SUPREME COURT OF INDIA

State of Maharashtra

Vs.

Arun Gulab Gawali

Crl.A.No.590 of 2007

(P.Sathasivam and Dr.B.S.Chauhan JJ.)

27.08.2010

JUDGEMENT

Dr.B.S.Chauhan, J.

1. This appeal has been preferred against the Judgment and Order dated 27.07.2006 in Criminal Writ Petition No.3169/2005 with Criminal Writ Petition Nos. 874 and 878 of 2006, passed by the High Court of Judicature at Bombay, allowing the said petitions filed by the respondents and quashing the Criminal Complaint/FIR.

2. Facts and circumstances giving rise to the present appeal are that Mohd. Qureshi, one of the respondents, lodged a complaint dated 8.11.2005 with Deputy Commissioner of Police, CID (Unit III) against the Arun Gulab Gawali gang. The said complaint was forwarded to Agripada Police Station.

> "Accordingly, CR No. 241/2005 under Sections 384, 386, 506(ii), 120, 34 of Indian Penal Code, 1860 (in short, "IPC") was registered against Arun Gulab Gawali, MLA, respondent herein, and members of his gang, namely, Sunil Gathe, Sadanand Panchal, Rajendra Sadvirkar and Sanjay Girkar. After taking over of the investigation by DCB, CID, Mumbai, CR No. 135/05 was registered."

3. According to the said complaint, there was a commercial transaction in December, 2002, between one Mr. Doshi and Mohd. Qureshi in respect of the purchase of Hotel Pritam International at Ambernath in partnership and certain payments had also been made, but there was a dispute between the parties. An advertisement was issued for sale of the hotel, but the said hotel could not be sold for two years and the differences between them continued. On 15th March, 2005, the complainant received a telephone call from an unknown person, who used very vulgar and indecent language and told the complainant to come to Dagadi Chawl for settlement of the dispute of Hotel Pritam. Dagadi Chawl is the residential place of respondent, Arun Gulab Gawali, and he also has an office in that Chawl. The complainant became scared and went to Dagadi Chawl on 18th March, 2005. On

reaching there the complainant met one person by the name Sanjay Girkar, who abused him. Sanjay Girkar contacted Mr. Doshi on his mobile and spoke with him in vulgar language and asked him to come to Dagadi Chawl for settlement of the case of Hotel Pritam. The complainant and Mr. Doshi visited Dagadi Chawl a number of times along with other persons. The accomplices of Arun Gulab Gawali gave threats to them and directed them to act according to their instructions.

> "Due to fear of threats of the members of the said gang, Mr. Doshi and the complainant agreed to pay the extortion money.
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> The complainant was instructed to pay a sum of Rs. 15 lakhs to Shiv Shambhu Trust, which is managed by Arun Gulab Gawali.
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> The complainant paid the amount of Rs.15 lakhs to the said Trust under the threat that if this amount was not paid, then his life would be in danger. The complainant also learnt that Mr. Doshi had already paid Rs. 25 lakhs to the said gang under threat. Subsequently, the accomplices of Arun Gulab Gawali made telephone calls to the complainant to pay Rs. 3 lakhs more and the said amount was also paid. They also forced the complainant to sign certain papers."

4. Mohd. Qureshi, the complainant/respondent, filed application dated 14.11.2005 before the Court of Metropolitan Magistrate (46th Court), Mazgaon, Mumbai stating that he did not want to proceed with the complaint. The court rejected the said application vide order dated 17.11.2005.

5. Mohd. Qureshi and his wife Ayesha Qureshi, respondents, filed Writ Petition No. 2906/2005 on 29.11.2005, before the High Court alleging harassment by the police and seeking the direction of removal of surveillance by police, as police had been posted with them under the garb of protection, and asking for the initiation of a judicial inquiry against the police alleging that Mohd. Qureshi was forced by the police itself to lodge the complaint dated 8.11.2005 against the Arun Gulab Gawali gang and also forced to write an application seeking protection, though they never sought any such protection.

6. The High Court disposed of the said Writ Petition vide order dated 21.12.2005, recording the statement of the petitioners' counsel that police protection had already been withdrawn and giving liberty to the said petitioners to make their grievances before the Commissioner of Police, Mumbai. The Commissioner of Police was directed that in case, such a complaint is filed, it should be decided expeditiously in accordance with law.

7. Mohd. Qureshi filed Criminal Writ Petition No. 874/2006 before the High Court of Bombay for quashing the CR No. 241/2005. Arun Gulab Gawali also preferred Writ Petition No. 3169/05 seeking quashing of FIR 241/2005 at Agripada Police Station, and Writ Petition No. 878/2006 for quashing of CR No.135 of 2005. All the said Writ Petitions were clubbed

and heard together. The appellants herein contested the said Petitions by filing Counter Affidavits.

8. In the meanwhile, Arun Gulab Gawali was granted anticipatory bail by the Sessions Court vide order dated 3.12.2005. The High Court cancelled the anticipatory bail of Arun Gulab Gawali vide Order dated 21.02.2006 and remanded the case to the Sessions Court to consider it afresh. During the pendency of the reconsideration of the said application, proceedings under Maharashtra Control of Organised Crime Act, 1999 (MCOCA) against Arun Gulab Gawali were initiated vide order dated 14.04.2006.

> "The High Court allowed all the said Writ Petitions quashing the C.R.No.241/2005, and C.R. No.135/2005. Hence, this appeal."

9. Sh. Arun R. Pednekar, learned counsel for the appellants, has submitted that the High Court has committed a grave error in quashing the FIR/complaint. Mohd. Qureshi, respondent, had filed a complaint against the Arun Gulab Gawali gang on the basis of which a case was registered. If for certain reasons or under threat by the Arun Gulab Gawali gang, Mohd. Qureshi did not want to pursue the matter further, such a course could not be a ground for quashing the proceedings. More so, the High Court reached the conclusion that if the proceedings were permitted to continue, there was no possibility of conviction after conclusion of the trial. The Court, in exercise of its inherent power, is not competent to take a decision at the preliminary stage and determine as to whether there is a possibility of conviction.

> "Thus, the impugned Judgment and order of the High Court is liable to be set aside."

10. Per contra, Mr. S.B. Sanyal, learned senior counsel for Respondent Nos. 2 & 3 and Mr. Makarand D. Adkar, learned counsel for the respondent No.1, have vehemently opposed the appeal contending that the Court had examined the facts and taken note of various proceedings initiated by the respondents in the meantime to the effect that the police officials had been harassing Mohd. Qureshi and his family and it was the police who forced the complainant to lodge the complaint against the Arun Gulab Gawali gang and, he was forced to take police protection labeling him as a complainant against the Arun Gulab Gawali gang. Ayesha Qureshi filed the appropriate application before the Metropolitan Magistrate on 9.11.2005 and approached the State Human Rights Commission on 11.11.2005 against the atrocities of the police. The High Court decided the matter after considering all the aspects. The Judgment and order of the High Court does not warrant any interference. The appeal lacks merit and is liable to be dismissed.

11. We have considered the rival submissions made by learned counsel for the parties and perused the record.

12. The power of quashing criminal proceedings has to be exercised very sparingly and with circumspection and that too in the rarest of rare cases and the Court cannot be justified in

embarking upon an enquiry as to the reliability or genuineness or otherwise of allegations made in the F.I.R./Complaint, unless the allegations are so patently absurd and inherently improbable so that no prudent person can ever reach such a conclusion.

13. The extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice. However, the Court, under its inherent powers, can neither intervene at an uncalled for stage nor it can `soft-pedal the course of justice' at a crucial stage of investigation/ proceedings. The provisions of Articles 226, 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 (hereinafter called as `Cr.P.C.') are a device to advance justice and not to frustrate it. The power of judicial review is discretionary, however, it must be exercised to prevent the miscarriage of justice and for correcting some grave errors and to ensure that esteem of administration of justice remains clean and pure. However, there are no limits of power of the Court, but the more the power, the more due care and caution is to be exercised in invoking these powers. (Vide State of West State of M.P. & Ors. AIR 2003 SC 1069).

14. Court laid down the following principles:-

> "(I) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;
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> (II) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;
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> (III) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged;
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> and (IV) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge."

15. This Court laid down the similar guidelines for exercising the inherent power, giving types of cases where the Court may exercise its inherent power to quash the criminal proceedings. However, the types of cases mentioned therein do not constitute an exhaustive list, rather the cases are merely illustrative.

> "this Court held as under :- "In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled

object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction."

(Emphasis added).

16. The inherent power is to be exercised ex debito justitiae, to do real and substantial justice, for administration of which alone Courts exist.

17. Wherever any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent the abuse. It is, however, not necessary that at this stage there should be a meticulous analysis of the case before the trial to find out whether the case ends in conviction or *Bangarappa & Ors.*[2]; *and M/s Zandu Ors.*[3], it has been held that probabilities of the prosecution version can not be analysed at this stage. Likewise the allegations of mala fides of the informant are of secondary importance. The relevant passage reads thus:

"It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with."

(Emphasis added).

18. This Court held that inherent power must be utilised with the sole purpose of preventing the abuse of the process of the court or to otherwise serve the ends of justice. In exercise of inherent powers, proper scrutiny of facts and circumstances of the case concerned are absolutely imperative.

19. *Sambhajirao Chandrojirao Angre & Ors.*[5], this court held as under :-

"The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique

purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

(Emphasis added).

20. This Court, while reconsidering the Judgment in Madhavrao Jiwaji Rao Scindia (supra), consistently observed that where matters are also of civil nature i.e. matrimonial, family disputes, etc., the Court may consider "special facts", "special features" and quash the criminal proceedings to encourage genuine settlement of disputes between the parties.

21. The said Judgment was reconsidered and explained by this, as under :

"*Madhaorao J. Scindhia v. Sambhaji Rao*[7], also does not help the respondents. In that case the allegations constituted civil wrong as the trustees created tenancy of Trust property to favour the third party. A private complaint was laid for the offence under Section 467 read with Section 34 and Section 120B I.P.C. which the High Court refused to quash under Section 482. This Court allowed the appeal and quashed the proceedings on the ground that even on its own contentions in the complaint, it would be a case of breach of trust or a civil wrong but no ingredients of criminal offences were made out. On those facts and also due to the relation of the settler, the mother, the appellant and his wife, as the son and daughter-in-law, this Court interfered and allowed the appeal.....Therefore, the ratio therein is of no assistance to the facts in this case. It cannot be considered that this Court laid down as a proposition of law that in every case the court would examine at the preliminary stage whether there would be ultimate chances of conviction on the basis of allegation and exercise of the power under Section 482 or Article 226 to quash the proceedings or the charge-sheet." (Emphasis added).

22. This Court explained the ratio of the Judgment in Madhavrao Jiwaji Rao Scindia (supra), that law laid down therein would only apply where it is a question of a civil wrong, which may or may not amount to a criminal offence. Madhavrao Jiwaji Rao Scindia (supra) was the case involving a trust where proceedings were initiated by some of the trustees against other trustees. This Court, after coming to the conclusion, that the dispute was predominantly civil in nature and that the parties were willing to compromise, quashed the proceedings.

23. This Court again explained the Judgment in Madhavrao Jiwaji Rao Scindia (supra) in a similar manner.

24. Thus, the judgment in Madhavrao Jiwaji Rao Scindia (supra) does not lay down a law of universal application. Even as per the law laid down therein the court can not examine the facts/evidence etc. in every case to find out as to whether there is sufficient material on the

basis of which the case would end in conviction. The ratio of the said Judgment is applicable in limited cases where the Court finds that the dispute involved therein is predominantly civil in nature and that the parties should be given a chance to reach a compromise e.g. matrimonial, property and family disputes etc. etc. The Superior Courts have been given inherent powers to prevent the abuse of the process of Court where the Court finds that the ends of justice may be met by quashing the proceedings, it may quash the proceedings, as the end of achieving justice is higher than the end of merely following the law. It is not necessary for the court to hold a full- fledged inquiry or to appreciate the evidence, collected by the Investigating Agency, if any to find out whether the case would end in conviction or acquittal.

25. The instant case is required to be examined in the light of the aforesaid settled legal propositions.

> "The High Court proceeded on the perception that as the complainant himself was not supporting the complaint, he would not support the case of the prosecution and there would be no chance of conviction, thus the trial itself would be a futile exercise. Quashing of FIR/Complaint on such a ground cannot be held to be justified in law. Ordinarily, the Court of Sessions is empowered to discharge an accused under Section 227 Cr.P.C. even before initiating the trial. The accused can, therefore, move the Trial Court itself for such a relief and the Trial Court would be in a better position to analyse and pass an order as it is possessed of all the powers and the material to do so. It is, therefore, not necessary to invoke the jurisdiction under Section 482 Cr.P.C. for the quashing of a prosecution in such a case.
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> The reliance on affidavits by the High Court would be a weak, hazy and unreliable source for adjudication on the fate of a trial.
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> The presumption that an accused would never be convicted on the material available is too risky a proposition to be accepted readily, particularly in heinous offences like extortion.
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> A claim founded on a denial by the complainant even before the trial commences coupled with an allegation that the police had compelled the lodging of a false FIR, is a matter which requires further investigation as the charge is levelled against the police. If the prosecution is quashed, then neither the Trial Court nor the Investigating Agency has any opportunity to go into this question, which may require consideration. The State is the prosecutor and all prosecution is the social and legal responsibility of the State. An offence committed is a crime against a society and not against a victim alone. The victim under undue pressure or influence of the accused or under any threat or compulsion may resile back but that would not absolve the State from bringing the accused to book, who has committed an offence and has violated the law of the land.

Thus, while exercising such power the court has to act cautiously before proceeding to quash a prosecution in respect of an offence which hits and affects the society at large. It should be a case where no other view is possible nor any investigation or inquiry is further required. There cannot be a general proposition of law, so as to fit in as a straitjacket formula for the exercise of such power. Each case will have to be judged on its own merit and the facts warranting exercise of such power.

More so, it was not a case of civil nature where there could be a possibility of compromise or involving an offence which may be compoundable under Section 320 Cr.P.C., where the Court could apply the ratio of the case in Madhavrao Jiwaji Rao Scindia (supra).

Thus, it is a fit case where the impugned Judgment should be set aside and the case be remitted for deciding afresh. As the matter is old and we have gone through the entire material on record, we have taken this task upon ourselves and examined whether the FIR could have been quashed on other grounds.

The complainant has submitted before the High Court as well as before us on oath that he was in police custody/police protection from 7.11.2005 to 9.11.2005 and he was forced to write the complaint against the Arun Gulab Gawali gang on 8.11.2005.

Ayesha Qureshi, wife of the complainant, made an application on 9.11.2005 before the Metropolitan Magistrate (37th Court) at Esplanade for issuing direction to the police to release her husband or produce him before the court. Immediately after filing of the said application, Mohd. Qureshi stood released. Again on 11.11.2005, Ayesha Qureshi sent a complaint to the State Human Rights Commission stating that her husband had been confined in police custody, tortured and was forcibly made to sign some papers. On 12.11.2005, Mohd. Qureshi made an application before Additional Chief Metropolitan Magistrate to drop the proceedings in the FIR/Complaint. Again on 14.11.2005, Mohd. Qureshi made an application before Metropolitan Magistrate submitting that he did not want to proceed with the said complaint. The said application was rejected by the Metropolitan Magistrate vide order dated 17.11.2005. Mohd. Qureshi and his wife filed the writ petition before the High Court on 29.11.2005 for the withdrawal of the so- called police protection and for a judicial inquiry on the issue of forcing the complainant to lodge an FIR/Complaint against the Arun Gulab Gawali gang."

26. The matter was heard by the High Court and disposed of, issuing a direction that there shall be no police personnel around Mohd. Qureshi, his wife and other family members and further directing the Police Commissioner to redress their grievances in respect of their allegation that Mohd. Qureshi had been forced by the police to lodge a complaint against the Arun Gulab Gawali gang. The other writ petitions for quashing of FIR/complaint were filed by Mohd. Qureshi, his wife Ayesha Qureshi and Arun Gulab Gawali at a later stage i.e. in April, 2006 and the said petitions, after contest, had been allowed vide Judgment and order

dated 27.7.2006. If the aforesaid facts are examined in correct perspective, it is evident that all possible steps had been taken by Ayesha Qureshi in a very close proximity to the date of lodging the complaint. At the cost of repetition, we mention again that the complaint was lodged on 8.11.2005 and application was moved by Ayesha Qureshi before the Chief Metropolitan Magistrate for release of Mohd. Qureshi from police custody or his production before the court on 9.11.2005. She approached the State Human Rights Commission on 11.11.2005 and all other steps have also been taken with due diligence and promptness. Therefore, it cannot be said that such complaints had been made by Ayesha Qureshi under any threat or that the complainant did not want to support the case of the prosecution for some other reason. There has been a persistent stand taken by Ayesha Qureshi that the complaint was not made voluntarily and her husband and other family members had been subjected to great deal of harassment and persecution by the police for no fault of theirs. In such a fact-situation, the possibility that the allegations made by Mohd. Qureshi and Ayesha Qureshi in their complaints/applications/writ petitions may be true, cannot be ruled out. Thus, it was a fit case, where in order to meet the ends of justice and to prevent the miscarriage of criminal justice, the inherent powers of the Court to quash the FIR/complaint could have been exercised.

27. Thus, the complaint dated 8.11.2005 lodged by Mohd. Qureshi against the Arun Gulab Gawali gang was liable to be quashed, though for different reasons, as recorded hereinabove.

28. In view of the above, the Criminal Appeal stands dismissed.

[1]*AIR 1992 SC 604*
[2]*(1995) 4 SCC 41*
[3]*AIR 2005 SC 9*
[4]*AIR 2003 SC 1386*
[5]*AIR 1988 SC 709*
[6]*AIR 1991 SC 1260*
[7]*AIR 1988 SC 709*