
Varsha Thakur Ganesh Ghuge Vs State Of Maharashtra

Criminal Application No. 4234 Of 2007 With Criminal Application No. 6849 Of 2016

Court: Bombay High Court (Aurangabad Bench)

Date of Decision: July 19, 2018

Acts Referred:

Code of Criminal Procedure, 1973 " Section 156(3), 482 Indian Penal Code, 1860 " Section 34, 166, 167, 193, 219, 228, 465, 468, 471#Judges (Protection) Act, 1985 " Section 2, 2(a), 3#Maharashtra Land Revenue Code, 1966 " Section 237, 247

Hon'ble Judges: T.V. NALAWADE, J; K. L. WADANE, J

Bench: Division Bench

Advocate: N. S. Ghanekar, M. M. Nerlikar, P.B. Patil

Final Decision: Disposed Off

Judgement

K.L. WADANE, J

1. Rule. Rule made returnable forthwith. With the consent of the parties, this application is taken up for final disposal.

2. This application is filed by the applicant under the provisions of section 482 of the Code of Criminal Procedure for relief of quashing of first

information report registered vide M.A.No. 1/2007 with Soygaon police station for the offences punishable under section 166, 167, 193, 465, 468, 471

read with section 34 of the Indian Penal Code.

3. Heard Mr. N.S. Ghanekar, learned counsel for applicant, Mr. Nerlikar, learned APP for the respondent/State and Mr. P.B. Patil, learned counsel

for respondent No. 2.

4. The respondent No. 2 herein filed a complaint, in the Court of Judicial Magistrate, First Class, Soygaon, bearing Criminal Case No. 82/2007

against five accused persons including applicant, Tahsildar, Nayab Tahsildar, Talathi and one Khemraj Jadhav. It is alleged by the respondent No.

2/original complainant that accused No. 1 Khemraj is having land gat No. 208 admeasuring 8, H 30, R situated at Palshi Tq. Soygaon. It is further

alleged that the respondent No. 2/complainant has purchased 1Ã, H 20Ã, R land out of 8Ã, H 30Ã, R land from accused No. 1 by way of registered

saleÃ, deed on 28.1.1994.Ã, His name is mutated in the 7x12 extract.Ã,

5. It is further alleged that there was dispute between respondent No. 2 and the accused No. 1 Khemraj, therefore, in the year 2002 the respondent

No. 2 filed a Regular Civil Suit No. 29/2002 with the allegation that the accused No. 1 took physical possession by force and accused No. 2 to 5 aided

him.Ã, Ã, Thereafter the accused No. 1 Khemraj filed an application to inspect the crops, to the accused No. 3 Tahsildar.Ã, Accused No. 5 Talathi

gave notice to the complainant and the date for inspection was fixed on 26.06.2002.Ã, However, it is allegation of the respondent No. 2/original

complainant that they did not turn up to the field and the accused No. 4 and 5 i.e. Nayab Tahsildar and Talathi prepared false panchnama on

27.06.2002.Ã, On the basis of that document the accused No. 5 Talathi took entry in the 7x12 extract in cultivation column in favour of accused No. 1

Khemraj.Ã, Therefore, the respondent No. 2/original complainant filed an appeal before the present applicant and the applicant granted stay to the

mutation entry.Ã, It is further alleged that respondent No. 2/original complainant also filed an application before the learned Judicial Magistrate, First

Class, on which the learned Magistrate has issued direction under section 156(3) of the Code of Criminal Procedure and upon such direction the first

information report is lodged and registered against the applicant and others.

6. Mr. Ghanekar, learned counsel for applicant submits that at the relevant time when applicant passes certain orders, she was acting as a Deputy

Collector and Sub-Ã, Divisional Magistrate of the concerned division and in the judicial proceeding she has passed some orders, therefore, the applicant

is a Ã¢, -Ã¢ JudgeÃ¢, - within the meaning of definition under section 2 of the Judges (Protection) Act, 1985.Ã, According to Mr. Ghanekar, learned

counsel, the appeal under section 247 of the Maharashtra Land Revenue Code presented by the accused No. 1 Khemraj as well as the appeal

presented by the respondent No. 2 /original complainant areÃ, judicial proceedings and if certain orders are passed inÃ, judicial proceedings then

those are passed in the capacity of a 'Judge'.Ã, Therefore, there is protection to the applicant under the Judges (Protection) Act, 1985.Ã, Hence, Mr.

Ghanekar submitted that the trial court is not empowered to take cognizance of the alleged offences.

7. As against this, Mr. P.B. Patil, learned counsel for respondent No. 2/original complainant argued that there was no appealable order, therefore, the

act of the applicant was without jurisdiction.Ã, Ã, Mr. Patil, learned counsel for respondent No. 2 further submitted that when there was no order

rather appealable it was not expected from the applicant to pass the stay order.Ã, Therefore, the act of the applicant is illegal, therefore, no protection is

available to the applicant, as claimed by her.

8. In view of the submissions made by learned counsel for both sides, it is necessary to refer the provisions of section 2 and 3 of the Judges

(Protection) Act 1985.

2. Definition "Judge" In this Act, "Judge" means not only every person who is officially designated as a Judge, but also every person

(a) who is empowered by law to give in any legal proceeding a definitive judgment, or a judgment which, if not appealed against, would be definitive,

or a judgment which, if confirmed by some other authority, would be definitive; or

(b) who is one of a body of persons which body of persons is empowered by law to give such a judgment as is referred in to clause (a).

3. Additional protection to Judges.

(1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of subsection (2), no court shall

entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken

by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.

(2) Nothing in sub-section (1) shall debar or affect in any manner the power of the Central Government or the State Government or the Supreme

Court of India or any High Court or any other authority under any law for the time being in force to take such action (whether by way of civil,

criminal, or departmental proceedings or otherwise) against any person who is or was a Judge.

9. Looking to the aforesaid provision it appears that at the relevant time the applicant was working as a Deputy Collector and the Sub-Divisional

Magistrate in a dwell capacity. When the applicant was acting on administration side her designation is to be considered as "Deputy Collector,"

and when she was acted while dealing with the legal proceedings her designation is "Sub-Divisional Magistrate." In view of the provision of

the Maharashtra Land Revenue Code, 1966, certain powers are assigned to the applicant to deal with the mutation entries, its appeals. In view of the

provisions of section 247 of the Maharashtra Land Revenue Code, the applicant is supposed to deliver a definitive judgment in the matters under

section 247 of the Maharashtra Land Revenue Code, and when the Sub-Divisional Magistrate is acting and exercising the powers under section

247 of the Maharashtra Land Revenue Code then it can be termed as, a person empowered by law to give in any legal proceeding a definitive

judgment or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be

definitive. So the applicant squarely falls within the definition of section 2 sub-section (a) of the Judges (Protection) Act.

10. From the record it appears that the applicant has passed an order under the provision of section 247 of the Maharashtra Land Revenue Code.

Such orders are appealable or revisionable before the learned Collector of the District. From the record it appears that the applicant was acting in

her official capacity and has passed certain orders. If at all, order passed by the applicant was wrong or improper then there is remedy to

respondent no. 2/original complainant to file revision/appeal before the Collector.

11. Mr. Patil, learned counsel for respondent No. 2 submitted that there was no order passed on 16.06.2002 and the respondent no. 2 obtained such

information under Right to Information Act. However, from the contents of the present applicant it appears that the mutation entries recorded by

the revenue authorities for the period from 1994 to 2002 were under challenge before the applicant and it is contended by the accused No. 1 that he

came to know about such entries on 16.06.2002, then obviously, 16.06.2002 is not the date of any order but it is the date of knowledge of accused

No. 1 about the mutation entries taken during the period from 1994 to 2002.

12. In support of his contention, Mr. Ghanekar, learned counsel for applicant has relied upon the observations of the Division Bench of this Court in

case reported in 2012 CRI. L.J. 4053 (E.S. Sanjeeva Rao Vs. Central Bureau of Investigation), as well as the judgment delivered by the Single Judge

of this Court (Coram : K.L. Wadane, J) and contended that the applicant is a "judge" within the meaning of Section 2 and 3 of the Judges

(Protection) Act and the proceedings of the appeal under section 247 of the Maharashtra Land Revenue Code, before the applicant is a legal

proceeding. In addition to that the applicant has relied upon the proviso of section 237 of the Maharashtra Land Revenue Code, which reads as

follows:

"S.237. Formal and summary inquiries to be deemed judicial proceedings :

(1) A formal or summary inquiry under this Code shall be deemed to be a judicial proceeding within the meaning of sections 193, 219 and 228 of the

Indian Penal Code, and the office of any authority holding a formal or summary inquiry shall be deemed to Civil Court for the purposes of such inquiry.

(2) Every hearing and decision, whether in a formal or summary inquiry, shall be in public, and the parties or their authorised agents shall have due

notice to attend.

13. In view of the aforesaid provisions, at the time of granting stay order, the applicant made a summary inquiry under the Maharashtra Land Revenue

Code, therefore, such proceeding is to be treated as judicial proceeding within the meaning of section 193, 219 and 228 of the Indian Penal Code and

the authority holding a formal or summary inquiry shall be deemed a Civil Court for the purpose of such inquiry.

14. In view of the aforesaid provisions, the proceedings presented by the accused No. 1 before the applicant under the provisions of Section 247 of the

Maharashtra Land Revenue Code is a judicial proceeding and the applicant is deemed to be a Civil Court within the meaning of section 237 of the

Maharashtra Land Revenue Code, as well as a "judge" within the meaning of section 2 of the Judges (Protection) Act.

15. In view of the above, we are of the opinion that the applicant is to be protected under the aforesaid provisions and therefore cognizance of the

alleged offence cannot be taken against her. Hence, following order is passed.

1. Application is allowed in terms of prayer clause 'B' to the extent of applicant only.

2. In view of the disposal of this application, pending Criminal Application No. 6849/2016 is disposed of.

16. Criminal application is disposed of.

17. Rule is made absolute, to the extent of applicant only.