclusion that the explanation given by the respondents was false and that they had not carried out alteration before filing of the complaint but after. If that was so and if that finding had been recorded by the trial Court, it was incumbent upon it to make a complaint thereof in writing for prosecuting at least respondent 3 who had admitted to have done it himself. He vehemently argued that by such tampering dignity and decorum of the Court as well as sanctity of the Court record and proceedings was vilified by the

third respondent and it was a fit case for charging him for an act of forgery and creating false evidence.

13. He also relied upon several ruling of various High Courts including the one reported in M. S. Sheriff v. State of Madras : [1954]1SCR1144 . He also adverted to the background of criminal cases and various litigations pending against him and the original complainant, second respondent in various Courts. He tried to express that he had been unnecessarily harassed in prosecutions and civil proceedings since many years and the conduct of the respondents deserves to be punished particularly for the glaring offence committed by tampering the Court record.

14. Shri Rammurthy, learned Counsel for the third respondent advocate Shri Mehta supported the impugned order and contended that there was no question of forgery or any fabrication of false evidence against the accused petitioner. On the other hand, the correction if any even if it is assumed to have been done after filing in Court was of very formal nature and that too only in the title of the complaint, which does not form substantive part. In fact he craved attention of this Court to the substantive pleadings in the original complaint which indicated that the act of wrongful confinement was thus committed by the security guard at the behest of the accused. As such the offence of alteration in the body of the complaint was that of aiding and abetting the offence of wrongful confinement.

15. Shri Mirza, learned Public Prosecutor also supported the stand taken by the third respondent.

16. It is well settled that under S. 340, Cr.P.C. in respect of offences stated under S. 195 a Court is competent to make a complaint either suo motu or on an application made to it, but it is also the responsibility of the Court in directing prosecution in such cases that such directions be issued by the Court only on due circumspection of the record before it and the material available. This power has to be exercised with great care and caution. The Court must necessarily take into consideration all circumstances to find out whether they do warrant a finding that it is expedient in the interests of justice that the matter should be inquired into by the Magistrate in a regular proceeding. It is only upon such a finding that the complaint

is to be made.

17. The responsibility in exercising circumspection and care in directing prosecutions in such cases is rather heavy on the Court because the offences contemplated by this section are the offences against public justice and if follows that this process is to be utilised never as a means of satisfying a private grudge. There ought not to be any abuse of the administration of criminal law else it is likely that a successful litigant would be permitted to use penal law merely to satisfy his personal ends and personal spite and thus cause misuse of the process of law.

18. No doubt it is true that while applying its mind to the facts and circumstances on record in a preliminary inquiry under S. 240 Cr.P.C. The Court is not required to decide the question of guilt or innocence. In any the event no sanction for prosecution or direction for prosecution should be granted unless there is a reasonable probability of conviction. The Court therefore must be prima facie satisfied that the offence as alleged has been committed by an individual against whom the proceedings in a criminal Court are being taken. Thus in directing a prosecution the Court must consider not only whether there is a prima facie case but also whether it is in or against public interest to allow a criminal proceeding to be instituted. It is for this purpose a preliminary inquiry is expected on behalf of the Court to come to a finding upon this opinion that it is expedient in the interest of justice to prosecute a wrong doer.

19. In the present case was the contention of the petitioner, original accused that by adding the words 'under S. 114. I.P.C.' after the main offence 342 I.P.C. The third respondent made an alteration in the complaint and this was done dishonestly or fraudulently, an offence punishable under S. 465 I.P.C., which is prima facie disclosed. Both the Courts below have found that even assuming that the heading was altered with the addition of words 'read with S. 114 I.P.C.' after the complaint was filed, it could not be said that an offence under S. 465 I.P.C. is disclosed. As stated clearly under S. 465 an alteration must be in the material part of the document. There was no alteration made in the substantive allegations in the complaint or in the body of the complaint as such. Such an alteration does not

change the version or the allegation narrated in the main complaint and and therefore it cannot be said to be an alteration made to a material part of the document. The alteration was also not such as could have falsely represented to the Court or induced the Court to form any opinion, which it would not have otherwise formed on the substantive allegation in the complaint. It was not of any consequence at all. It was also not such an alteration any which original complainant, the second respondent could gain anything nor could any wrongful loss be caused to the original accused petitioner. It cannot therefore be said that it was made with intent to defraud the accused. The said alteration also does not amount to any fabrication of false evidence. It is upon such a finding that the trial court had given finding that it was not expedient in the interests of justice that an inquiry should be made into the offence. It is in this view that the finding has been recorded by the trial Court not to lodge any regular report to a Magistrate.

20. The revisional court has also concurred with this part of the conclusion reached by the trial Court. The revisional Court has gone a step ahead to hold that there was not even enough material before the Court to conclude that respondent 3 had actually done tampering after the filing of the complaint much less any power to make a report to the Bar Council for misconduct.

21. In view of the principles which are well settled in the matter of directing a sanction under S. 340 Cr.P.C., I find that the orders of both the Courts below are justifiable on good and valid grounds and no interference is called for therewith in this petition under Art. 227 of the Constitution read with S. 480 of the Cr.P.C.

22. Rule is discharged.

23. Petition dismissed.

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