

Viod Raghuvanshi

v.

Ajay Arora & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE B.S. CHAUHAN HON'BLE MR. JUSTICE S.A.
BOBDE

Criminal Appeal No. 1477 Of 2013 | 23-09-2013

Dr. B.S. Chauhan, J.

1. This criminal appeal has been preferred against the impugned judgment and order dated 11.11.2008 passed by the High Court of Madhya Pradesh at Jabalpur in Misc. Criminal Case No. 5521 of 2008 dismissing the application of the appellant filed under Section 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as `Cr.P.C.') by which the appellant had sought quashing of a complaint under Sections 420 and 120-B of the Indian Penal Code, 1860 (hereinafter referred to as the `IPC') filed by the respondent no.1.

2. Facts and circumstances giving rise to this appeal are that:

A. On 27.2.2002, a partnership firm in the name and style of "M/s. Ashok Traders" (hereinafter referred to as "firm") was constituted and a partnership deed was executed on the same date with the intention to carry on business of liquor. The firm consisted of seven partners.

B. The said partnership firm was reconstituted and a deed dated 5.3.2002 was executed inducting among others the respondent no. 1, namely, Shri Ajay Arora as a partner of the firm and the said firm now consisted of twelve partners. As per clause 10 contained in the deed, the partnership firm was to be terminated on 31.3.2003.

C. The said firm participated in the excise contracts for Bhopal District for the year 2002-2003 and had been a successful bidder. The excise auctions for the year 2003-2004 was held on 6.3.2003 and the said firm participated in the auction and being a successful bidder, the contract was awarded to it.

D. The respondent no. 1 filed a complaint alleging that while negotiating and accepting the contract for the year 2003-2004, the reconstituted partnership deed dated 5.3.2002 was utilised, wherein the said complainant-respondent no. 1 had also invested a huge amount, but the said deed was subsequently replaced by a forged/fabricated deed dated 6.3.2003 in which the respondent no.1 was not a partner.

The respondent no.1 could acquire the knowledge of such facts at a much belated stage when he preferred to enter into certain transactions with the bank.

E. Aggrieved, respondent no. 1 filed a Criminal Complaint Case No. 3968 of 2003 on 18.7.2003 against nine partners of the reconstituted firm alleging that the said partners had replaced the Deed of Partnership dated 5.3.2002 in the bank, and a forged partnership deed dated 6.3.2003 was implanted in the excise office in its place to deprive him of the profits of the firm.

F. The respondent no.1 also filed a complaint before the Chief Secretary, Government of Madhya Pradesh in this regard. The Chief Secretary sought a report in that respect from the Office of the Collector (Excise), District Bhopal. The Collector (Excise), District Bhopal submitted a report dated 4.9.2003 stating that the said contract had been awarded on the basis of partnership deed dated 6.3.2003 and there was no substance in the allegation made by the respondent no. 1 that the partnership deed dated 5.3.2002 had been replaced by partnership deed dated 6.3.2003.

G. Aggrieved, the respondent no. 1 filed Writ Petition No. 28262 of 2003 before the Madhya Pradesh High Court seeking various directions for inquiry in this regard and the High Court vide order dated 5.1.2004 asked the respondent no. 1 to make a detailed representation to the Commissioner of Excise and if such a representation was filed, the Commissioner of Excise was directed to decide the

same. In pursuance of the said order, the respondent no. 1 filed a representation dated 10.1.2004 before the Excise Commissioner.

H. After conducting the inquiry, Shri B.K. Vyas, Addl. Excise Commissioner submitted a report dated 2.12.2005, to the effect that the excise contract was granted to the said firm on the basis of the partnership deed dated 5.3.2002 and the same stood replaced later on by partnership deed 6.3.2003 and the appellant, being a District Excise Officer, was responsible for such replacement as it was not practically possible to do so without his connivance.

I. The respondent no.1 filed Writ Petition No. 2617 of 2007 before the Madhya Pradesh High Court seeking a direction for initiation of departmental proceedings against the appellant on the basis of inquiry report dated 2.12.2005, however, as the said inquiry report was not considered to be sufficient by the authorities for taking further action, the case was referred to the Principal Secretary to the Excise Commissioner vide letter dated 4.12.2006 for conducting further inquiry into the matter.

J. Shri D.R. Johri, Deputy Commissioner of Excise, conducted the inquiry and submitted an inquiry report dated 1.5.2007 recording the findings similar to the report dated 2.12.2005. The view expressed therein is that the appellant being the head of the District Excise Office, Bhopal, was indirectly responsible.

K. The Government of Madhya Pradesh vide letter dated 23.8.2007 informed the Excise Commissioner that no ground was found to initiate the departmental inquiry against the appellant.

L. In the aforesaid background, the respondent no. 1 filed a complaint on 21.1.2008 against the appellant and two others under Sections 420, 467, 468, 471 and 120-B IPC in the court of Chief Judicial Magistrate (hereinafter referred to as 'CJM'), Bhopal. The CJM recorded the statement of the complainant and after considering the pre-charge evidence, vide order dated 10.4.2008, registered the case against the appellant and two others under Sections 420 and 120- B IPC.

M. It may also be pertinent to point out that the respondent no. 1 also filed a complaint against the appellant before the Lokayukta, that was dismissed vide order dated 21.4.2008.

N. Aggrieved, the appellant filed an application under Section 482 Cr.P.C. for quashing of the complaint dated 21.1.2008. However, the High Court dismissed the said application vide impugned judgment and order dated 11.11.2008.

Hence, this appeal.

3. Shri Ashok Shrivastava, learned Senior counsel appearing for the appellant has submitted that the High Court has committed an error in dismissing the application of the appellant as the complaint filed by the respondent no.1 is nothing, but an abuse of the process of the court. The appellant stood exonerated in various departmental enquiries initiated on the complaint of the respondent no.1. More so, the High Court failed to appreciate that the complaint had been filed after a delay of 5 years against the appellant, though against the alleged partners of the firm, the complaint had been instituted in 2003 itself. The delay in filing the complaint by itself was a good ground for quashing the same. The complainant-respondent no.1 was fully aware of all the developments and there is nothing on record to show that the contract had been obtained by the said firm on the basis of the partnership deed dated 5.3.2002, and it had been subsequently replaced by the partnership deed dated 6.3.2003. The appellant by no means can be held responsible directly or indirectly for any such act. The report dated 2.12.2005 submitted by Shri B.K. Vyas and subsequently by Shri D.R. Johri dated 1.5.2007 had not been accepted by the State Authorities, being based on surmises and conjectures. Thus, the appeal deserves to be allowed and the complaint dated 21.1.2008 is liable to be quashed.

4. Shri P.S. Patwalia, learned Senior counsel for respondent no.1 has opposed the appeal contending that there was no delay in lodging the complaint against the appellant as the complainant could know about the activities of the appellant only after getting the enquiry reports which had been made available to him in the year 2007 itself. The question of replacement of the partnership deed dated 5.3.2002 by another partnership deed dated 6.3.2003, which deprived the complainant-respondent no.1 of all the benefits of the partnership firm, though

the complainant had contributed huge amount to get the liquor contract for the year 2003-04, amounts to a fraud which had been committed in the office headed by the appellant. It could not have been possible to replace the earlier partnership deed without the connivance of the appellant. The manner in which the deed dated 6.3.2003 has been executed, itself reveals that it is a forged deed. The appeal lacks merit and is liable to be dismissed.

5. Shri Arvind Varma, learned Senior counsel appearing for the State of Madhya Pradesh has supported the case of the appellant submitting that the reports submitted by Shri B.K. Vyas and Shri D.R. Joshi were not accepted by the State Government. More so, once the Lokayukta had examined the grievance of the complainant in detail and did not find any truth in it, the High Court ought to have quashed the complaint.

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

7. In the complaint filed by the respondent no.1 dated 21.1.2008 in the court of CJM, Bhopal, serious allegations of cheating by replacing the partnership deed dated 5.3.2002 by a forged partnership deed dated 6.3.2003 with the connivance of the appellant and other officers in his office were made. Particulars had been furnished to establish that the partnership deed dated 6.3.2003 was a forged document. The deed dated 6.3.2003 had been deposited in the office of the appellant on the same date at Bhopal. The stamp papers had been purchased on 6.3.2003 itself at Sagar and the deed had been executed on 6.3.2003 at 12 noon at Bhopal by a Notary. This could not be possible as one of the partners, namely, Shri Anand Kumar Tiwari remained present on 6.3.2003 for the purpose of auction of Excise at Ujjain, though he had been shown as signing the said document at Bhopal on the same date. Alongwith the auction record sent by the Excise office, Bhopal to the office of Commissioner of Excise, Gwalior through the Collector, Bhopal on 11.3.2003, a copy of the partnership deed dated 6.3.2003 had also been enclosed. Had it been the case that the contract was awarded on the basis of partnership deed dated 6.3.2003, the said partnership deed could have been sent to the office of the Excise Commissioner at Gwalior.

8. The Inquiry report submitted by Shri B.K. Vyas, Additional Commissioner of Excise, Madhya Pradesh and further Inquiry Report submitted by Shri D.R. Johri, referred to hereinabove had found the appellant and 2 others, namely, Shri R.K. Goel and Shri O.P. Sharma involved in the commission of acts amounting to misconduct by manipulating the Government record for providing undue benefits to the partner of the firm and causing loss to the complainant.

9. The learned CJM, Bhopal examined the complainant and issued the process. The reports submitted by Shri B.K. Vyas and Shri D.R. Johri make it evident that the appellant and others had been involved, as such the replacement could have not been possible without the connivance of the appellant and others. Undoubtedly, the CJM, Bhopal asked the complainant as is evident from the Order sheet dated 28.3.2008 as to what had been the fate of the said reports, particularly the inquiry report submitted by Shri B.K. Vyas dated 2.12.2005, to which the complainant replied that no action had been taken on the same.

10. Though there is material on record to show that the State Government did not accept the said reports, however, it is a question of fact to be established as to whether and to what extent the complainant had been aware of those developments. The record of the Excise Commissioner, Gwalior makes it evident that the excise auction for the year 2003-04 had been on the basis of the partnership deed dated 5.3.2002 and the said deed was on record upto 11.3.2003. As regards what had happened in the office of the appellant and who had done it and whether the appellant can be held responsible for the same, would depend upon the evidence adduced in the court.

11. In *Debendra Nath Bhattacharyya & Ors. v. The State of W.B. & Anr.*, AIR 1972 SC 1607, this Court held:

"The mere existence of some grounds which would be material in deciding whether the accused should be convicted or acquitted does not generally indicate that the case must necessarily fail. On the other hand, such grounds may indicate the need for proceeding further in order to discover the truth after a full and proper investigation."

12. In *Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi & Ors.*, AIR 1976 SC 1947, this Court held that where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused or where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible or where the complaint suffers from fundamental legal defects, the proceedings become liable to be quashed.

13. In *Smt. Manju Gupta v. Lt. Col. M.S. Paintal*, AIR 1982 SC 1181, this Court held that in a case where no specific allegation or any overt act has been ascribed to a person in the matter of the commission of an offence, the proceedings may be quashed.

14. In *Union of India v. Prafulla Kumar Samal & Anr.*, AIR 1979 SC 366, this Court dealt with the issue observing:

"10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out;

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Court cannot act merely as a Post-Office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

(See also: *Smt. Rumi Dhar v. State of W. B. & Anr.*, AIR 2009 SC 2195; and *Shoraj Singh Ahlawat & Ors. v. State of U.P. & Anr.*, AIR 2013 SC 52)

15. Thus, it is evident that for taking cognizance or issuing process in a complaint case, the court must have merely a prima facie satisfaction that there is some material on record to proceed against the accused. In the instant case, the CJM, Bhopal issued process after being fully satisfied that some material was available on record to proceed against the appellant and others.

16. In *Kishan Singh (D) through L.Rs. v. Gurpal Singh & Ors.*, AIR 2010 SC 3624, this Court held :

"22. In cases where there is a delay in lodging an FIR, the court has to look for a plausible explanation for such delay. In the absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an afterthought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the civil court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may

take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case."

17. The question of delay in this case remains totally immaterial in view of the fact that all these facts came to the notice of the complainant at a much belated stage in 2007 when the report etc. had been placed by the State Authorities before the High Court.

18. In *Umesh Kumar v. State of Andhra Pradesh*, JT 2013 (12) SC 213, this Court held as under:

"12.....Law does not prohibit entertaining the petition under Section 482 Cr.P.C. for quashing the charge sheet even before the charges are framed or before the application of discharge is filed or even during its pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused to undergo the agony of a criminal trial....."

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25. Thus, in view of above, the order of the High Court impugned before us cannot be termed as a final decision. The order is subject to further order which could be passed by the trial court under Section 216 Cr.P.C., on the basis of the evidence to be led during trial. If the impugned order is dubbed as having attained finality, the provisions of Section 216 Cr.P.C. would render otiose/nugatory. Thus, the same is to be read that the said order had been passed taking into consideration the material which was available "at that stage" and it is still open to the trial court to add or alter the charges according to the evidence produced before it."

19. It is a settled legal proposition that while considering the case for quashing of the criminal proceedings the court should not "kill a still born child", and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegations have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the court is whether the uncontroverted allegations as made, prima facie establish the offence. At this stage neither the court can embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence or nor the court should judge the probability, reliability or genuineness of the allegations made therein. More so, the charge sheet filed or charges framed at the initial stage can be altered/amended or a charge can be added at the subsequent stage, after the evidence is adduced in view of the provisions of Section 216 Cr.P.C. So, the order passed even by the High Court or this Court is subject to the order which would be passed by the trial court at a later stage.

20. In view of the above, we do not see any cogent reason to interfere with the impugned complaint or orders impugned herein. The appeal is devoid of any merit and is accordingly dismissed.