

Bhaskar Vs. The State of Maharashtra

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Court : Mumbai Nagpur

Decided On : Jun-29-2015

Judge : B.P. Dharmadhikari & P.N. Deshmukh

Appeal No. : Criminal Application (Apl) No. 260 of 2015

Appellant : Bhaskar

Respondent : The State of Maharashtra

Advocate for Pet/Ap. : Shri. Shashank Manohar, Shri. Chauhan

Judgement :

B.P. Dharmadhikari, J.

1. By this application under Section 482 of the Code of Criminal Procedure, the applicant seeks an order for quashing and setting aside of First Information Report bearing Crime No. 3073 of 2015 dated 25.03.2015 punishable under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 1988 Act), registered with Police Station, Frezarpura, Amravati.

2. This Court had issued notice on 17.04.2015 and directed that the charge sheet shall not be filed without its permission.

Thereafter, non-applicant “ State of Maharashtra has filed reply on 05.05.2015. In this background, we have heard Shri Shashank Manohar with Shri Chauhan,

learned counsel for the applicant and Ms. Mehta, learned APP for the non-applicant finally by issuing Rule and making it returnable forthwith with consent.

3. FIR No. 3073 of 2015 has been questioned only on the ground that it is second FIR. This Court is not called upon to find out whether allegations therein support the charge as leveled or not.

4. Shri Manohar, learned counsel submits that the applicant, who was sent on deputation by his parent department on 20.04.2013, was holding the post of Additional Tribal Commissioner at Amravati. After deputation, he was to go back to his parent department i.e. Department of Forest. He had illustrious career and never faced any Departmental Inquiry or received any warning. Otherwise also, he comes from a affluent and established agriculturist family. He regularly earned income from agricultural source i.e. approximately 33 Acres of land at Village “Aliyani, Tq. Shahapur in Thane district and rent. He himself holds Masters degree in Horticulture. His wife and her parents also have vast track of agricultural land in Western Maharashtra and, therefore, his wife also derived income from those lands. One of his sons is Dental Surgeon, who runs Clinic since 2010 at Thane. Thus, the applicant was never dependent on mere salary. Unfortunately, he was trapped on a complaint made by one Narayan Mahatre, resident of Digras, through FIR bearing No. 3178 of 2014 dated 18.07.2014. The trap was not successful and it was intended for a clerk by name Kalidas Meshram. As such, there was never any demand or acceptance on the part of the applicant. Second trap was conducted on 18.07.2014. Though nothing incriminating could be found, the applicant was arrested for the offence punishable under Sections 7, (13)(1)(d) and 13(2) of 1988 Act. He was produced before Special Judge, Anti Corruption on 18.07.2014 and his P.C.R. was sought till 22.07.2014. The State Government claims that raids were conducted at the residence of the applicant at Amravati and Thane and Investigating agency could secure sum of Rs.91,78,500/-. Further P.C.R. was sought to verify source of income and on 22.07.2014, M.C.R. was given till 05.08.2014. He was then released on 23.07.2014.

5. In accordance with terms and conditions of his release on bail, the applicant appeared before the Investigation Officer on not less than 33 occasions and

cooperated in in-depth investigation. He furnished various details vide communications dated 29.09.2014, 13.10.2014, 05.02.2015, 09.03.2015, 25.02.2015 and 17.03.2015. Despite this, non-applicant registered a fresh FIR against the applicant on 25.03.2015. The only reason for later FIR, according to the applicant, is dissatisfaction of Investigating Officer about answers given by him. The non-applicant claimed that the applicant has secured assets disproportionate to the extent of 178.15% of the actual source of income and that claim of non-applicant is without any foundation. The applicant admitted sources of income worth Rs. One lakh per month in addition to his agricultural income, the details of which were already submitted to the department.

6. Shri Manohar, learned counsel, submits that in this background subsequent action of non-applicant in registering fresh FIR, which is only an offshoot of material collected while investigating the previous offence, is questioned in the present application. It is contended that in the backdrop of scheme of Section 154 read with Section 161 to S. 173 of the Code of Criminal Procedure, the material collected during the investigation cannot be treated as foundation for the purposes of such FIR and ought to form part of earlier FIR. After completion of such investigation, the Investigation Officer can form an opinion either under Section 169 or 170 or can forward the report under Section 173(2) of the Code of Criminal Procedure. Further investigation is possible if Investigating Officer comes in possession of certain additional evidence, in that case, he can file supplementary report under Section 173(8) thereof. It is contended that in present matter, a charge sheet in relation to first FIR has not been filed and hence Investigating Officer could not have registered second FIR. Thus, subsequent FIR dated 25.03.2015 bearing Crime No. 3073 of 2015 is liable to be quashed and set aside. Shri Manohar, learned counsel points out that it not being a counter case, the later FIR must be quashed by High Court in exercise of its powers under Section 482 of Code of Criminal Procedure. Shri Manohar, learned counsel, has relied upon the judgments in the case of Amitbhai Anilchandra Shah vs. Central Bureau of Investigation and Anr., reported at (2013) 6 SCC 348 and T.T. Antony vs. State of Kerala and Ors., reported at (2001) 6 SCC 181, to substantiate his contention.

7. The learned APP, on the other hand, has invited attention to the provisions of Section 13 of 1988 Act. She submits that offence under Section 13(1)(d) is distinct than the offence under Section 13(1)(e). As both offences are distinct, though the applicant may be exonerated or acquitted of an offence in pursuance of FIR dated 18.07.2014, it does not result in his automatic acquittal in later FIR bearing Crime No. 3073 of 2015 registered on 25.03.2015. She points out that later offence is under Section 13(1)(e) while the earlier FIR is under Section 13(1)(d) of 1988 Act. She has also relied upon reply affidavit to substantiate the contention that the evidence to be adduced to prove offences under respective FIR is entirely different and distinct. She contends that FIR dated 25.03.2015, therefore, cannot be read as second FIR. To support her contentions, she draws support from Babubhai vs. State of Gujarat and Ors., reported at (2010) 12 SCC 254; Ashok s/o Sopan Patil vs. The State of Maharashtra and Ors., reported at 2015 ALL MR (Cri) 7 and judgment of Delhi High Court in the case of R. Vasudevan vs. C.B.I., reported at 2012 LawSuit (Del) 1483. The judgment of Hon'ble Apex Court in case of V.K. Puri vs. Central Bureau of Investigation, reported at 2007 (6) SCC 91, is also relied upon by her.

8. For appreciating the rival submissions, we find it convenient to refer first to S, 13 of the Prevention of Corruption Act, 1988. It reads “

13. Criminal misconduct by a public servant.”

(1) A public servant is said to commit the offence of criminal misconduct,”

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in Section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is

subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he,"

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation."For the purposes of this section, known sources of income? means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than [four year] but which may extend to [ten years] and shall also be liable to fine.?

9. We find that the judgment of the Hon'ble Supreme Court in the case of "Amitbhai Anilchandra Shah V/s. The Central Bureau of Investigation and Anr." (2013) 6 SCC 348, shows that in respect of the alleged murder of Sohrabuddin and his wife Kausarbi on 26.11.2005 and 29/30.11.2005 respectively, one charge sheet came to be filed on 23.07.2010. About subsequent killing of an associate of

Sohrabuddin namely Tulsiram Prajapati on 28.12.2006, another charge sheet was filed on 04/09/2012. Charge sheet dated 23.7.2010 filed by the CBI in the first FIR, the CBI had mentioned that the killing of Tulsiram Prajapati was a part of the very same conspiracy. The Apex Court has, in this background, observed that a second FIR for an offence or different offences committed in the course of the same transaction is not only impermissible but it violates Article 21 of the Constitution. It held that the killing of Tulsiram Prajapati was a part of the same series of acts in which Sohrabuddin and Kausarbi have been killed. Therefore, the second F.I.R. filed in respect of murder of Tulsiram Prajapati was quashed. But then it is important to note that the Hon'ble Apex Court did order that the charge sheet filed on 04/09/2012, in pursuance of the second F.I.R., be treated as a supplementary charge sheet in the first F.I.R. T.T. Anthony Vs. State of Kerala and Ors. AIR 2001 SC 2637=(2001) 6 SCC 181 and Babubhai v. State of Gujarat (2010) 12 SCC 254 are the other judgments cited before us. These also find consideration in this case by Hon'ble Court in paragraph 38 where consequence test? is also applied. Hence, we find it appropriate to reproduce it here “

38. Mr Raval, learned ASG, by referring **T.T. Antony** submitted that the said principles are not applicable and relevant to the facts and circumstances of this case as the said judgment laid down the ratio that there cannot be two FIRs relating to the same offence or occurrence. The learned ASG further pointed out that in the present case, there are two distinct incidents/occurrences, inasmuch as one being the conspiracy relating to the murder of Sohrabuddin with the help of Tulsiram Prajapati and the other being the conspiracy to murder Tulsiram Prajapati ” a potential witness to the earlier conspiracy to murder Sohrabuddin. We are unable to accept the claim of the learned ASG. As a matter of fact, the aforesaid proposition of law making registration of fresh FIR impermissible and violative of Article 21 of the Constitution is reiterated and reaffirmed in the following subsequent decisions of this Court: (1) Upkar Singh v. Ved Prakash, (2) Babubhai v. State of Gujarat, (3) Chirra Shivraj v. State of A.P., and (4) C. Muniappan v. State of T.N. In C. Muniappan this Court explained the consequence test? i.e. if an offence forming part of the second FIR arises as a consequence of the offence alleged in the first FIR then offences covered by both the FIRs are the same and, accordingly, the second FIR will be impermissible in law. In other words, the

offences covered in both the FIRs shall have to be treated as a part of the first FIR.?

10. The Hon'ble Apex Court in T.T. Anthony Vs. State of Kerala and Ors. (supra) in para 18 (para 20 of SCC) observes “

On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the F.I.R. in the station house diary, the officer in charge of a Police Station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 of the Cr. P.C.”

In paragraph 18 (SCC), Hon'ble Court states:

Apart from a vague information by a phone call or a cryptic telegram, the information first entered in the station house diary, kept for this purpose, by a police officer in charge of a police station is the First Information Report F.I.R. postulated by Section 154 of Cr. P.C. All other informations made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the First Information Report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling under Section 162 of Cr. P.C. No such information/statement can properly be treated as an F.I.R. and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of the Cr. P.C.”

11. In V.K. Puri vs. Central Bureau of Investigation, reported at (2007) 6 SCC 91 = (2007) 6 Mah. L.J. (SC) 751, while examining the issue of territorial jurisdiction of a special court and holding that situs of the property may or may not be decisive, Hon'ble Apex Court also pointed out the ingredients of S. 13(1)(e) of 1988 Act. The same are “

(i) the accused is public servant, (ii) the nature and extent of the pecuniary resources of property found in his possession, (iii) his known sources of income

i.e. known to prosecution, (iv) such resources or properties found in possession of accused were disproportionate to his known source of income. Once these ingredients are proved, the burden shifts to accused to show that the prosecution case is not correct. Hon'ble Apex Court further points out that in a case involving Section 13(1)(e) of the 1988 Act, keeping in mind the period in question i.e. check period, investigation has to be whether the public servant did acquire wealth disproportionate to his known sources of income. It has no bearing on individual instance/s of bribery. It has nothing to do with a series of acts culminated into an offence. We find that offences or misconducts in clauses (a) to (e) of S.13(1) are distinct from each other though they have been clubbed together under section 13 as acts of Criminal misconduct by a public servant?. Out of all the offences under sub-section (1) clauses (a) to (e), only an offence under clause (e) mandates calling of an explanation from accused as an ingredient and this requirement cannot be extended to the offence under clause (d).

12. Thus, it can be seen that an offence or a criminal misconduct in S.13(1)(e) is distinct from that under S. 13(1)(d) of the Prevention of Corruption Act, 1988. A person accused under S. 13(1)(d) with reference to a single incidence or more such specified instances may be exonerated of the same but still be punished under S.13(1)(e). Vice-versa, though acquitted under it, still possibility of his being punished under the other clauses for other criminal misconduct/s cannot be ruled out, provided there exists disproportionate property. Trials under S. 13(1)(d) and S.13(1)(e) are not dependent on each other for their sustainability, though part of evidence to be lead therein may be common or overlapping. Need of having a joint trial or clubbing thereof due to possible impact of material coming on record therein on the other trial are not the issues relevant at this stage. Parties have rightly not made any such effort. Obtaining for himself or for any other person any valuable thing or pecuniary advantage in manner as prohibited in S. 13(1)(d), either once or on more than one occasion is relevant under said provision and person found guilty therefor may not be possessing any assets or then, disproportionate assets at all. Still he can be punished for such misconduct. Such misconduct may be either a single transaction or more than one transaction. On the other hand, criminal misconduct falling under clause (e) can be proved by demonstrating the assets which are disproportionate to accused's known sources

of income. Thus, such person need not be found to have indulged in any other criminal misconduct under other clauses of S.13(1) of the 1988 Act. Ingredients of S.13(1)(e) are unique and not relevant under S.13(1)(d). Offences under S.13(1)(d) and S.13(1)(e), therefore, cannot be said to be committed as a part of the same transaction. To prove guilt under S.13(1)(e), the prosecution need not prove involvement of the person in any other criminal misconduct? under other clauses of S.13(1) of the P.C. Act, 1988. Converse proposition is also good. Thus there is no question of same transaction and scope to apply consequence test?.

13. In the case of Ashok S/o Sopan Patil Vs. State of Maharashtra and Ors., reported at 2015 (3) LJSOFT 82, the Division Bench of this Court has found that earlier FIR was registered at the instance of the auditor against the Chairman and Directors of the society for illegally sanctioning and disbursing loan due to audit conducted for the period from 1/4/2007 to 31/3/2009. Subsequent complaint was based upon outcome of audit made for the period 2011-12 and hence, cannot be termed as second FIR. Both the complaints were registered on the basis of two different complaints and based upon altogether different facts. Thus, when misappropriation coming to light is entirely different and not connected with earlier one, the consequence test? is not attracted. Therefore, lodging of a separate FIR for it is not viewed as second FIR.

14. In present case, looking to the nature of challenge, it is not necessary to go into niceties of either of the FIRs. Fact that the FIRs are under different provisions is not in dispute and whether facts mentioned therein constitute the offence or not is not the debate here. Earlier FIR bearing No. 3178 of 2014 dated 18.07.2014 against the Applicant is for alleged demand and acceptance of bribe, a transaction complete in itself under S.13(1)(d) and not having any bearing on later FIR No. 3073 under S.13(1)(e) lodged on 25.03.2015. Investigation into both the misconducts or offences warrants different perspective and has to be totally distinct and unconcerned with each other. It has no bearing on each other and failure or success of the prosecution to establish guilt in one FIR cannot eclipse its investigation into the other. Later FIR, therefore, is not a second FIR at all. It does not form part of same transaction in this case.

15. Thus, we find the challenge as raised without any substance. Present Application is rejected. Rule is discharged with no order as to costs.

At this stage, Shri Chauhan, learned counsel for the applicant seeks continuation of interim orders for a period of six weeks so as to enable the applicant to approach the Hon'ble Apex Court. The request is being strongly opposed by the learned APP. However, as the order was in force since 17.04.2015, we continue it for a period of six weeks more from today. It shall cease to operate automatically thereafter.

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