

# SUPREME COURT OF INDIA

Manohar M.Galani

Vs.

State of Gujarat

C.A.No. 6396 of 2012

(Deepak Gupta and Sanjiv Khanna,JJ.,)

08.05.2019

## JUDGMENT

### **Deepak Gupta,J.,**

1. Briefly stated the facts necessary for disposal of this appeal are that the appellant's sister had started a firm in the name of M/s. Jubilee Capital Market Services at Ulhasnagar for sale and purchase of shares and other related financial services. The appellant who was otherwise employed with the Punjab National Bank was helping his sister in the firm. One Mr. Kishore K. Keswani started investing in shares and stocks through the aforesaid firm in March, 1992. During 1993, the share market crashed resulting in very heavy losses to all investors. Mr. Keswani, however, blamed the appellant for the loss of approximately rupees 13 lakhs allegedly suffered by him. Thereafter, the said Mr. Keswani instituted as many as 10 cases against the appellant and his family members directly or with the help of others out of which one was a civil suit and the remaining 9 were criminal cases. In six of the criminal cases arrest warrants were issued against the appellant and his family members and they were illegally arrested.

2. The case of the appellant is that there was an illegal racket in the State of Gujarat whereby some unscrupulous lawyers in connivance with court officials were procuring arrest warrants against the alleged accused without following the procedure prescribed by law and without verifying whether there was any truth in the complaint. The appellant informed one Mr. Mahatre, a journalist about the manner in which he was arrested. Shri Mahatre decided to carry out a sting operation. He filed a complaint and managed to obtain arrest warrants against a sitting Judge of the Bombay High Court, the Home Minister of Maharashtra, 3 M.L.As., a spokesman of a national party and a journalist. After obtaining these warrants Shri Mahatre lodged the same with the police to expose the scandal by which arrest warrants were being issued. According to the appellant, the sting operation was carried out at his instance. This matter was splashed across the newspapers and the police started investigating the matter. In fact, the Sessions Court, Nadiad took suo motu notice and quashed the order of the Judicial Magistrate First Class (JMFC) Dakor and recalled the warrants. The case was transferred from the JMFC, Dakor to JMFC, Nadiad.

3. A public interest litigation was filed in the High Court by Shri Ajit D. Padiwal, an advocate. Shri Padiwal died during the pendency of the petition but keeping in view the serious nature of the issues involved the High Court continued with the appeal and appointed an amicus curiae to assist it. The appellant also intervened in the matter. The criminal proceedings were also initiated against four persons before the Dakor Court. The High Court by an elaborate judgment dated 15th/20th/21st and 22nd September, 2004 disposed of the writ petition giving various directions. None has challenged those directions. The challenge is limited to the directions issued by the High Court that all the courts where the 10 proceedings against the appellant and his family members are pending should disposed of the proceedings at the earliest.

4. The contention of the appellant is that, in fact, during the course of proceedings before the High Court various reports were submitted to the High Court by the police officials which clearly indicate that the cases filed against the appellant were totally false. In many of the cases the complainant(s) was not even in existence and remained absent and in some cases the complainant denied having filed any case. Therefore, the appellant prayed that the proceedings in all the 10 cases be quashed.

5. We may also note that the appellant had also filed Writ Petition (Criminal) No. 150 of 2006 in this Court praying for the similar reliefs in which this Court had passed the following order:

“In view of the fact that in SLP(C) No. 10008/2005 leave has been granted, we are not inclined to entertain this writ petition under Article 32 of the Constitution of India by the same party. The writ petition is dismissed accordingly. We may, however, clarify that at the time of final disposal of the civil appeal, it will be open to the writ petitioners to urge any additional ground, which is raised in this writ petition subject to the leave of the Court.”

6. Mr. Gopal Sankarnarayanan, learned senior counsel has drawn our attention to a number of documents. He candidly admitted that in the public interest litigation there was no prayer for quashing of the proceedings and only an intervention application had been filed.

7. The High Court was justified in holding that in the absence of any application in this behalf, the relief could not be granted. However, we may note that the High Court itself found that out of 10 cases, 3 cases already stand disposed of. The proceedings had been closed by the magistrate and these need not be re-opened again. The cases were, however, remanded to the courts of the magistrate only with a view to take further action in view of the various directions given by the High Court including initiating proceedings under Section 195 of the Indian Penal Code, 1860.

8. After the special leave petition was filed these proceedings have remained stayed and as a result seven cases filed in 1994 are still pending. Out of the 7 cases, one is summary suit being Suit No. 67 of 1994, pending before 3rd Joint Civil Judge, Vadodara, Gujarat and one is a complaint case being CC No. 704 of 1994 pending before JMFC Dabhoi, Distt.

Vadodara, Gujarat under Section 138 of the Negotiable Instruments Act, 1881. The other 5 cases being (i) Criminal Case No.1099 of 1993, pending before JMFC, Dakor, Distt. Kheda, Gujarat, (ii) M. Case No. 11 of 1994, pending before JMFC, Dabhoi, Distt. Vadodara, Gujarat, (iii) Enquiry Case No. 6 of 1994, pending before JMFC, Bajwa, Court No. 4, Gujarat, (iv) Enquiry Case No. 3 of 1994, pending before JMFC, Municipal Court, Makarpura, Baroda and (v) CC No. 288 of 1994 pending before JMFC, 18th Court of Metropolitan Magistrate, Mirzapur, Ahmedabad. Learned counsel for the appellant submitted that though it is true that he had not prayed for quashing of proceedings before the High Court, the appellant may be granted liberty to file proceedings for quashing of these cases in view of the various reports given by the investigating officers before the High Court in public interest litigation being Special Civil Application No. 13258 of 1994.

9. We find merit in the submission of learned counsel for the appellant. Though the appellant may not have made specific prayer for quashing of the proceedings, we cannot lose sight of the fact that he was the whistle blower and an aggrieved person. He has the right to challenge such criminal proceedings which, according to him, have been initiated in total violation of law. According to the appellant, the sting operation and various police reports filed before the High Court reveal a pattern of obtaining illegal arrest warrants.

10. We are of the view that the appellant should not be denied his right to question the initiation of criminal proceedings. Therefore, while dismissing the appeal we direct that the proceedings in the five cases mentioned above shall remain stayed for a further period of six weeks. In the meantime, the appellant is granted liberty to file appropriate proceedings before the High Court for quashing the criminal proceedings in the five cases mentioned above. With regard to CC No. 704 of 1994 and Summary Suit No.67 of 1994, we direct the concerned courts to first issue notices to the complainant/plaintiff. Only if the complainant and the plaintiff appear before the concerned courts and are interested in pursuing the complaint/suit, will notice be issued to the appellant and/or his family members. In case the plaintiff/complainant appears and notices are issued, the trial court shall make an effort to dispose all the two cases at the earliest and in any case not later than six months from the date when the appellant herein puts in appearance.

11. The appeal is disposed of with the aforesaid directions. Pending application(s), if any, shall stand disposed of.