

Vivek Vs. the State of Maharashtra and Another

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Court : Mumbai Nagpur

Decided On : Mar-26-2013

Judge : B.R. Gavai & Prasanna B. Varale

Appeal No. : Criminal Application [APL] No.417 of 2012

Appellant : Vivek

Respondent : The State of Maharashtra and Another

Judgement :

Oral Judgment: [B.R. Gavai, J.]

1] **Rule.** Rule, returnable forthwith. Heard finally by consent of the parties.

2] The applicant has filed the present application seeking quashing of the First Information Report dated 06.02.2012 lodged by non-applicant no.2 with non-applicant no.1 Police Station Officer, Seloo Police Station, District Wardha, by which, the crime is registered against the applicant, vide Crime No.12 of 2012, for the offences punishable under Sections 167, 420, 468, 471, 474, 109 r/w 34 of the Indian Penal Code and Section 13 (1)(d) r/w 13 (2) of the Prevention of Corruption Act, 1988.

3] The facts, in brief, giving rise to the present application are as under:

The applicant is an I.F.S. officer and was working as Deputy Conservator of Forest from 29.09.2006 to 16.08.2010 at Wardha. On 03.05.2006 one Govinda Mahagya Waskar had applied for permission to cut tress on his land to the Range Forest Officer, Hingni. The Range Forest Officer, Hingni, after receipt of the application, by proclamation, invited objections. After following procedure prescribed under the Maharashtra Felling of Trees (Regulation) Act, 1964, the permission was granted in favour of said Shri Govinda Mahagya Waskar. It appears that one Shri Namdeo Narayan Dekate filed complaint with non-applicant no.2 alleging that the permission for felling of trees was granted on an application of a person who was dead. It appears that in the investigation conducted by non-applicant no.2, the present applicant was booked in the said crime along with five other persons for the offences punishable under sections, as aforementioned. The applicant, on these premises, has approached this court for quashing of the criminal proceeding.

4] Shri Mardikar, learned counsel appearing on behalf of the applicant, submits that the present applicant had no role, whatsoever, in granting permission for felling of the trees. He submits that the only role attributed to the present applicant is to sanction the transit pass. He submits that the material placed on record reveals that the transit pass was granted to the applicant, after the case was duly recommended by the Range Forest Officer and Assistant Conservator of Forest. The learned counsel for the applicant, therefore, submits that there is nothing on record, so as to prima facie establish the complicity of the present applicant with the offences for which the first information report has been registered.

5] Mrs. Bharti Dangre, learned Additional Public Prosecutor and Shri T.A. Mirza, learned A.P.P. appearing on behalf of the non-applicants-State, on the contrary, submit that as per the duties assigned to the Deputy Conservator of Forest, it was necessary that the applicant, who was, at the relevant time working as Deputy Conservator of Forest, should have verified the entire facts and only upon his satisfaction, he could have sanctioned granting of transit passes. It is submitted that the applicant has failed to do so and as such he is equally guilty for the offences for which he has been charged with. It is further submitted that the investigating agency has recoded the statements of two witnesses, who clearly

implicate the present applicant. It is submitted that the statements of Shyam Narayanrao Dhamande and Arun Janardhan Gawali clearly show that the present applicant had sanctioned the transit passes, in spite of having a knowledge that the permission granted by the Tree Officer, was granted in the name of a dead person. It is submitted that the investigation is still in progress. It is further submitted that this court, while exercising the powers under Section 482 of the Code of Criminal Procedure, cannot go into the question regarding the truthfulness or otherwise of the evidence. It is submitted that if there is some evidence to establish the complicity of the accused, it would not be permissible for this court to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure for quashing the proceedings. The learned APPs, therefore, submit that the present application deserves to be dismissed.

6] It is the basic case of the prosecution that the permission as granted by the Tree Officer was granted in the name of a dead person. It is the allegation against the present applicant that he had issued the transit pass knowing very well that the permission granted by the Tree Officer is granted in favour of the dead person. It is further stated in the affidavit that two personnel in the office of the Deputy Conservator of Forest, Shri Dhamande and Shri Gawali, had brought to the notice of the present applicant that enquiry report is pending in this case on an application made by the heirs of deceased land-owner Shri Govinda Waskar regarding illegal felling of trees. It is further stated that in spite of the said objections being brought to the notice of the present applicant, he had overlooked the same. It is further stated that the present applicant did not pay any heed to the advise of office personnel and passed the order of sanctioning transit pass with an ulterior motive.

7] In view of this specific statement made in an affidavit, the learned APP was directed to produce entire material for our perusal and point out the material collected by the investigating agency, to substantiate these averments. In spite of grant of sufficient time, from the perusal of the papers placed before us, it can clearly be seen that there is not a single document which would show that any deficiencies as referred to in the affidavit in reply were pointed out to the Applicant by the Round Officer Shri Rajmalwar, Range Forest Officer Shri Ghonmode and

Assistant Conservator of Forest Shri Nagbhire.

8] We are aware about our limitations while exercising our jurisdiction under Section 482 of the Code of Criminal Procedure. It will not be permissible for us to go into the correctness or truthfulness of the material placed on record on behalf of the prosecution. But the least it is expected from the prosecution is to show some material to prima facie establish the complicity of accused with the crime in question.

9] It will be relevant to refer to Sections 167, 420, 468, 471 and 474 of the Indian Penal Code, which read thus:

Sec.167 : Public servant framing an incorrect document with intent to cause injury. - Whoever, being a public servant, and being, as [such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record] in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Sec.420 :Cheating and dishonestly inducing delivery of property.- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Sec. 468 : Forgery for purpose of cheating.- Whoever commits forgery, intending that the [document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description a term which may extend to seven years, and shall also be liable to fine.

Sec. 471 : Using as genuine a forged [document or electronic record].-

Whoever fraudulently or dishonestly uses as genuine any [document or electronic record] which he knows or has reason to believe to be a forged [document or electronic record], shall be punished in the same manner as if he had forged such [document or electronic record]

Sec. 474 : Having possession of document described in section 466 or 467, knowing it to be forged and intending to use it as genuine. -

[Whoever has in his possession any document or electronic record, knowing the same to be forged and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document or electronic record is one of the description mentioned in section 466 of this Code], be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the description mentioned in section 467, shall be punished with [imprisonment for life], or with imprisonment of either description, for a term which may extend to seven years, and shall also be liable to fine. In so far as Sections 34 and 109 of the Indian Penal Code are concerned, the same are related to common intention or abetment.

10] Section 167 of the Indian Penal Code deals with framing an incorrect document with intent to cause injury by public servant. The perusal of the entire charge sheet reveals that there is not a single document which is alleged to be prepared by the present applicant knowingly or believing the same to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person.

11] Insofar as Section 420 of the Indian Penal Code is concerned, the same deals with cheating. For bringing an act within the ambit of Section 420 of the Indian Penal Code, it is necessary to show that the person, who is charged with that section, cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security. There is no material on record to show that the applicant can be charged inasmuch as there is nothing to show that these

ingredients are available.

12] Insofar as Section 468 of the Indian Penal Code is concerned, the same deals with forgery. The learned prosecutors have not been in a position to point out any single document, which is alleged to be forged by the present applicant. Insofar as Section 471 of the Indian Penal Code is concerned, the same deals with using a forged documents as genuine. As already stated hereinabove, there is not a single document which can be said to be forged by the present applicant and as such Section 471 of the Indian Penal Code would not be attracted by any stretch of imagination. Insofar as Section 474 of the Indian Penal Code is concerned, the same deals with the possession of documents described in Sections 466 and 467 of the Indian Penal Code, knowing it to be forged and intending to use it as genuine. As already stated hereinabove, since the prosecution has not pointed out any single document, which is said to be forged by the present applicant, the said sections would also not be attracted.

13] The Apex Court in the case of State of Haryana and others .vs. Ch. Bhajan Lal and others, AIR 1992 SC 604 has laid down the categories in which the powers under Section 482 of the Code of Criminal Procedure may be exercised. The Apex Court has observed in paragraph no.108, which reads thus:

108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if, they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

We find that the present case would be squarely covered by category nos.1 and 3 of the categories laid down by the Apex Court.

14] We are of the considered view that, even if, the allegation made in the first information report and the material collected by the prosecution in support of the same even if taken as its face value, the same would not make out an offence for which the first information report is registered against the present applicant.

15] Insofar as the contention that the applicant has failed to act in accordance with the duties which are assigned to him is concerned, merely because a person does not discharge his duties properly, cannot be a ground for charging him with penal sections. The very nature of the allegation charged with requires a mensrea. Unless the prosecution has some material to show that the act done by the person is done with criminal intention, it will not be appropriate to sustain such a first information report.

16] The Apex Court in the case of L. Chandraiah .vs. State of A.P. and another, AIR 2004 SC 252, has held that merely because an employee is shown to have acted negligently in passing the vouchers cannot be itself sufficient for bringing him under the purview of Section 409 of the Indian Penal Code.

17] A similar view has been taken by the Apex Court in the case of Radha Pisharassiar Amma .vs. State of Kerala, (2007) 13 SCC 410. The Apex Court, in the said case, has also held that even the charge under the Prevention of Corruption Act would not be sustainable.

18] The Apex Court in the case of R. Kalyani .vs. Janak C. Mehta and others, (2009) 1 SCC 516, was considering a case wherein the appellant before the Apex Court was charged with the commission of offences of cheating, criminal breach of trust and forgery. The Apex Court found that merely forwarding a letter to the National Stock Exchange would not be sufficient to permit to a first information report to continue for an offence of forgery. The Apex Court further found that the appellant did not have any knowledge of the fact that the document was forged or fabricated document and as such the continuation of criminal proceeding against him was not sustainable. The Apex Court in the said case has reiterated the principles for exercising the jurisdiction under section 482 of the Code of Criminal Procedure. It will be relevant to refer to paragraphs 15 and 16 of the said judgment, which read thus:

15. Propositions of law which emerge from the said decisions are :

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the

allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any means *rea* or *actus reus*.

(4) If the allegation discloses a civil dispute, the same by itself may not be ground to hold that the criminal proceedings should not be allowed to continue.

16. It is furthermore well known that no hard-and-fast rule can be laid down. Each case has to be considered on its own merits. The Court, while exercising its inherent jurisdiction, although would not interfere with a genuine complaint keeping in view the purport and object for which the provisions of Section 482 and 483 of the Code of Criminal Procedure had been introduced by Parliament but would not hesitate to exercise its jurisdiction in appropriate cases. One of the paramount duties of the superior courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint.

(emphasis supplied)

19] The Apex court has held that the court, while exercising its inherent jurisdiction, although would not interfere with a genuine complaint keeping in view the purport and object for which the provisions of Section 482 and Section 483 of the Code of Criminal Procedure had been introduced. However, it has been further held that the court would not hesitate to exercise its jurisdiction in appropriate cases. It is held that it is one of the paramount duties of the superior courts to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint.

20] It will also be relevant to refer to a recent judgment of the Apex Court in the case of C.K. Jaffer Sharief .vs. State (Through CBI) (2013) 1 SCC 205. In the said case, the allegation against appellant/accused, who was a former Union Railway Minister and ex-officio head of RITES, was that he mis-utilized four employees on deputation for sole purpose of sending them to London in connection with medical treatment of appellant. The Apex Court has observed in paragraph no.16, which reads thus:

16. A fundamental principle of criminal jurisprudence with regard to the liability of an accused which may have application to the present case is to be found in the work Criminal Law by K.D. Gaur. The relevant passage from the above work may be extracted below:

Criminal guilt would attach to a man for violations of criminal law. However, the rule is not absolute and is subject to limitations indicated in the Latin maxim, *actus non facit reum, nisi mens sit rea*. It signifies that there can be no crime without a guilty mind. To make a person criminally accountable, it must be proved that an act, which is forbidden by law, has been caused by his conduct, and that the conduct was accompanied by a legally blameworthy attitude of mind. Thus, there are two components of every crime, a physical element and a mental element, usually called *actus reus* and *mens rea* respectively.

The Apex Court further observed that the dishonest intention to obtain undue pecuniary advantage is the gist of offence u/s 13(1)(d) of the Prevention of Corruption Act, 1988. As such the Hon'ble Apex Court quashed and set aside the proceeding against the appellant-accused.

21] In the light of the aforesaid facts, on examination of the prosecution case as against the present applicant, it can be seen that though it is alleged that the present applicant had overlooked the deficiencies pointed out by the Round Officer, Range Forest Officer and Assistant Conservator of Forest, as already stated hereinabove, there is nothing to show that any of such deficiencies were brought to the notice of the applicant by any of those officers. On the contrary, the document which is annexed as Annexure-P5 in the application would reveal that the Range Forest Officer as well as the Assistant Conservator of Forest had duly

recommended the case for grant of transit pass. The only role played by the present applicant is granting his sanction on the recommendations of his subordinate officers.

22] Insofar as the statement of Shri Shyam Dhamande is concerned, it was recorded on 11.7.2012 i.e. almost four months after registration of the first information report and almost a month after the present application has been filed before this court. The said person, who was a Forest Guard, was working as a Clerk from 1988. The perusal of his statement also reveals that even, according to him, the then Range Forest Officer as well as Assistant Conservator of Forest had recommended for grant of transit pass. Though, he states that he had orally brought to the notice of the present applicant regarding the complaint of legal heirs of the original owner, in his supplementary statement recorded on 11.7.2012, he himself states that he had written on the said file sadrp`krNaat ksalyaahl p`karcAl AvaOQa vaRxataoD tsaoca p`krNa nyaayap`iva YT nasalyaacao AaZLuna yaoto and after putting such endorsement, had put up the file before the present applicant. The said statement rather than supporting with the case of prosecution, would rather support the case of present applicant. To the same effect is the statement of Arun Janardan Gawali, who states that the details on the tpasaNalyaadl (inspection list) are in the handwriting of Shyam Dhamande. It can thus clearly be seen that the statement made on affidavit that the three subordinate officers had pointed out the deficiencies, which were overlooked by the present applicant, is totally incorrect. Even, the reliance placed on the statements of Shyam Narayanrao Dhamande and Arun Janardan Gawali is also without substance. On the contrary, the perusal of the documents on record submitted by the prosecution itself would reveal that the file was scrutinized by Shyam Dhamande and put up for signature of the present applicant and the present applicant has only endorsed on the said file as sanctioned, after accepting the recommendations of his subordinate officers.

23] It is further to be noted that the powers under the Maharashtra Felling of Trees (Regulation) Act, 1964 for grant of permission to cut the trees are with the Tree Officer, i.e. the Range Forest Officer. It is further to be noted that the permission of felling of trees was granted by the Range Forest Officer Shri Ghonmode on

17.5.2006, whereas the present applicant has joined the duties on 29.9.2006 i.e. almost after four months. The perusal of the first information report would reveal that the allegations regarding fabrication of the documents are against Avinash Ghonmode. In that view of the matter, the contention that the present applicant was having any knowledge about the complaint filed by said Shri Dekate does not hold water.

24] In that view of the matter, we find that the continuation of the criminal proceeding against the present applicant would result in nothing else but the persecution and humiliation of a senior I.F.S. Officer. The prosecution, in the present case, has gone to the extent of filing false affidavit.

25] In the result, the application is allowed in terms of prayer clause (1).

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