

Rohit Vasavada Vs. R.K. Shah, Public Prosecutor and anr.

Rohit Vasavada Vs. R.K. Shah, Public Prosecutor and anr.

SooperKanoon Citation : sooperkanoon.com/744520

Court : Gujarat

Decided On : Oct-21-1993

Reported in : (1996)2GLR758

Judge : M.S. Parikh, J.

Appellant : Rohit Vasavada

Respondent : R.K. Shah, Public Prosecutor and anr.

Judgement :

M.S. Parikh, J.

1. The Gujarat Industrial Investment Corporation Limited (for short 'G.I.I.C.') is a company incorporated under the provisions of the Companies Act, 1956 (for short 'the Act') for various objects, all of which are commercial in nature, as described in Clause (3) of the Memorandum of Association, which has been read before this Court. G.I.I.C. was formed with an object to provide assistance for the development of industries in the State of Gujarat and to render financial assistance to various entrepreneurs. It also participates in certain joint ventures by holding equity capital with others.

2. The petitioner is a President of G.I.I.C. Officers' Union and also the President of G.I.I.C. Employees' Union. One Mr. Madhusudan Dayal at the relevant of time was Managing Director of the G.I.I.C. and one Dr. B.P. Gupta was the General

Manager at the relevant point of time. It appears that the petitioner had an occasion to issue various pamphlets in the year. 1987 making wild allegations and using defamatory language in respect of the aforesaid two officers of G.I.I.C. It was in that respect that the opponent No. 1 being the Public Prosecutor, with the sanction from the Government, filed a complaint on 30-9-1987 bearing Criminal Case No. 1 of 1987 in the Court of the learned Sessions Judge at Ahmedabad. By the order passed on the same day, the learned Sessions Judge issued process, i.e. summons to the present petitioner being accused in the said criminal case for an offence punishable under Section 500 of the Indian Penal Code.

3. It is this process and the proceedings of the aforesaid criminal case which have been called in question under Section 482 of the Code of Criminal procedure (for short 'the Code') in this petition.

The prayer for quashing has been made on various grounds as enumerated in the petition. However, the petition deserves to be granted only on the ground that the concerned officers cannot be said to be public servants at the relevant point of time employed in connection with the affairs of the State of Gujarat. In this respect reference may be made to the very provision, on the strength of which the complaint came to be filed, contained in Section 199 of the Code. It reads:

199. (1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860), except upon a complaint made by some person aggrieved by the offence:

Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.

(2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice President of India, the Governor of a State, the Administrator of a Union

Territory or a Minister of the Union or of a State or of a Union Territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

(3) Every complaint referred to in Sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) No complaint under Sub-section (2) shall be made by the Public Prosecutor except with the previous sanction --

(a) of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government;

(b) of the State Government, in the case of any other public servant employed in connection with the affairs of the State;

(c) of the Central Government, in any other case.

4. In the context of the very incorporation of the company wherein at the relevant time concerned officers were discharging their duties, it can be seen that the company cannot be said to have been connected with the affairs of the State. It is a Corporation registered under the provisions of the Companies Act. It has a different entity from the State itself. Besides, the affairs of the Company cannot be said to be affairs of the State. On the plain reading of the aforesaid provision this becomes apparent. In order to consolidate submission that flows from the plain reading of the aforesaid provision Mr. Bhatt, learned Advocate for the petitioner placed reliance upon a decision of Andhra Pradesh High Court in the case of S. Dasaratharami Reddi v. A.H. Dara reported in 1980 Cri. LJ 377. In that case, the Andhra Pradesh High Court was concerned with the very provision quoted above. It has been held that under that provision it is not enough if a person aggrieved by commission of any offence included in Chapter XXI of the Penal Code (Section

500 being a part thereof) is a public servant. He must also establish that he was a public servant employed in connection with the affairs of the State. These conditions must be strictly fulfilled

5. The satisfaction of the requirements in Section 199(2) should be with reference to the position which the public servant at the relevant time of the commission of offence alleged by him, occupied. In that case, the concerned public-servant worked as Block Development Officer of Panchayat Samithi, a body corporate, at the time when the accused published defamatory article. It was held that the aggrieved person was not a public servant employed in connection with the affairs of the State at the relevant point of time and the complaint for offences punishable under Sections 501 and 502 of I.P.C. by the Public Prosecutor was not competent. The learned single Judge followed the decision of the Division Bench of the same Court for reaching the aforesaid conclusion. The acquittal of the concerned accused was, therefore, confirmed by the learned single Judge.

6. Examining the aforesaid provision, it is clear that Sub-section (2) begins with a non-obstante clause apparently indicating that the provision contained, in Sub-section (1) would operate in cases of persons other than the persons described in Sub-section (2). An exception is carved out by Sub-section (2) and a condition for such an exception is that the aggrieved person inter alia must be a public servant employed in connection with the affairs of the State. The exception which has been carved out under Sub-section (2) clearly appears to be a condition precedent for complaint to be filed under Chapter XXI of the Indian Penal Code by not the person aggrieved but by the Public Prosecutor. It is clear from the reading of Sub-section (1) that no Court is to take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code except upon a complaint made by an aggrieved person. It is, therefore, clear that the complaint filed by the Public Prosecutor in respect of the aforesaid officers of G.I.I.C. is not tenable on the face of it by virtue of the aforesaid provision.

7. Mr. Divetia, learned A.P.P. for the State firstly submitted that the whole of the share capital for G.I.I.C. is subscribed by the State Government. Assuming that fact very nature of the incorporation indicates that the G.I.I.C. is a company

incorporated under the Companies Act; it is not created directly by any Statute. Merely because the State is stated to have subscribed the whole of the share capital, the nature of the activity of the Corporation does not undergo the change so as to include within its operation the affairs of the State. The submission of Mr. Divetia hence cannot be accepted. Legally speaking the G.I.I.C. is owned and managed by the shareholders and their representatives. It cannot be said that the aforesaid officers were employed in connection with the affairs of State within the meaning of Section 199(2) of the Code.

8. Mr. Divetia then placed reliance upon a decision of the Hon'ble Supreme Court in the case of *Ramana v. I.A. Authority of India* reported in : (1979)11LLJ217SC , in order to substantiate his submission that the G.I.I.C. would be State within the meaning of Article 12 of the Constitution of India. In my opinion, such a meaning cannot be ascribed in the context of aforesaid provision, which has got to be construed strictly.

Thus, on this limited point, the petition deserves to be allowed. In that view of the matter, other points canvassed by Mr. Bhatt need not be considered. Following order is, therefore, passed.

9. The petition is allowed. The process issued in Criminal Case No. 1 of 1987 pending in the Court of learned City Sessions Judge at Ahmedabad and the proceedings of the said Criminal case are hereby quashed and set aside. Rule made absolute accordingly.