
(2011) 12 BOM CK 0170

In the Bombay High Court

Case No : Criminal Application No. 46 of 2011 in Cri. Appeal No. 35 of 2011

Babu Uligappa Batteli

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 13-12-2011

Acts Referred:

Constitution of India, 1950 — Article 136
Consumer Protection Act, 1986 — Section 2(o)
Criminal Procedure Code, 1973 (CrPC) — Section 2(wa), 372, 377, 389
Foreign Exchange Management Act, 1999 — Section 35

Citation : (2012) 4 MhLj 760

Hon'ble Judges : V.M. Kanade, J;M.L. Tahaliyani, J

Bench : Division Bench

Advocate : Murtaza Najmi along with A.K. Moily, for the Appellant; P.S. Hingorani, Assistant Public Prosecutor for State, Kamlesh Mali along with Pawan Mali instructed by C.P. Sengaonkar for respondent No. 2 and H, Shaikh with Dhiraj Bansode instructed by Amin Solkar, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Kanade, J.—Heard Learned Counsel for the applicant, Learned Counsel for respondent Nos. 2 and 3, and learned A.P.P. appearing for the State. The applicant is the original complainant who had filed a complaint against respondent No. 2 for offences punishable under the Prevention of Corruption Act. Pursuant to the complaint investigation was made and a charge-sheet was filed against respondent No. 2, and he was tried by the Special Judge. The trial Court, however, acquitted respondent No. 2 by judgment and order dated 11-5-2009.

2. Being aggrieved by the said judgment and order, the applicant has preferred this appeal under the proviso of section 372 of the Code of Criminal Procedure, and has also filed an application for condonation of delay caused in filing of this appeal.

3. It is submitted that the applicant is a victim within the meaning of section

2(wa) of the Criminal Procedure Code, and therefore, has a right to file an appeal against the order of acquittal in view of the amendment to section 372 of the Criminal Procedure Code. Secondly, it is submitted that the said amendment being a procedural amendment could have retrospective effect and therefore, the applicant would have a right to file an appeal and apply for a condonation of delay caused in filing this appeal.

4. On the other hand, Learned Counsel appearing on behalf of respondent No. 2 submits that in the complaint which is filed under the Prevention of Corruption Act, the complainant could not be termed as victim within the meaning of section 2(wa) of the Criminal Procedure Code. In support of the said submission, reliance is placed on the judgment of the learned Single Judge of this Court delivered in the case of Prakash C. Sheth vs. State of Maharashtra and ors. in Criminal Appeal No. 508 of 2011 dated 21-7-2011. Further, it is submitted that since the judgment which was delivered by the trial Court was dated 11-5-2009, the applicant did not have the right to file an appeal under the amended section 372 of Criminal Procedure Code. Since the said amendment came into force on 31st December, 2009, In support of the said submission, reliance is placed on the judgment of the Apex Court in the case of National Commission of Women Vs. State of Delhi and Another, .

5. On the other hand, Learned Counsel appearing on behalf of the applicant submitted that so far as the term "victim" is concerned, it could not be given a restricted meaning. He further submits that similarly the word "any" which is used in the proviso clearly showed that the word "victim" included all types of victim. In support of the said submission, reliance is placed on two judgments of the Apex Court in the case of viz. (i) Union Bank of India Vs. M/s. Seppo Rally OY and Another, , and (ii) Rajkumar Shivhare vs. Assistant Director, Directorate of Enforcement and anr., AIR 2010 SC 2239.

6. So far as the first question as to whether the complainant who has filed a complaint under the provision of Prevention of Corruption Act would be a victim or not within the meaning of the said section 2(wa) is concerned, in our view, taking into consideration the objects and reasons and the said definition, even a complainant who files a complaint under the Prevention of Corruption Act will have to be treated as a victim. Firstly it has to be remembered that the Legislature in its wisdom had to amend the Code of Criminal Procedure after taking into consideration various judgments of the Apex Court and observations made thereunder, and also the law commission report wherein emphasis was laid on the rights of the victim. It would be relevant to take into consideration the objects and reasons. From the perusal of the said objects and reasons, it is obvious that the Legislature thought it necessary to create substantive rights in favour of the victim and in order to ensure that the said word "victim" was not given a restricted meaning the word "any" has been used as prefix to the said word "victim". The word "any victim" therefore would include various categories of victim. Since it is not possible to categorize the word "victim" by defining it in

particular manner, therefore, the Legislature has used the word "any". The word victim is defined in section 2(wa) as under :

"victim " means a person who has suffered any loss or injuries caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir

Section 372 of Criminal Procedure Code reads as under :

No appeal to lie unless otherwise provided- No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.

7. Perusal of the definition of the "victim" would also indicate that the criteria which has been used for the purpose of determining the victim is essentially the loss or injury caused by reason of the act or omission for which the accused person has been charged. If the said criteria is applied to the cases where the complaint is filed under the Prevention of Corruption Act, the loss or injury has to be read in the context of the provision of the Prevention of Corruption Act.

8. Under the said Act, the complainant or a person who suffers as a result of any act or omission on the part of a public servant by virtue of demand of bribe is entitled to file a complaint. The loss or injury caused, therefore, in such case cannot be equated with loss or injury caused in the case where the person is inflicted a physical injury or wrongful loss is caused to his property or valuable security as in the case where the complaint of cheating is filed. In cases where the complaints are filed under the Prevention of Corruption of Act injury is caused by the public servant in not discharging his statutory duty for deciding the application of the complainant.

9. The law Commission in its 154th Report has laid special emphasis in Chapter XV on the subject of Victimology and has observed that right from the ancient Babylonian Code of Hammurabi (about 1775 BC), it has been observed that victim of crime was left with no remedy except to sue for damages in the civil Court. It is also noted that in Anglo-Saxon legal system an English Magistrate advocated state compensation to be given to the victims of crime and, accordingly, programme was set up in Britain in the year 1964. A reference also was made to the declaration made by the General Assembly of the United States Nations in its 96th plenary meeting on 29th November, 1985, laying down basic principles of justice for victims of crime and abuse of power, recognizing that millions of people throughout the world suffer harm as a result of crime and the abuse of power and that the rights of these victims have not been adequately recognized and that frequently their families, witnesses and other who aid them

are unjustly subjected to loss, damage or injury. In this Report, apart from referring to earlier Law Commission Reports, reference is also made to Justice V. R. Krishna Iyer, Human Rights- A Judge's Miscellany (1995); V. N. Rajan Victimology in India (1995); R.I. Mawby and S. Walklate, Critical Victimology (1994); Law Reform Commission of Canada (1974) and other essays and reports on this subject.

10. The celebrated "Heydon's Rule" or "Mischief Rule" reads as under:--

1st - What was the law before making of the Act,

2nd - What was the mischief and defect for which the previous law did not provide.

3rd - What remedy the Parliament had resolved and appointed to cure the disease of the commonwealth, and 4th - The true reason of the remedy.

(Principles of Statutory Interpretation by Justice G. P. Singh, 11th Edition 2008.)

11. It appears that as a result of prevailing conditions as they existed prior to the amendment when instances had come to light where the accused, who had tremendous influence, both, political, financial and otherwise, could get away after committing crime and the victim was very often was left without remedy either of filing appeal or challenging the inadequate compensation which was awarded, the legislature appears to have taken cognizance of the pronouncements and observations made by the Apex Court in various judgments; one of which is referred to herein (Best Bakery Case) and passed Amendment Act which takes into consideration various aspects which may be seen from the Statement of Objects and Reasons which reads as under :--

Statement of Objects and Reasons.-- The need to amend the Code of Criminal Procedure, 1973 to ensure fair and speedy justice and to tone up the criminal justice system has been felt for quite sometime. The Law Commission has undertaken a comprehensive review of the Code of Criminal Procedure in its 154th report and its recommendations have been found very appropriate, particularly those relating to provisions concerning arrest, custody and remand, procedure for summons and warrant-cases, compounding of offences, victimology, special protection in respect of women and inquiry and trial of persons of unsound mind. Also, as per the Law Commission's 177th report relating to arrest, it has been found necessary to revise the law to maintain a balance between the liberty of the citizens and the society's interest in maintenance of peace as well as law and order.

2. The need has also been felt to include measures for preventing the growing tendency of witnesses being induced or threatened to turn hostile by the accused parties who are influential, rich and powerful. At present, the victims are the worst sufferers in a crime and they don't have much role in the Court proceedings. They need to be given certain rights and compensation, so that there is no distortion of the criminal justice system. The application of technology

in investigation, inquiry and trial is expected to reduce delays, help in gathering credible evidences, minimize the risk of escape of the remand prisoners during transit and also facilitate utilisation of police personnel for other duties. There is an urgent need to provide relief to women, particularly victims of sexual offences, and provide fair trial to persons of unsound mind who are not able to defend themselves.

3. The Code of Criminal Procedure (Amendment) Bill, 2006 seeks to achieve the above objectives.

[Emphasis supplied]

The Statement of Objects and Reasons also makes a reference to the Law Commission's 154th Report and its recommendations and it is observed that these recommendations have been found to be very appropriate, particularly relating to the provisions of arrest, custody and remand, procedure for summons and warrant-cases, compounding of offences, victimology, special protection in respect of women and inquiry and trial of persons of unsound mind. It is also observed that the need has also been felt to include measures for preventing the growing tendency of witnesses being induced or threatened to turn hostile by the accused parties who are influential, rich and powerful. It was also felt, therefore, that certain rights and compensation should be provided to the victim so that there is no distortion of the criminal justice system. It is also observed that application of technology in investigation, inquiry and trial is expected to reduce delays, help in gathering credible evidences, minimise the risk of escape of the remand prisoners during transit etc and urgent need to provide relief to women, particularly victims of sexual offences. The Amendment Act which is called the Code of Criminal Procedure (Amendment) Act, 2008 was passed on 7-1-2009 and the various provisions of the Code have been amended in order to ensure that intention of the legislature is fulfilled by carrying out these amendments. Before, therefore taking into consideration the said provisions of section 372 and the proviso which has been inserted, it is necessary to keep in mind that prior to the said amendment being brought in force, no right of appeal was given to the victim and proviso, therefore, gives right to victim in three cases viz. in cases where the accused is acquitted or is convicted for a lesser offence or where the compensation which is imposed is found to be inadequate. No right, however, has been given in cases where inadequate sentence is imposed or awarded by the trial Court and that right is retained by the State by virtue of section 377."

12. It would be also relevant to note the observations made by the Apex Court in a different context in the case of K.C. Sareen Vs. C.B.I., Chandigarh, in paragraphs 12 and 13 which are as under :

12. Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functioning of the public offices, through

strong legislative, executive as well as judicial exercises the corrupt public servants could even paralyse the functioning of such institutions and thereby hinder the democratic polity. Proliferation of corrupt public servants could garner momentum to cripple the social order if such men are allowed to continue to manage and operate public institutions. When a public servant is found guilty of corruption after a judicial adjudicatory process conducted by a Court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior Court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction, it is public interest which suffers and sometimes, even irreparably. When a public servant who is convicted of corruption is allowed to continue to hold public office, it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction, the fallout would be one of shaking the system itself. Hence it is necessary that the Court should not aid the public servant who stands convicted for corruption charges to hold only (sic) public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level. It is a different matter if a corrupt public officer could continue to hold such public office even without the help of a Court order suspending the conviction.

13. The above policy can be acknowledged as necessary for the efficacy and proper functioning of public offices. If so, the legal position can be laid down that when conviction is on a corruption charge against a public servant the appellate Court or the revisional Court should not suspend the order of conviction during the pendency of the appeal even if the sentence of imprisonment is suspended. It would be a sublime public policy that the convicted public servant is kept under disability of the conviction in spite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision.

Though the said observations are made in the context of exercise of power by the Court of appeal u/s 389 for suspending the order of conviction, in our view, these observations also are very relevant for the purpose of determination of the issue in question.

13. Therefore, in our view, in the case under the Prevention of Corruption Act, the inaction or omission on the part of the public servant not passing any order on the application or passing a adverse order since bribe is not given would constitute the loss or injury and therefore, even such complainant would fall

within the category of a victim.

14. Apart from this, there is much substance in the submissions made by the Learned Counsel for the applicant that the word "any" which has been used in the proviso to the section 372 also cannot be given restricted meaning. The Apex Court in the case of Rajkumar Shivhare vs. Assistant Director (supra), has while construing the provision of section 35 of the Foreign Exchange Management Act, 1999 has observed as under :

25. Justice Chitty in Beckttt vs. Sutton (51 Law Journal 1882 Chancery Division 432) had to interpret "any decree or order" in section 1 of the Trustee Extension Act, 1852 and his Lordship held:

"...the words of the section are as wide as possible, and appear to me to apply adopting the language the Legislature has used to "any decree or order" by which the Court directs a sale ".

26. The word "any dispute" is somewhat akin to "any order" or "any decision". Any dispute, occurring in section 51 of Arbitration Act 1975, has been interpreted to have a wide meaning to cover all situations where one party makes a request or demand and which is refused by the other party [see Ellerrine Bros (Pty) Ltd. and another V. Klinger, 1982 (2) AER 737].

27. Justice Bachawat, while in Calcutta High Court, in the case of Arbn. Satyanarain Biswanath Vs. Harakchand Rupchand, , interpreted the word "any" in Rule 10 of Bengal Chamber of Commerce, Rules of the Tribunal of Arbitration. Construing the said rule, the learned Judge held that the word "any" in Rule 10 means one or more out of several and includes all and while doing so the learned Judge relied on an old decision of the Calcutta High Court in the case of Jokhiram Kaya vs. Ganshamdas Kedarnath, AIR 1921 Cal 244 at page 246. this Court is in respectful agreement with the aforesaid view of the learned Judge.

28. In Black's Law Dictionary the word "any" has been explained as having a "diversity of meaning" and may be "employed to indicate all and every as well as some or one and its meaning in a given Statute depends upon the context and subject matter of Statute". The aforesaid meaning given to the word "any" has been accepted by this Court in Lucknow Development Authority V. M.K. Gupta [AIR 1994 SC 7871:(1994 AIR SCW 97)]. While construing the expression "service of any description" u/s 2(o) of Consumer Protection Act, 1986 this Court held that the meaning of the word "any" depends upon the context and the subject matter of the Statute and held that the word "any" in section 2(o) has been used in wider sense extending from one to all (para 4 at page 793 of the report). In the instant case also when a right is conferred on a person aggrieved to file appeal from "any" order or decision of the Tribunal, there is no reason in the absence of a contrary statutory intent, to give it a restricted meaning.

15. In this context, the Apex Court, therefore, held that the word "any" which was used in the said provision could not be given restricted meaning.

16. On the same analogy, therefore, in our view a restricted meaning cannot be given to the word "victim". Even complainant who has suffered loss on account of inaction and omission on the part of the public servant will have to be termed as "victim". Our attention has been invited to the judgment of the learned Single Judge of this Court in the case of Prakash C. Sheth vs. State of Maharashtra and ors., in Criminal Appeal No. 508 of 2011 dated 21-7-2011 (Coram : R. C. Chavan, J.). We respectfully disagree with the view taken by the learned Single Judge in view of whatever we have stated hereinabove.

17. We are of the view that the complainant or a person who is aggrieved on account of act or omission of a public servant would fall within the definition of the word "any victim" and would be entitled to file a substantive appeal against the order of acquittal in view of the proviso to section 372 of Criminal Procedure Code.

18. So far as second submission is concerned, in our view, since the impugned judgment and order passed by the Special Judge is dated 11-5-2009, the applicant does not have a substantive right to file an appeal against the said order since such right had vested in him only after the amended section 372 came into force i.e. after 31st December, 2009. It is settled position in law that whenever substantive rights are created by the amendment, the said provision cannot apply retrospectively unless it is specifically provided by the said amendment. This question is no longer res-integra in view of the judgment of the Apex Court in the case of National Commission for Women (supra). In the said case similar question arose and the Apex Court in para-8 of the said judgment has observed as under:

8. Chapter XXIX of the Code of Criminal Procedure deals with "Appeal(s)". Section 372 specifically provides that no appeal shall lie from a judgment or order of a criminal Court except as provided by the Code or by any other law which authorises an appeal. The proviso inserted by section 372(Act 5 of 2009) with effect from 31-12-2009, gives a limited rights to the victim to file an appeal in the High Court against any order of a criminal Court acquitting the accused or convicting him for a lesser offence or the imposition of inadequate compensation. The proviso may not thus be applicable as it came in the year 2009 (long after the present incident) and, inn any case, would confer a right only on a victim and also does not envisage an appeal against an inadequate sentence. An appeal would thus be maintainable only u/s 377 to the High Court as it is effectively challenging the quantum of sentence.

19. In the said case, the trial Court had acquitted the accused by its judgment and order dated 21-4-2008, and therefore, the appeal could not have been filed. The Apex Court, therefore, in para-11 has observed as under :

11. An appeal is a creature of a statute and cannot lie under any inherent power. this Court does undoubtedly grant leave to appeal under the discretionary power conferred under Article 136 of the Constitution of India at the behest of the State

or an affected private individual but to permit anybody or an organization pro bono publico to file an appeal would be a dangerous doctrine and would cause utter confusion in the criminal justice system. We are, therefore, of the opinion that the SLP itself was not maintainable.

20. In view of the above, the appeal filed by the applicant being not maintainable since it is challenging the judgment and order passed by the trial Court dated 11-5-2009, the question of condonation of delay does not arise.

Hence, the Criminal Application is dismissed. In view thereof, the Criminal Appeal also does not survive.

Needless to mention that the applicant is at liberty to take out proceedings in accordance with law.