

Order Below Exh.22 In Reg. Civil Suit No.150/2021
(Rafic Shaikh Vs. Somnath Pati etc.)
CNR No. MHSN050009712021

1. By way of present application defendant No.1 prayed to reject the plaint under the provisions of Order VII Rule 11(d) of CPC.

2. It is submitted that the defendant No.1 and 2 are police officials, thus they are public servant. The alleged act was done in discharge of their duties, the plaintiff was found in possession of calcium carbide, a explosive substance. Thus after registration of FIR and through investigation charge sheet was filed in discharge of official duties. The plaintiff has opportunity to raise his stand of malicious prosecution at the time of recording of statement under sec.313 of Cr.P.C. at the conclusion of trial in S.C.C.No. 980/2015. As the witnesses resiled from their previous statement before the court at the time of deposition resulted the matter in to acquittal. It does not pointed finger towards the malicious prosecution, even the court has not drawn inference about malicious prosecution. If the plaintiff is intend to file suit for malicious prosecution, in view of limitation prescribed under Sec. 161 of Maharashtra Police Act has to file it within one year from date of registration of offence. Thus suit is beyond limitation.

3. Apart from it, the law prescribes prior notice to defendant. But record does not show any notice issued by the plaintiff against the defendant No. 1 and 2. Therefore, the suit is not maintainable for want

of mandatory compliances. With these submissions prayed to reject the plaint.

4. The plaintiff filed his say and strongly resisted the application. It is submitted that the suit is within limitation in view of Sec. 74 of Limitation Act, as on 30-03-2019 plaintiff was acquitted in the SCC 980/2015 and suit has to filed within one year. However due to lockdown the plaintiff was not in position to file his suit within prescribed period, however in view of direction given in Sue-moto Writ petition No. 03/2020 Hon'ble Supreme Court relaxed the rule of limitation since 15/03/2020 up to 28/02/2022. Thus bar of limitation of one year do not come across to the right of plaintiff.

5. Further the defence of act done in good faith need full trial and at this initial stage it would not proper to discuss this aspect. Moreover this suit is not filed for the act under the colour of duty or excess of duty, it is compensation for malicious prosecution. Thus the bar under sec. 161 would not come in to picture.

6. Lastly the plaintiff had issued the notice to the defendant as contemplated under the Sec. 80 of CPC through the head of the office of the defendant No. 1 and 2 that is District Magistrate. In support of his submissions relied on the ratio ruled in the case of **Ghulam Rasool Vs. State of Jammu and kashmir** reported in **AIR 1983 SC 1188**, wherein it is held that suit is against the state and BDO is impled as state's agency thus notice to state is sufficient. He further submitted that the provision of notice is not to oust the party to file suit against the

state, it is to avoid unnecessary litigation. Thus concept of notice should not consider in hyper technical manner and relied on ratio ruled in case of **Raghunath Das Vs.. Union of India** reported in **AIR 1969 SC 674** and lastly on Case of **Ram kumar Vs.. State of Rajasthan** reported in **AIR 2009 SC 4**, wherein it is held that respondent No. 2 collector is administrator and overall in charge including government middle schools in the district thus notice served on the state government through district collector was sufficient compliance. The collector is competent authority in view of Sec. 3(b) and sec.17 envisaged that the district magistrate is having control over police force in said district. Thus the notice to collector is sufficient. Even in the notice issued to collector names of the defendant No. 1 and 2 is properly described and accordingly explanation is called from them. All these facts suggest proper compliance of sec 80 of C.P.C. With these submissions prayed to reject the application.

7. Heard both side and perused application, say and documents filed by the plaintiff in support of his case.

8. Before entering to discussion it is just to mention here that the law is well settled that the document on which plaintiff relied can be taken into consideration along with the plaint, however the written statement and documents appended to it can not be taken in to consideration.

9. The defendant challenges the maintainability *firstly*, the court has not observed that the case filed against the plaintiff is false,

Secondly, the suit has to be filed within one year in view of Sec. 161 of Maharashtra Police Act, *Thirdly*, act done by the police officer in good faith can not be subjected for litigation, *Lastly*, no compliance of notice as contemplated under Sec. 80 of CPC.

10. The present suit is filed for the compensation against the malicious prosecution after the acquittal of accused from SCC 980/2015. The possibility can not be ruled out that while deciding said case court has not observed that the accusation against the accused i.e. present plaintiff are false. But the question arose, whether such observations are necessary to have constitute cause of action against these defendants. Certainly not, because the suit is filed for the compensation for malicious prosecution. The plaintiff has to prove that he was subjected to the malicious prosecution. Therefore it is not proper to say that unless court observed that the accused is falsely implicated in case cause of action would not arose.

11. Another aspect of consideration is immunity to police officer under sec. 159 of Maharashtra Police Act that no police officer is liable for damages for the act done in good faith. Certainly this immunity is available to him so as he could discharge his duty without fear. However the act done is good faith as to be taken into consideration at the finality it would not proper to arrive to the conclusion without giving opportunity to plaintiff to prove the malafide. Therefore at this juncture it would not proper to reject the plaint on this count.

12. The defendant No. 1 challenges the maintainability on ground of limitation prescribed under Sec. 161 of Maharashtra Police Act, as the suit to be filed within one year from the date of complaint. Certainly on plain reading on the provision it made clear that proceeding needs to be filed within one year and thereafter it cannot be entertain. It is laid down in case of **Directorate of Revenue Intelligence Vs. Pushpa Tolani** in respect of Customs Act 1962 that the limitation contemplated in section 155(2) does not apply to the suit. While considering this proceeding the Hon'ble Lordship has also considered the provisions about limitation in Maharashtra Police Act and thereafter it is ruled that for a suit for malicious prosecution the limitation will be considered under section 3, 12 read with article 74 of limitation Act. Herein present case the plaintiff submitted that the suit is filed for compensation against malicious prosecution and therefore limitation is for 1 year from the date of acquittal. Thus considering the circumstances it is my humble opinion that ratio ruled in case of **Directorate of Revenue Intelligence** is applicable to the present set of facts. Further considering the nature of limitation as it is mixed question of law considering the peculiar circumstances on this count also suit cannot be rejected at threshold without giving opportunity to lead evidence and prove facts. Thus the plaint cannot be rejected for bar of limitation. In fact an issue needs to be framed.

13. Lastly the defendant No.1 submitted that suit is barred for non compliance of section 80. On going through the provisions under 80 it made clear that the object of said provision is to avoid unnecessary

litigation not to oust the plaintiff. It is supported by the ratio laid in **Gulam Rasul** (cited supra). Thus the notice issued to collector by plaintiff is sufficient compliance of provision under section 80 of C.P.C.

14. Further record suggests that plaintiff issued notice to state Government through collector. On going through the provisions under Maharashtra Police Act specifically in section 3(b) it laid that district magistrate is competent authority. In section 17 It is envisaged that the police force of a district is under the control of District Magistrate. Further 18 and 19 of it envisaged power of district magistrate to require report from superintendent and having power of supervision. All these aspect made clear that the district magistrate is head of the police machinery and it is not the case of defendant that notice was never issued to district magistrate i.e. collector for state. Moreover on going through the ratio laid in case of **Ram kumar** and **Raghunath Das** (cited supra), it held that notice issued to administrator or over all incharge of the district was sufficient compliance of section 80 of C.P.C. It is undisputed that notice was issued to collector. Moreover record further suggest that the collector sought reply from defendant No.1 and 2 as administrator of the police as contemplated in the Maharashtra Police Act. On these count I come to conclusion that the suit is not barred for non compliance of section 80 of C.P.C. Therefore merely notice issued against the defendant No.1 and 2 would not amount to non complied of section 80 of C.P.C. Considering all these aspect I come to conclusion that the plaint is not required to be rejected, either for bar

of limitation or bar of non compliance of mandatory provisions. Hence following order.

ORDER

1. Application is rejected.

2. No order as to costs.

sd/----

Islampur.

(Mukul M. Chitale)

Dt.17.02.2024

Jt. Civil Judge Senior Division, Islampur.

CERTIFICATE

“ I affirm that the contents of this PDF file order are the same, word to word, as per the original order.

Name of the Steno with Post : Shri. S. K. Patil
(Stenographer Grade-II)

Name of the Court : Jt. Civil Court Senior Division
Islampur.

Date of pronouncement of order : 17/02/2024

Order signed by the P.O.on : 20/02/2024