

CASE NO.:
Writ Petition (civil) 46 of 2004

PETITIONER:
Vijay Shekhar & Anr.

RESPONDENT:
Union of India & Ors.

DATE OF JUDGMENT: 27/04/2004

BENCH:
N.Santosh Hegde, S.B.Sinha & S.H.Kapadia.

JUDGMENT:
J U D G M E N T

O R D E R

This is a writ petition filed inter alia seeking a writ of mandamus calling upon the respondents to immediately seize the records pertaining to Criminal Case No.118 of 2004 titled Suresh Kumar Jethalal Sanghvi v. Rajendra Kumar Jain & Ors. pending in the Court of Metropolitan Magistrate, Court No.10, Meghani Nagar, Ahmedabad, on the ground that the proceedings in the said case was an example of, the extent to which the criminal justice system in Subordinate Courts in Gujarat is corrupted.

This writ petition raises important issues of legal and public importance; one amongst them being the validity of the complaint filed in the Court of Metropolitan Magistrate, Court No.10, Ahmedabad in a complaint filed by the said Suresh Kumar Jethalal Sanghvi under Sections 406, 420, 504, 506(1) and 114 IPC against 4 persons named therein and consequential bailable warrants issued against the said persons by the said court.

Many of the issues involved in the writ petition require further consideration, hence it is agreed by all the parties to this petition that those issues can be separately dealt with. The parties are also at ad idem on the issue of the validity of the complaint being decided at this stage itself. Hence in this order of ours we will consider and decide the validity of the complaint referred to hereinabove.

Though all the parties to this petition are in one voice have agreed to quash the said proceedings. We do not think we should do so on the basis of the concession shown by the parties. In public interest we think it appropriate to consider the merit of the case and decide the legality of the case on the basis of the law applicable and material available in the records.

It is stated in the writ petition that the writ petitioner with a view to expose the mal-practices in the judicial administration in the subordinate courts in Ahmedabad had approached one of the lawyers named in the writ petition to procure a non-bailable warrants against the persons named in the complaint for proving his case of corruption for which the petitioner was ready and willing to pay such money as was demanded by the lawyers concerned.

Learned counsel appearing for the writ petitioner has in specific terms contended that the contents of the complaint based on which cognizance was taken and bailable warrants were issued are not true and the same is drafted by the lawyers concerned knowing full well that they are untrue and only with a view to obtain a warrant for a monetary consideration.
From the affidavit filed on behalf of the said lawyers and

from the arguments addressed today on their behalf, it is clear that at least as on today they are also in agreement with the writ petitioner that the contents of the complaint are not genuine though they categorically state that the said statement was recorded at the instance of one Suresh Kumar Jethalal Sanghvi who had approached them to file a complaint and on the basis of the facts narrated by him the said complaint was drafted and filed. Be that as it may from the above pleadings and the arguments addressed on behalf of the respective parties before us today, it is clear that the complaint in question is a product of fraud and a total abuse of the process of court. There is also serious doubt whether the procedure required under the Code of Criminal Procedure was really followed by the Magistrate at all while taking cognizance of the offence alleged. In this background of inherent falsehood that could be ex facie noticed from the contents of the complaint and coupled with the fact admitted by the parties to this petition, it is evident that the said complaint is a fraudulent one, hence, the same is liable to be quashed based on the legal principle that an act in fraud is ab initio void. This principle in our opinion applies to judicial acts also.

This Court in *Express Newspapers Pvt. Ltd. & Ors. v. Union of India & Ors.* (AIR 1986 SC 872) at para 118 has held thus :

"Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers. The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a Minister as in *S. Pratap Singh v. State of Punjab*, (1964) 4 SCR 733 : (AIR 1964 SC 733). A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an 'alien' purpose other than the one for which the power is conferred is mala fide use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order. The ulterior or alien purpose clearly speaks of the misuse of the power and it was observed as early as in 1904 by Lord Lindley in *General Assembly of Free Church of Scotland v. Overtown*, 1904 AC 515, 'that there is a condition implied in this as well as in other instruments which create powers, namely, that the power shall be used bona fide for the purpose for which

they are conferred'. It was said by Warrington, C.J. in *Short v. Poole Corporation*, (1926) 1 Ch 66 that :

"No public body can be regarded as having statutory authority to act in bad faith or from corrupt motives, and any action purporting to be of that body, but proved to be committed in bad faith or from corrupt motives, would certainly be held to be inoperative."

In *Lazarus Estates Ltd. V. Beasley*, (1956) 2 QB 702 at Pp. 712-13 Lord Denning, L.J. said :

"No judgment of a Court, no order of Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."
(emphasis supplied)

See also, in *Lazarus* case at p. 722 per Lord Parker, C.J. :

"'Fraud' vitiates all transactions known to the law of however high a degree of solemnity."

All these three English decisions have been cited with approval by this Court in *Pratap Singh's* case."

Similar is the view taken by this Court in the case of *Ram Chandra Singh v. Savitri Devi and Ors.* (2003 8 SCC 319) wherein this Court speaking through one of us (Sinha, J.) held thus :

"Fraud as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by word or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of others in relation to a property would

render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata."

Thus, it is clear a fraudulent act even in judicial proceedings cannot be allowed to stand.

In view of our finding that the complaint filed before the Court of Metropolitan Magistrate, Court No.10 at Ahmedabad in Criminal Case No.118 of 2004 dated 15.1.2004 is ex facie an act of fraud by a fictitious person, and an abuse of the process court, every and any action taken pursuant to the said complaint gets vitiated. Therefore, we think the complaint registered before the Metropolitan Magistrate, Court No.10 at Ahmedabad in Criminal Case No.118 of 2004 dated 15.1.2004 and all actions taken thereon including the issuance of non-bailable warrants is liable to be declared ab initio void, hence, liable to be set aside.

We, however, make it clear that the quashing of the abovesaid proceedings before the Metropolitan Magistrate, Court No.10, Ahmedabad would not in any way exonerate any of the parties to the above writ petition of charges levelled against them and the same will be considered independently and de hors the quashing this criminal proceedings.

We also make it clear that any observations made in the course of this order in regard to the role played by the respective parties in this episode are only tentative and are made for the limited purpose of deciding the validity of the criminal case pending before the Magistrate and the same will not be treated as a conclusive finding in any future proceedings.

For the reasons stated above, the complaint as well as the entire proceedings culminating in issuance of bailable warrants in Criminal Case No.118 of 2004 filed before the Metropolitan Magistrate, Court No.10, Ahmedabad, are quashed.

The other issues involved in this case will be separately dealt with.