

Manohar M. Galani

Vs

Ashok N. Advani

Criminal Appeals Nos. 1211-16 of 1999

(G. B. Pattanaik, R. P. Sethi JJ)

17.11.1999

JUDGMENT

PATTANAİK J.-

1. Leave granted.

2. The order of the Gujarat High court quashing the complaints as well as further investigation taken up by the police stations and also setting aside all the proceedings in Criminal Miscellaneous Application No. 5722 of 1994 in CR No. 211 of 1994 is being challenged in these appeals at the instance of the complainant. The complaints are the outcome of a nefarious incident that took place in Dakor Court in the district of Kheda in State of Gujarat. It was revealed in the newspaper that from the said Court warrants can be issued against anyone by mere asking for and in fact from the said Court at Dakor, non-bailable warrants had been issued against Justice M.L. Pendse, the then acting Chief Justice of the Bombay High Court. So far as the complaints which have been quashed by the High Court of Gujarat, it was alleged that the family of the complainant came in contact with the accused, Mr. Kishore Keswani had invested money in shares and stocks and when the share market crashed in Mumbai Stock Exchange, several depositors/investors sustained loss. Shri Keswani, however, made the complainant responsible and pressurised him to compensate the loss. Notwithstanding several pressure tactics, when the complainant did not succumb to the pressure, the said Shri Keswani lodged false criminal complaints against the complainant and his family members in various places and Ulhasnagar. He was also successful in obtaining warrants of arrest against the complainant and his family members and the complainant and his family members were arrested and lodged in various police stations and jails. It was further alleged in the complaint that the moment the complainant or nay of his family members would be released on bail in one case, they would be made accused in some other case and would be arrested. The complainant took the assistance of a local press reporter from Mumbai and exposed the entire scandal that was happening in the Court at Dakor. A social activist when came to know of the entire episode from the newspaper, filed a writ petition in public interest before the Gujarat High Court which was registered as Special Civil Application No. 13258 of 1994, and in that petition, prayer was made for suitable directions to the Government of Gujarat and the Bar Council of Gujarat. On the said public interest petition, the High Court directed the Director General of Police to conduct an inquiry and submit report. Several reports were submitted to the Gujarat High Court which according to the complainant would establish his innocence and innocence of his family members who were being unnecessarily harassed by false and frivolous criminal proceedings. It further transpires that the High Court on the administrative side took action suspending the Judicial Magistrate at Dakor Court in District Kheda and no final decision had been taken in the pending public interest petition. At this stage, when the complaints were lodged by the complainant which were being investigated into, the

accused persons named in the complainant case moved the High Court and the High Court by the impugned order quashed the two complaints as well as the public interest petition which was pending before it and hence the present appeals.

3. Mr. Gopal Subramaniam learned Senior Counsel appearing for the complainant submitted that the High Court obviously exceeded its jurisdiction in quashing the FIRs as well as the pending public interest petition whereunder certain inquiries were directed by the High Court itself, on a finding that Section 195 will get attracted. According to Mr. Subramaniam, gross irregularities having alleged to have been committed by the accused persons and the complainant having alleged to have been committed by the accused persons and the complainant having been harassed unduly by the accused persons, the High Court could not have throttled the investigation and quashed the proceedings on a finding that Section 195 would be a bar to proceed further. According to Mr. Gopal Subramaniam, the bar under Section 195 of the Code of Criminal Procedure can be gone into at the stage when the court takes cognizance of the offence and an investigation on the basis of the information received could not have been quashed and an investigating agency cannot be throttled at this stage from proceeding with the investigation particularly when the charges are serious and grave. Learned counsel for the respondents on the other hand contended that the various subject-matters of the complaints are already being inquired into and, therefore, allowing any further inquiry or complaint if allowed to be proceeded with, it will be an abuse of the process of the Court. Learned counsel for the respondents, however, fairly conceded that the Court was not justified in quashing the public interest petition which has been registered as Criminal Miscellaneous Application No. 5722 of 1994 in CR No. 211 of 1994.

4. So far as the public interest petition is concerned, not only the counsel for both sides agreed that the same ought not to have been set aside but we also fail to understand how the High Court in exercise of its power under extraordinary jurisdiction can interfere with a collateral proceeding initiated by the High Court itself in an application filed in public interest. There cannot be any dispute that the facts revealed a serious scandal in the functioning of some subordinate court in the State of Gujarat and, therefore, the High Court took cognizance of the matter and directed inquiry to be conducted, and on the basis of the said inquiry, it was open for the High Court to issue necessary directions and at that stage the impugned order has emanated. In our considered opinion, the order in the impugned judgment setting aside the aforesaid public interest petition is erroneous and we, therefore, set aside the said order and direct that the public interest petition should be considered by the High Court on merits on the basis of the reports submitted to the Court and appropriate directions be given, whatever the Court thinks fit.

5. So far as the quashing of the complaints and inquiry on the basis of FIR registered by the complainant are concerned, we also find that the High Court was not justified in interfering with the same and quashing the proceedings by an elaborate discussion on the merits of the matter and in coming to the conclusion that Section 195 of the Code of Criminal Procedure will be a bar. In our opinion, it was rather premature for the High Court to come to the aforesaid conclusion and on account of the order passed, the investigation into several serious allegations are being throttled. We, therefore, set aside the orders quashing the two complaints and the investigation made thereunder and direct that those cases may proceed in accordance with law. Needless to mention, our setting aside the impugned order does not tantamount to expression of our opinion on merits and the accused, therefore, may not feel aggrieved and are entitled to take any appropriate remedy that is available to them under the law.

6. Criminal appeals are allowed in the above terms.