

## Sau. Kamal Shivaji Pokarnekar vs The State Of Maharashtra on 12 February, 2019

**Equivalent citations:** AIR 2019 SUPREME COURT 847, AIRONLINE 2019 SC 69, (2019) 109 ALLCRIC 288, 2019 (14) SCC 350, (2019) 1 CRILR(RAJ) 288, (2019) 1 ORISSA LR 511, (2019) 1 UC 452, (2019) 200 ALLINDCAS 144, 2019 (2) ABR(CRI) 39, (2019) 2 ALLCRILR 151, (2019) 2 BOMCR(CRI) 626, 2019 (2) GLH NOC 2, (2019) 2 RECCRIR 38, (2019) 3 SCALE 277, (2019) 6 MH LJ (CRI) 251, (2019) 74 OCR 131, 2019 CRILR(SC MAH GUJ) 288, 2019 CRILR(SC&MP) 288

**Author:** L. Nageswara Rao

**Bench:** Chief Justice, L. Nageswara Rao, Sanjiv Khanna

Non-Reportable

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 255 of 2019  
(Arising out of SLP (Crl.) No. 7513 of 2014)

SAU. KAMAL SHIVAJI POKARNEKAR

.... Appellant(s)

Versus

THE STATE OF MAHARASHTRA & ORS.

... Respondent(s)

JUDGMENT

L. NAGESWARA RAO, J.

Leave granted.

1. The Trial Court issued process to the Respondents in the complaint filed by the Appellant. The Writ Petition filed by the Respondents against the issuance of process was allowed. The High Court set aside the process issued by the Trial Court as affirmed by the Revisional Court in the Criminal Writ Petition filed by the Respondents. Aggrieved thereby, the Appellant has filed this appeal.

2. It was alleged by the complainant that her father Shamrao Nalavade expired on 17.01.1994. The Respondents were accused of forgery and preparing false documents on the basis of which a development agreement dated 11.12.2002 came into existence. On the basis of the above facts, the

complainant alleged that the Respondents made themselves liable for being prosecuted under Sections 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as 'the IPC'). The complaint that was filed on 18.11.2008 was sent for investigation under Section 156 (3) of the Criminal Procedure Code, 1973. The police submitted a report stating that the matter appeared to be of a civil nature.

3. The Trial Court recorded the statement of the husband of the Appellant and directed issuance of process to the Respondents. The Respondents filed a revision challenging the issuance of process against them which was dismissed. The High Court allowed the Writ Petition filed by the Respondents, holding that the dispute is of a civil nature, and criminal proceedings against the Respondents would be an abuse of the process of law. The High Court recorded a finding that the disputed document cannot be stated to be a sham document, as Shamrao during his lifetime stated on oath that he had handed over the possession of the land to the Respondents. The submission made on behalf of the Respondents that the matter is entirely of a civil nature was accepted by the High Court.

4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not<sup>1</sup>.

5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are *Sonu Gupta v. Deepak Gupta and Ors.* 2015 (3) SCC 424. disclosed, there would be no justification for the High Court to interfere<sup>2</sup>.

6. Defences that may be available, or facts/aspects which when established during the trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold. At that stage, the only question relevant is whether the averments in the complaint spell out the ingredients of a criminal offence or not<sup>3</sup>.

7. Relying upon the aforementioned judgments of this Court, Mr. M. N. Rao, learned Senior Counsel appearing for the Appellant submitted that the High Court acted in excess of its jurisdiction in setting aside the order of the Trial Court by which process for summoning the accused was issued. He further submitted that the evaluation of the merits of the allegations made on either side cannot be resorted to at this stage.

8. Mr. R. Basant, learned Senior Counsel appearing for the Respondent Nos.2 to 6 and 8 to 11 submitted that a proper evaluation of the material on record would disclose that the complaint is frivolous. He submitted that the dispute is essentially of a civil nature and the ingredients of the offences that are alleged against the Respondent are not made out. By making the above statement, Mr. Basant commended to this State of Karnataka v. M. Devendrappa and Anr. 2002 (3) SCC 89 Indian Oil Corporation v. NEPC India Ltd. and Others, 2006 (6) SCC 736 Court that there is no warrant for interference with the judgment of the High Court.

9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted.

10. Accordingly, the appeal is allowed and the judgment of the High Court is set aside.

.....J [L. NAGESWARA RAO] .....J [M.R. SHAH] New Delhi,  
February 12, 2019.