

SUPREME COURT OF INDIA

Keki Hormusji Gharda

Vs.

Mehervan Rustom Irani

Crl.A.No. _of 2009

(S.B. Sinha and Cyriac Joseph JJ.)

13.05.2009

JUDGEMENT

S.B. Sinha, J.

1. Leave granted.

2. First respondent is a practising advocate. He is a resident of Gharda Villa, 1st Floor, situated at 48, Hill Road, Bandra (West), Mumbai. M/s Gharda Chemicals Limited is a deemed public limited company registered and incorporated under the *Companies Act, 1956*. It has its registered office at 5/6, Jer Mansion, First Floor, W.P. Varde Marg, Tuner 2 Road, Bandra (West) in the town of Mumbai. Appellant No. 1 (Accused No.1) is the Chairman cum Managing Director of the said Company. Appellants 2 to 5 are the Directors thereof and the Appellant No. 6 is an Architect. It is stated that Appellants 1 and 3 are no longer associated with the Company. Gharda Villa, in which the first respondent resides and the premises known as 'Khaiber Property' are adjacent to each other. They were said to be belonging to Hormasji Dinshawji Gharda since deceased. The Company is said to be the owner of the property. Gharda House being an old building was required to be demolished and reconstructed. Several proceedings, however, were initiated in respect of the said building by the Bombay Municipal Corporation.

3. Father of the first respondent filed a suit in the year 1978 in his capacity as a tenant against the predecessor-in-interest of the Company. An application for amendment of the plaint was filed in the said suit on 17.4.1998. It is stated that the said application for amendment was dismissed. An appeal allegedly was preferred thereagainst. An interim relief prayed for by the first respondent in the said appeal is also said to have been rejected. In regard to the proposed action on the part of the Company to demolish and reconstruct the said building, the first respondent had initiated various proceedings. Bombay Municipal Corporation also issued a stop-work notice dated 25.7.1998, which was said to have been withdrawn on 21.5.1999. When repair work on the road upon removing the debris lying on a portion of the land was started, a first information report was lodged by the first respondent before Bandra Police Station against the officers of the Company and the representatives of the Contractor.

A charge sheet was also filed before the Additional Chief Metropolitan Magistrate, 9th Court, Bandra in that case. However, after one month the first respondent again filed a private complaint before the Additional Chief Metropolitan Magistrate, 9th Court, Bandra in regard to the same incident wherein not only the original accused were made parties but also appellants were made accused Nos. 1 to 6. A verification statement was made by the first respondent on 6.8.1999, the relevant portion whereof reads as under:

"On 06.06.1999 at about 10.00 a.m. Accused No.8, 9 along with workers of Accused No. 11, came on site along with road roller and dumpers, and began putting hot sticky tar on the road Gardha Villa, I complaint to the Bandra Police Station Accused No. 8 was warned by the duty officer of Bandra Police Station. To stop the work and get the clarification from the Small Causes Court.

Though Accused No. 8 assured to stop the work, he again, started the tarring of the access to Gardha Villa I again went to Police Station. And complained against it. Accused No. 7 and 8 were called to Police Station. And were warned that they will booked for wrongly red trained if they will continuing the tarring the access road.

Accused Nos. 7 and 8 assured to duty officer that they will stop the work, when I returned from Police Station. I found that the work was still continuing and accused No. 8 and 10 along with Accused No.11, were continuing the work, I lodged my complaint at about 3:20 p.m. on 06.06.1999 and my FIR was register under C.R. No. 257/1999 and accused Nos. 7 to 10 were arrested for wrongful restrained U/Sec. 341 IPC, 34 IPC and was subsequently released on bail.

The driver's of Accused No. 11 was also detained by Bandra Police Station. At about 5:00 p.m., Accused No. 11 came on site and requested him to assist him to release the driver, which I refused to do so. Ultimately he manage to release the driver.

The access from the hill road to Gardha Villa is only access road to Gardha Villa because of putting hot sticky tar on the existing road on hill road and Gardha Villa I and my brother wrongfully restrained from going to Gardha Villa for several hours. My aged parents who were in the house, also restrained for going out the road. Accused Nos. 1 to 5 manage the affairs of Gardha Chemicals had instigated accused No. 6 to construct the road. Hence my complaint against accused No. 1 to 11. I am producing the copy of the FIR lodged the Bandra P. Stn."

4. Relying on or on the basis of the allegations made in the Complaint Petition as also the said Verification Statement, cognizance of an offence under Section 341 read with Section 34 of the *Indian Penal Code* (for short, "the IPC") was taken. Appellants were summoned as accused by an order dated 06.08.1999.

5. Before the learned Additional Chief Metropolitan an application under Section 210 of the *Code of Criminal Procedure, 1973* (for short, "the Code") was preferred by the first

respondent since both the cases arose out of the same incident/cause of action, which by an order dated 6.5.2004 was allowed.

6. Appellants filed an application under Section 482 of the Code which by reason of the impugned judgment and order dated 16.6.2005 has been dismissed, opining that the same was grossly delayed and the allegations made in the Complaint Petition in regard to accused Nos. 1 to 5 and 12, if proved would amount to commission of a criminal offence. Appellants, however, was granted liberty to raise all contentions at the trial in terms of Section 255 of the Code.

7. Appellants are, thus, before us.

8. The Complaint Petition is a detailed one. It discloses disputes between the parties as also various proceedings initiated against the Company by the Bombay Municipal Corporation.

9. Indisputably, the dispute arose in regard to construction/tarring of the road by reason whereof, the first respondent might have faced difficulties in ingress and egress to and from his house for a short while. However, evidently, first respondent went to the Police Station and made a complaint thereabout. The work was stopped for some time, but allegedly the same was started again. Accused Nos. 7 and 8 were called to Police Station.

“However, first respondent again went to Police Station to lodge a first information report after he allegedly found that the work had been continuing. Allegations at that point of time were confined to Accused Nos. 8, 9 and 11 at the first stage and to Accused Nos. 8, 10 and 11 at the second stage. Accused Nos. 7 to 10 were workers of the Company. They were arrested. They were, however, granted bail.”

10. It is in the aforementioned backdrop of events, the statement made by the first respondent that accused Nos. 1 to 5 were managing the affairs of the Company and had instigated accused No. 6 to construct the road must be viewed.

11. It is one thing to say that the Company had asked the accused No. 6 to make construction but only because the accused Nos. 1 to 5 were its Directors, the same, in our opinion, would not be sufficient to fasten any criminal liability on them for commission of an offence under Section 341 of the IPC or otherwise.

‘Wrongful restraint’ has been defined under Section 339 of the IPC in the following words:

"339. Wrongful restraining - Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception.- The obstruction of a private way over land or water which a person in good-faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this Section."

The essential ingredients of the aforementioned provision are: (1) Accused obstructs voluntarily; (2) The victim is prevented from proceeding in any direction; (3) Such victim has every right to proceed in that direction.

12. Section 341 of the IPC provides that whoever wrongfully restrains any person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both. The word 'voluntary' is significant. It connotes that obstruction should be direct. The obstructions must be a restriction on the normal movement of a person. It should be a physical one. They should have common intention to cause obstruction.

13. Appellants herein were not at the site. They did not carry out any work. No overt act or physical obstruction on their part has been attributed.

"Only because legal proceedings were pending between the Company and the Bombay Municipal Corporation and/or with the first respondent herein, the same would not by itself mean that appellants were in any way concerned with commission of a criminal offence of causing obstructions to the first respondent and his parents. We have noticed hereinbefore that despite of said road being under construction, the first respondent went to the Police Station thrice. He, therefore, was not obstructed from going to Police Station. In fact, a firm action had been taken by the authorities. The workers were asked not to do any work on the road. We, therefore, fail to appreciate that how, in a situation of this nature, the Managing Director and the Directors of the Company as also the Architect can be said to have committed an offence under Section 341 of the IPC."

14. Indian Penal Code, save and except some matters does not contemplate any vicarious liability on the part a person. Commission of an offence by raising a legal fiction or by creating a vicarious liability in terms of the provisions of a statute must be expressly stated. The Managing Director or the Directors of the Company, thus, cannot be said to have committed an offence only because they are holders of offices.

15. The learned Additional Chief Metropolitan Magistrate, therefore, in our opinion, was not correct in issuing summons without taking into consideration this aspect of the matter. The Managing Director and the Directors of the Company should not have been summoned only because some allegations were made against the Company.

In *Pepsi Foods Ltd. & Anr. vs. Special Judicial Magistrate & ors.*¹, this Court held as under:

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The 10 Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

16. Even as regards the availability of the remedy of filing an application for discharge, the same would not mean that although the allegations made in the Complaint Petition even if given face value and taken to be correct in its entirety, do not disclose an offence or it is found to be otherwise an abuse of the process of the Court, still the High Court would refuse to exercise its discretionary jurisdiction under Section 482 of the Code of Criminal Procedure. Indisputably, there might have been some delay on the part of the appellants in approaching the High Court but while adjusting equity the High Court was required to take into consideration the fact that in a case of this nature the appellants would face harassment although the allegations contained in the Complaint Petition even assuming to be correct were trivial in nature. The High Court furthermore has failed to take into consideration the fact that in the first information report no allegation in regard to acts of common intention or common object on the part of the appellants was made out. Appellants were not named as accused therein.

17. It is, therefore, really difficult to appreciate as to on what basis the Complaint Petition was filed.

18. For the reasons aforementioned, the impugned judgment and order of the High Court is set aside. The appeal is allowed. The order summoning the appellant is quashed.

¹(1998) 5 SCC 749