

# SUPREME COURT OF INDIA

Tukaram Annaba Chavan

Vs.

Machindra Yeshwant Patil

Crl.A.No.162 of 2001

(D.P. Mohapatra and Shivaraj V. Patil JJ.)

06.02.2001

## JUDGMENT

**D.P. Mohapatra, J.**

1. Leave granted.
2. We have heard learned counsel for the parties.
3. We have perused the order dated 1.12.1999 of the Bombay High Court in Criminal Writ Petition No. 290/1999 which is under challenge in the present appeal.
4. In this appeal the accused have sought to assail the order dated 2.11.1995 of the Judicial Magistrate 1st class, Atpadi issuing process against them which was confirmed by the IIIrd Additional Sessions Judge, Sangli, in Criminal Revision Application Nos. 317/95 and 318/95 and by the High Court in the impugned order. The aforementioned criminal case was registered on the private complaint by Dr. Machindra Yeshwant Patil, Respondent No. 1 herein, invoking sections 177, 193, 181, 406, 465, 474 read with Section 34 IPC. The complainant alleged, *inter alia*, that the accused persons have got affixed bogus/fake signatures/thumb impressions of the members of the educational Institution viz. "Modern Education Society", by themselves or through other persons, for the purpose of showing that there was necessary quorum in the General Body Meeting held on 27.9.1984 in which a resolution was purportedly passed to set-up a new executive body, and therein accused No. 1 assumed the post of Executive President. It was further alleged in the complaint/petition that the accused persons made false signatures or thumb impressions of the persons named therein and got prepared a "no objection certificate" to the effect that they have no objection to delete their names from the managing committee. According to the complainant, as a matter of fact, neither he (complainant) nor any member from the managing committee had affixed his signature or thumb impression on any 'no objection certificate'. It was also alleged in the complaint petition that the accused persons utilising the aforementioned forged and fabricated documents got registered the changes in Change Report No. 384/91 and 385/91 before the Assistant Charity Commissioner, Sangli.

5. The learned magistrate on perusal of the complaint issued process vide order dated 2.11.1995 which reads :

"Read the papers. Heard Mr. A.K. Suphekar, Advocate for complainant. Issue process under Section 463 read with Section 34 I.P.C."

6. The accused persons, appellants herein, challenged the said order by filing revision petitions before the Sessions Judge which were dismissed by the IIIrd Additional Sessions Judge, Sangli vide order dated 2.2.1999.

7. On perusal of the order passed by the High Court it appears that the main ground of challenge against the order issuing process was that in the facts and circumstances of the case a complaint of the nature could be lodged only by the Charity Commissioner as provided under Section 195(1)(a) of the Code of Criminal Procedure, and therefore, the private complaint filed by the complainant could not be entertained. The High Court declined to accept the contention. The observations in paragraph 12 of the judgment which bring forth the reasoning of the High Court read as follows:

"Whatever may be the nature of the complaint, the learned magistrate has issued the process only on that part of the complaint which was concerning the events prior to the filing of the proceeding before the assistant Charity Commissioner. Those allegations in paragraphs 4 and 5 of the complaint were concerning section 463 of I.P.C. and as far as that part is concerned the learned magistrate was within his powers in entertaining the complaint on behalf of a private party. That part of the complaint was not concerning anything happening before the Assistant Charity Commissioner. As far as the happening before the Assistant Charity Commissioner is concerned, that is recorded in paragraph 6 of the complaint which would invite the application of sections 177 and 181 of I.P.C. and in which case the complaint will have to be necessarily lodged by the Charity Commissioner as required by section 195(1)(a) of I.P.C."

8. The learned counsel for the appellants strenuously urged that the complaint filed by the respondent is a composite one containing allegations of interpolations/fabrications of the documents before initiation of proceedings which is now pending with the Assistant Charity Commissioner, Sangli and also allegations regarding use of the said documents in the said proceedings. In these circumstances, according to the learned counsel, section 195(1)(a) is clearly attracted.

9. The learned counsel appearing for the respondent, on the other hand contended that the Additional Sessions Judge and the High Court have committed no serious illegality in declining to interfere with the order passed by the learned Magistrate issuing process to the appellants.

10. The controversy raised in the case relates to the election of the Board of Directors of the Modern Education Society, Atpadi, which is registered under the provisions of the Bombay Public Trusts Act, 1950. We were informed by the learned counsel for the parties that the matter is pending before the Assistant Charity Commissioner, Sangli, who is to determine the validity or otherwise of the charge report submitted by the appellants. On perusal of the record we find that a contention that in the proceeding relating to the confirmation or otherwise of the change report a contention has been raised that the documents on the basis of which the report has been submitted have been forged and fabricated by the appellants. In all probability that question will also arise for consideration by the authority.

11. In the facts and circumstances of the case it is our considered view that in the interest of justice and for a fair trial the proceedings in the criminal case should remain suspended till the proceeding pending before the Assistant Charity Commissioner, Sangli is disposed of by him. Accordingly it is order that further proceedings in regular criminal case No. 82/1994 pending in the Court of Judicial Magistrate 1st Class, Atpadi shall remain stayed till disposal of the proceeding in C.R. (Changed Report) No. 385/91 by the Assistant Charity Commissioner, Sangli. The appeal is disposed of on the terms aforesaid.

Order accordingly.