
(2000) 02 GUJ CK 0037

In the Gujarat High Court

Case No : Special Criminal Application No. 210 of 1996

Amichandbhai M. Adhwan Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 10-02-2000

Acts Referred:

Citation : (2001) 1 GLR 287

Hon'ble Judges : A.L. Dave, J

Bench : Single Bench

Advocate : Sanjay M. Doshi, for the Appellant; H.H. Patel, APP for Respondent No. 1 and M.H. Rathod and 4, for the Respondent

Final Decision : Dismissed

Judgement

A.L. Dave, J.—In this Special Criminal Application under Article 226 of the Constitution, the petitioner has sought the following reliefs :-

"(a) to admit this petition;

(b) to declare that the learned Board of Nominees, Palanpur is competent to lodge complaint u/s 195(1)(b) of the Criminal Procedure Code against the present respondent Nos. 2, 3 and 4 by issuing an appropriate writ, or order or direction;

(c) to issue a writ of mandamus or in the nature of mandamus or any other appropriate writ, or order or direction directing the respondent No. 1 to lodge the complaint against the respondent Nos. 2, 3 and 4 for the offences punishable u/s 193, 208 and 500 of the Indian Penal Code;

(d) pending the admission, hearing and final disposal of this Special Criminal Application, direct the learned Board of Nominees, Palanpur to seize the record of Lavad Case No. 459 of 1990 and 460 of 1990 and further be pleased to direct the learned Board of Nominees, Palanpur to keep the said record in their custody;

(e) to grant any other and further relief/s that may be deemed fit and proper in

the interest of justice."

FACTS:

2. The petitioner was working as Secretary of the Banaskantha District Panchayat Employee and Credit Co-operative Society. During audit, some irregularities were detected and, therefore, a complaint was lodged against the petitioner for misappropriation. For the very same irregularities, the co-operative society and its office bearers instituted Lavad Suits before the Board of Nominees for recovery of the amount. One Lavad Suit was numbered 3192 of 1987, for recovery of Rs. 1,43,866/and the other was numbered 3193 of 1987, for recovery of Rs. 1,28,000/-, with interest. Both the Lavad Suits were allowed and awards in favour of the society were passed on 1.1.1993, whereby the petitioner was directed to pay Rs. 1,43,886/- with interest at the rate of 18% from December 30, 1983 in Lavad Suit No. 3192 of 1987 and was further ordered to pay Rs. 2,68,750/- with interest at the rate of 18% with effect from December 30, 1987, in the other suit. The awards were challenged by the petitioner before the Co-operative Tribunal by way of Appeal No. 63 of 1993 and 64 of 1993. Appeal No. 64 of 1993 was dismissed by the Tribunal, whereas Appeal No. 63 of 1993 was remanded back to the Board of Nominees with a direction to pay Rs. 15,000/- on or before 2nd December, 1993. The petitioner did not deposit the amount and, as such, the judgments and the awards passed by the Board of Nominees assumed finality. The petitioner, however, preferred Special Civil Application No. 13286 of 1993 before this Court against the order passed in Appeal No. 63 of 1993.

2.1 The society, therefore, started proceedings for recovery of the said amounts and recovery certificates in both the suits were ultimately issued.

2.2 The petitioner, on 19th September, 1995, approached the Board of Nominees, at Mehsana, along with a complaint against respondents No. 3 and 4 for offences punishable under Sections 123 (it should be 193), 208, 500 and 114 of I.P.C. with a request to forward the complaint to the Court of 3rd Joint Judicial Magistrate, First Class, Palanpur, as required under law. The allegations were that respondents No. 3 and 4 herein had given wrong depositions in the Lavad Suit, which has resulted into an award. The depositions were against facts on record and documentary evidence which has been suppressed by respondents No. 3 and 4. The Board of Nominees returned the application by communication dated 27th September, 1995, stating that it has no jurisdiction for conducting proceedings u/s 500, 114, 193 and 208 of the Indian Penal Code and, therefore, the complaint was returned for presenting it before competent Court. The petitioner, therefore, approached the learned Judicial Magistrate, First Class, 3rd Court, at Palanpur, with the complaint, who, by order dated October 20, 1995, dismissed the complaint on the ground that by virtue of provisions contained in Section 195(1) (b) of Code of Criminal Procedure, cognizance of the offence can be taken only if such complaint is lodged by the Court before whom the offence is allegedly committed and that the petitioner has no locus/right to lodge the complaint.

3. The petitioner has not challenged the orders passed by either the Board of Nominees or by the learned Judicial Magistrate, First Class, before any higher forum and has approached this Court with this petition under Article 226 of the Constitution, seeking reliefs as stated earlier.

CONTENTIONS:

4. Mr. Doshi, learned advocate appearing for the petitioner, submitted that respondent No. 4 has committed perjury. The petitioner is aggrieved as the perjury has affected his interest and, therefore, he wants respondent No. 4 to be prosecuted. Neither the Board of Nominees nor the learned Judicial Magistrate, First Class, are prepared to take action and, therefore, the petitioner has approached this Court.

4.1 Mr. M.H. Rathod, appearing for respondents No. 3 and 4 has strongly opposed this petition. According to him, this is an attempt on part of the petitioner to dodge the recovery and put respondents No. 3 and 4 under pressure. He submitted that neither the Judicial Magistrate, First Class, Palanpur nor the Board of Nominees can be said to have committed an error and the petition, therefore, may be dismissed.

4.2 Mr. H.H. Patel, learned Additional Public Prosecutor, has opposed this petition.

DISCUSSION:

5. What is required to be seen now, therefore, is whether this Court can grant the relief that is sought for in given set of facts. Reliance is placed on Section 195(1)b) of the Code of Criminal Procedure, which reads as under :-

"195. (1) No Court shall take cognizance-

(a) (i) of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable u/s 471, section 475 or section 476 of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence, in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment

of, any offence specified in sub-clause (i) or sub-clause (ii),

except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a Tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that -

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."

6. Admittedly, the perjury, if at all it is committed as alleged, is committed in a proceeding before the Board of Nominees. By virtue of provisions as contained in Section 195(1)(b), cognizance can be taken of such offence only upon a written complaint by the Court before whom the offence is committed. The learned Judicial Magistrate, First Class, Palanpur, as such, cannot be said to have committed any error in observing that he cannot take cognizance of a complaint by the petitioner.

6.1 The petitioner is aggrieved not by that order, but by the Board of Nominees not taking action for the alleged offence. In this regard, factually, the relief sought by the petitioner before the Board of Nominees was to forward the complaint of the petitioner to learned Judicial Magistrate, First Class, Palanpur and not for lodging a complaint by the Board of Nominees. There again, the petitioner cannot have any grievance against return of the complaint and thereby

the rejection of the application by the Board of Nominees.

6.2 Now, if the situation is seen from what is provided in statute, sub-section (3) of Section 195 becomes very relevant which says that for purpose of clause (b) of sub-section (1), term "Court" would mean a Civil, Revenue or Criminal Court and would include a Tribunal constituted by or under a Central, Provincial or State Act, if declared by that Act to be a Court for the purposes of this section. Board of Nominees, for this purpose cannot be said to be Civil, Criminal or Revenue Court. Mr. Doshi, learned advocate for the petitioner, could not point out any provision of law which declared a Board of Nominees to be a Court for the purposes of Section 195 of Code of Criminal Procedure. A Board of Nominee, therefore, cannot be said to be empowered to take action u/s 195(1)(b) of the Code of Criminal Procedure. It cannot, in law, be directed to take actions thereunder as prayed for by the petitioner. Nor can a writ for the declaration as prayed for, be issued. In view of the fact that there is no specific provision in the Co-operative Societies Act which declares the Board of Nominees to be a Court for the purposes of Section 195 of Code of Criminal Procedure, 1973, as required under sub-section (3) of Section 195, Board of Nominees cannot be declared as a Court for the purpose of taking action as contemplated u/s 195 of Code of Criminal Procedure, 1973.

7. The petition, therefore, must fail and the same is dismissed. Rule is discharged. No costs.