

(2009) 09 SC CK 0016

In the Supreme Court Of India

Case No : Criminal Appeal No's. 1678-1679 of 2009 (Arising out of S.L.P. (Criminal) No's. 1878-1879 of 2009) and Criminal Appeal No. 1680 of 2009 (Arising out S.L.P. (Criminal) No. 888/09)

Babubhai Jamnadas Patel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 02-09-2009

Acts Referred:

Constitution of India, 1950 — Article 142, 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 154(3), 156(3), 162, 169, 172
Penal Code, 1860 (IPC) — Section 120B, 420, 465, 466, 467

Citation : (2009) 3 ACR 3033 : (2010) CriLJ 2249 : (2010) 1 GLR 556 : (2009) 11 JT 600 : (2009) 12 SCALE 183 : (2009) 9 SCC 610 : (2009) 13 SCR 1155

Hon'ble Judges : Cyriac Joseph, J;Altamas kabir, J

Bench : Division Bench

Advocate : R.F. Narima, Huzefa Ahmadi, Ejaz Maqbool, Parthiv Shah, Pardhuman Gohil, Taruna Singh and Abhijit Sinha, for the Appellant; Dushyat Dave, Bharat B. Naik, Siddharth Luthra, Roma Fidelis, S. Udaya Kumar Sagar, Bina Madhavan, Tarun Satija for Lawyer's Knit and Co., Hemantika Wahi, Somnath Padhan and Mamta Tushir, for the Respondent

Final Decision : Dismissed

Judgement

Altamas Kabir, J.—Leave granted.

2. These appeals are directed against the judgment and interim orders dated 5th December, 2008 and 23rd January, 2009, passed by the Gujarat High Court in Special Criminal Application No. 1855 of 2008 and order dated 16th January, 2009, passed in Misc. Application No. 15014 of 2008 in the said application. The order dated 5th December, 2008, merely records the fact that the learned Government Pleader and the Additional Public Prosecutor had placed on record a copy of the order dated 1.12.2008 passed by the office of the Police Commissioner intimating the Senior Police Inspector, Sabarmati Police Station, that investigation of Karanj Police Station, F.I.R. No. 254 of 2008, under Sections

420, 465, 466, 467 and 120B of the Indian Penal Code, 1860, had been handed over to the Assistant Commissioner of Police, "C" Division, Ahmedabad City. By the said order, the High Court also directed the Assistant Commissioner of Police, "C" Division, Ahmedabad City, to file a progress report of the investigation undertaken in the aforesaid F.I.R. dated 24th December, 2008. It was also indicated that in the event final report was ready, the same was not to be submitted without prior intimation to Court.

3. On 23rd January, 2009, the learned Additional Public Prosecutor placed an "Action Taken Report" of even date before the Court. In the said report, the officer concerned had stated that the investigation was being conducted according to the procedure followed. Based upon the said report, the Additional Public Prosecutor was directed to convey to the Officer present in the Court to incorporate the details of the action taken by him from the date of the receipt of the letter dated 5.12.2008 which, according to him, was received by him on 12.12.2008. The learned Additional Public Prosecutor was also directed to place on record the steps taken by the Police Authorities in respect of Item No. 13 mentioned in the Action Taken Report dated 11.11.2008 filed under the signature of Shri M.P. Joshi, Senior Police Inspector, Sabarmati Police Station, Ahmedabad City. The matter was also adjourned till 30th January, 2009.

4. The said three orders are the subject matter of the appeals under consideration.

5. The lands comprised in Block No. 84 of Village Ambali, Taluka Dascroi, were owned and occupied by several persons, including the respondents herein. According to the appellant, the original land owners wanted to sell the lands to one Kalaji Nathaji, who used to work as a broker in land transactions. Kalaji Nathaji got in touch with the appellant and informed him about the proposed transfer of the lands in question. On receipt of such information, the appellant expressed his willingness to purchase the said lands. For the purpose of changing the user of the land and to arrange for the sale subject to such conversion, Kalaji Nathaji prepared a Power of Attorney of the original land owners in favour of the appellant and several persons who were not made parties to the said Deeds.

6. Upon execution of the said Power of Attorney, a registered Sale Deed was executed for the undivided share of the original land owners in favour of one Godavariben Chunnilal Thakkar. It may be pointed out that none of the shares belonging to the respondents herein was sold by registered deeds of sale. On the other hand, the land forming the subject matter of the present proceeding was included along with other plots of land in the Draft Town Planning Scheme No. 212. According to the appellant, various farmers joined hands for the purpose of developing the property and they also jointly applied to the Competent Authority and on the basis thereof the lands in question were sold to form F.P. No. 63 and out of a total area of 74,764 sq.mts., 52,335 sq.mts. were allotted for the aforesaid purpose.

7. On 18.10.2005, the Respondent No. 2 and several other persons executed a notarized Agreement for Sale and a Supplementary Agreement in favour of the appellant's son in respect of their undivided share in the said lands. A joint Power of Attorney was also executed in favour of another son of the appellant. Soon, thereafter, construction work was commenced on the said final plot as per the sanctioned plans. According to the appellant, more than three years after the date of commencement of the construction, the respondents and several other persons commenced various litigations against the appellant.

8. On 14th May, 2008, various people, including the Respondent No. 2, filed Special Civil Application No. 7572 of 2008 before the High Court in respect of civil disputes between the parties and the matter is still pending. Thereafter, on 2nd June, 2008, the State of Gujarat filed Special Criminal Application No. 1061 of 2008 before the High Court for a writ in the nature of Mandamus for a direction to the police authorities of Sarkhej Police Station, Ahmedabad, to register the complaint of the appellant u/s 154(3) of the Criminal Procedure Code.

9. F.I.R. No. 187 of 2008 having been lodged on 11th August, 2008, the High Court disposed of the Special Criminal Application filed by the respondent on 12th August, 2008. Subsequently, on 25th September, 2008, the respondents filed Special Criminal Application No. 1855 of 2008 before the High Court praying for transfer of F.I.R. No. 187 of 2008, registered with Sarkhej Police Station, Ahmedabad, to the Central Bureau of Investigation. The said prayer was ultimately given up. The High Court issued notice in the said writ petition and directed the concerned Investigating Authority to submit the Action Taken Report with respect to the investigation carried out in respect of F.I.R. No. 187 of 2008 referred to hereinabove.

10. By virtue of various other orders passed in the proceedings, the High Court asked for a status report of the investigation conducted in the matter. Subsequently, the F.I.R. in question came to be transferred from Sarkhej Police Station to the Sabarmati Police Station, Ahmedabad. Two days thereafter, a prayer was made for transfer of the investigation to the C.I.D. (Crime) which was asked to submit periodical reports, so that the investigation could remain under the control of the High Court to dispel any impression that the investigation was not being conducted properly by the police authorities. On 14th November, 2008, the Superintendent of Police, Ahmedabad (Rural), filed an affidavit, but on the prayer made by the Public Prosecutor, the matter was adjourned to enable him to take instructions as to whether the affidavits filed by the Superintendent of Police (Rural) should be withdrawn or not.

11. On 5th December, 2008, the High Court passed one of the impugned orders recording the fact that both the learned Government Pleader and also the learned Public Prosecutor were placing on record a copy of the order dated 1st December, 2008, passed by the Office of the Police Commissioner informing the Senior Police Officer, Sabarmati Police Station, that investigation of Karanj Police Station C.I.R. No. 254/2008 under Sections 420, 465, 466, 467 and 120B of the

Indian Penal Code had been handed over to the Assistant Commissioner of Police, 'C' Division, Ahmedabad City. The High Court directed the said officer to file a Progress Report of the investigation in respect of the said F.I.R. by 24th December, 2008. The investigating authorities were also directed not to submit the final report, if ready, without prior intimation to the Court.

12. On 30th December, 2008, by an oral direction given to the Public Prosecutor by the High Court, the investigation was stayed till 17.1.2009. On 16th January, 2009, the High Court passed an order directing the Investigating Officer that all materials/documents that were felt to be of importance in the case were to be collected and a report to that effect was required to be filed on the next date of hearing, i.e., 23.1.2009.

13. On 23.1.2009, the learned Additional Public Prosecutor submitted the Action Taken Report of even date. In that report, the Investigating Officer, who was an officer of the rank of Assistant Police Commissioner, 'C' Division, Ahmedabad City, narrated the steps taken till then and what remained to be done by way of further investigation in the matter. The Additional Public Prosecutor was directed to convey to the Investigating Officer who was present in the Court, that steps should be taken to incorporate the details of the action taken by him from the date of receipt of letter dated 5.12.2008. The learned Public Prosecutor was also directed to place on record the steps taken by the police authorities with a specific item in the Action Taken Report dated 11.11.2008 filed under the signature of Mr. M.B. Joshi, Senior Police Inspector, Sabarmati Police Station, Ahmedabad City.

14. Appearing in support of the appeals, Mr. R.F. Nariman, learned Senior Advocate, submitted that from the orders dated 5.12.2008 and 23.01.2009, passed by the Gujarat High Court, it would be evident that the High Court had, in fact, taken over the investigation by directing both the manner and mode in which the investigation was to be conducted and the course which such investigation was required to take. It was submitted that the impugned orders, together with the order dated 16.1.2009, would actually indicate that the High Court wanted to retain control over the investigation which has only served to hamper the investigation and cause severe prejudice to the appellant. Mr. Nariman submitted that on several occasions, the affidavits filed by Investigating Agency were rejected with directions to file fresh affidavits causing a good deal of pressure on the Investigating Agency. Reference was made to various decisions of this Court, wherein a view had been expressed that the High Court should not direct the Investigating Agency to submit a report in accordance with the Court's own views. Mr. Nariman submitted that it had been categorically observed that the High Court would be exceeding its jurisdiction under Article 226 of the Constitution of India in interfering with criminal investigation in passing such orders.

15. In this regard, Mr. Nariman referred to the decision of this Court in Director, Central Bureau of Investigation & Ors. Vs. 'Niyamavedi' represented by its

member K. Nandini, Advocate & Ors. [(1995) 3 SCC 601] , where the point urged by Mr. Nariman was directly in issue. Considering the Division Bench judgment of the Kerala High Court, in which reference was made to the material disclosed in the course of investigation, this Court observed that having regard to the provisions of Sections 162 and 172 of the Code of Criminal Procedure, the Division Bench should have refrained from disclosing in its order, material contained in police diaries and statements, especially when the investigation in the very case was in progress. It was also observed that the High Court should also have refrained from making any comments on the manner in which the investigation was being conducted by the Central Bureau of Investigation. This Court went on to further observe as follows:

Any observations which may amount to interference in the investigation, should not be made. Ordinarily the Court should refrain from interfering at a premature stage of the investigation as that may derail the investigation and demoralise the investigation. Of late, the tendency to interfere in the investigation is on the increase and Courts should be wary of its possible consequences. We say no more.

16. Mr. Nariman submitted that the aforesaid observation was sufficient to indicate that investigation into an alleged offence is the responsibility of the investigating agency which should not be interfered with by the Courts, except for compelling reasons.

17. Reference was also made to the decision of this Court in M.C. Abraham & Anr. Vs. State of Maharashtra & Ors. [(2003) 2 SCC 649] , by which several criminal appeals were disposed of on 20th December, 2002. One of the issues which was considered in the said appeals was whether the Court had the power to direct the Investigating Agency to submit a report in accordance with the view taken by the Court. While considering the provisions of Sections 156(3), 169, 173 and 190 Cr.P.C., this Court held that while investigation is in progress, the Court cannot direct the Investigating Agency to submit a report in accord with the Court's own view. In the facts and circumstances of the said case, this Court observed that it was open to the Magistrate, to whom the report is submitted by the Investigating Agency after a full and complete investigation, to either accept the same or to order a further inquiry. As far as the High Court is concerned, it could give directions for prompt investigation, but it could not direct the Investigating Agency to submit a report that is in accord with its views and that would amount to unwarranted interference with the investigation of the case by inhibiting the exercise of statutory power by the Investigating Agency. In the said case, this Court also set aside the direction given by the High Court that not only should the case be investigated, but a charge-sheet must be submitted. This Court held that whether a charge-sheet should be submitted or not was the concern of the Investigating Agency and the High Court had exceeded its jurisdiction in directing the same to be filed.

18. Mr. Nariman urged that the same question, as enumerated hereinabove, is

also involved in SLP(Crl.)No.888 of 2009.

19. Referring to the order of the High Court dated 21st October, 2008, Mr. Nariman urged that the same would clearly demonstrate the manner in which the investigation was being interfered with by the High Court. Mr. Nariman submitted that the procedure adopted by the High Court in dealing with the matter was not contemplated under the provisions of the Criminal Procedure Code and while setting aside the order, the High Court should be requested to refrain from doing any act or passing any order which would have the effect of interfering with the investigation.

20. In reply to Mr. Nariman's submissions, Mr. Dushyant Dave, learned Senior Advocate appearing for the respondents, submitted that the powers of the High Court under Articles 226 and 227 of the Constitution of India were sufficiently wide to enable the High Court to direct a public authority to perform its duties in accordance with law when it is brought to its notice that the said functions were not being discharged by the said public authority.

21. Mr. Dave submitted that through judicial pronouncements it has been well settled that ordinarily the investigating authorities should be left to perform their duties, as provided for under the statute, but in the event, the said authority failed to perform such duties, as they were required to perform, the Courts could direct, the investigating authorities to do so.

22. Mr. Dave referred to the decision of this Court in *S.N. Sharma vs. Bipen Kumar Tiwari & Ors.* [(1970) 1 SCC 653] , which was a decision under the old Code, wherein it was observed that though the Code of Criminal Procedure gave to the police unfettered power to investigate all cases where they suspected that a cognizable offence had been committed, in appropriate cases an aggrieved person could always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution under which, if the High Court was convinced that the power of investigation had been exercised by a police officer mala fide, the High Court could always issue a writ of Mandamus to restrain the police officer from misusing his powers. Mr. Dave submitted that this Court has uniformly held that the Courts should not normally interfere with the investigative process unless it was established that the investigating agency had remained inactive for whatever reason.

23. Mr. Dave, then, referred to the decision of this Court in *Kashmeri Devi Vs. Delhi Administration & Anr.* [(1988) Supp. SCC 482] , wherein, since a charge-sheet had already been submitted by the investigating agency, a direction had to be given to the Magistrate to exercise his powers u/s 173(8) Cr.P.C. to direct the Central Bureau of Investigation to make a proper and thorough investigation in an independent and objective manner and to submit an additional charge-sheet, if any, in accordance with law. Mr. Dave pointed out that the said decision starts with the observation that the case in hand was an unfortunate case which tended to shake the credibility of police investigation and undermined the faith of the

common man in the Delhi Police which was supposed to protect the life and liberty of the citizen and to maintain law and order.

24. Yet another decision of this Court referred to by Mr. Dave in this regard is the decision in *State of Bihar & Anr. Vs. Ranchi Zila Samta Party & Anr.* [(1996) 3 SCC 682] , where also directions were given by the High Court for investigation by the Central Bureau of Investigation which was upheld by this Court with the further direction that the investigation by the CBI would be under the over- all control and supervision of the Chief Justice of the High Court.

25. To further bolster his submissions, Mr. Dave also referred to the decision of this Court in *Vineet Narain & Ors. Vs. Union of India & Anr.* [(1998) 1 SCC 226] , popularly known as "Hawala case", in which it was held that in the absence of appropriate legislation and even executive orders in matters of public interest and urgency, the Supreme Court, in exercise of its powers under Article 142 of the Constitution, can issue orders and directions to fill the gap for enforcement of fundamental rights and doing complete justice between the parties.

26. Reference was also made to the decisions of this Court in (1) *State of W.B. and Ors. v. Nuruddin Mallick and Ors.* (1998) 8 SCC 43; (2) *Nirmal Singh Kahlon vs. State of Punjab & Ors.* [(2009) 1 SCC 441] ; (3) *Gudalure M.J. Cherian & Ors. Vs. Union of India & Ors.* [(1992) 1 SCC 397] ; and (4) *Comptroller and Auditor General of India, Gian Prakash, New Delhi & Anr. Vs. K.S. Jagannathan & Anr.* [(1986) 2 SCC 679] , wherein in the circumstances of each case, this Court directed the Central Bureau of Investigation to conduct fresh investigation in order to do complete justice to the parties.

27. Mr. Dave referred to various orders passed by the Gujarat High Court in similar matters, wherein similar orders were passed with regard to the investigations and submissions of the Action Taken Report, which have been annexed to the Special Leave Petitions.

28. The State of Gujarat has chosen not to file any affidavit, but has supported the submissions made by Mr. Dave.

29. Responding to the decisions cited by Mr. Dave, Mr. Nariman submitted that while in the decisions cited by Mr. Dave certain special circumstances existed, in which directions had to be given by the High Court to the investigating agencies, there is nothing extraordinary as to the facts of these cases which necessitated the monitoring of the cases by the High Court.

30. Mr. Nariman submitted that the dispute in the present cases related to the allotment of houses in the Shivalik (Ambali) Cooperative Housing Society Limited and the dispute was of a purely civil nature in respect of which suits were also pending and did not require any such directions for the purpose of investigation into the complaint made.

31. The area of dispute ultimately narrows down to the question as to whether the Courts can monitor investigations in respect of offences alleged to have been

committed when the investigation had already been commenced by the investigating agency. There is little doubt that normally investigation of offences is the function of the investigating agencies and the Courts do not ordinarily interfere with the same. But, at the same time the High Court is vested with such powers, though the same are invoked only in cases where extraordinary facts are involved, necessitating such monitoring by the Courts.

32. In the circumstances, we are only required to see whether such an extraordinary fact situation exists in this case which warranted such a course of action to be adopted by the High Court.

33. Though Mr. Nariman has in unequivocal terms denied that such extraordinary circumstances exist in this case, which requires monitoring by the High Court, it cannot be denied that the progress of the investigation has been tardy and slow. It is in such circumstances that the investigation had to be handed over to the Assistant Commissioner of Police, 'C' Division, Ahmedabad City, with a further direction upon the said Assistant Commissioner of Police to file a progress report of the investigation undertaken in respect of the First Information Report dated 24th December, 2008.

34. Having regard to the factual circumstances in which the incident had occurred, the Court adopted the procedure for keeping a watch over the investigation in order to prevent a miscarriage of justice.

35. In cases where it has been brought to the notice of the Courts that investigation into an offence was not being carried on in the manner in which it should have been carried on, directions have been given by the Courts to the investigating agencies to conduct the investigation according to certain guidelines, as otherwise the very purpose of the investigation could become fruitless. The decisions cited by Mr. Nariman do not militate against the concept of the Court's power, where necessary, to direct the authorities to conduct themselves in a particular way. Once it is proved that there are no other circumstances except those which were projected, the need for such monitoring diminished. However, there is nothing in the decisions cited by Mr. Nariman to even remotely suggest that if the investigation was being stalled, for whatever reason, the Courts were powerless to pass appropriate orders to ensure that the investigation was proceeded with and justice was done to the parties.

36. The said position has been reiterated in the various decisions cited by Mr. Dave, particularly in the case of Kashmeri Devi (supra), wherein a direction had to be given to the Magistrate to exercise powers u/s 173(8) Cr.P.C. to direct the C.B.I. to make a proper and thorough investigation in an independent and objective manner and to submit an additional charge-sheet, if any, in accordance with law.

37. The Courts, and in particular the High Courts and the Supreme Court, are the sentinels of justice and have been vested with extraordinary powers of judicial review and supervision to ensure that the rights of the citizens are duly

protected. The Courts have to maintain a constant vigil against the inaction of the authorities in discharging their duties and obligations in the interest of the citizens for whom they exist. This Court, as also the High Courts, have had to issue appropriate writs and directions from time to time to ensure that the authorities performed at least such duties as they were required to perform under the various statutes and orders passed by the administration. As for example, in the instant case, the High Court had to repeatedly intervene and pass orders to ensure that the investigation was being conducted diligently. Periodical status reports were required in that regard. In fact, the High Court had to direct the Additional Public Prosecutor to ask the Investigating Officer to incorporate the details of the action taken by him from the date of receipt of the letter dated 5th December, 2008. There is little doubt that only after the High Court began monitoring the progress of the investigation that the Investigating Authorities began to deal with the matter with some amount of seriousness.

38. We are unable to agree with Mr. Nariman that the High Court in the name of investigation directed both the manner and mode in which the investigation was to be conducted or the direction in which the investigation was to proceed. It is because of the tardy progress of the investigation that the High Court had to step in at the instance of the respondents herein. It was at the instance of the State of Gujarat, which filed Special Criminal Application No. 1061 of 2008 on 2nd June, 2008, before the High Court, that a direction was issued to the Investigating Authorities to register the complaint on 11th August, 2008, by way of F.I.R. No. 187 of 2008.

39. The various decisions cited by Mr. Dave endorse the view that when required not only could the High Court or this Court direct the Investigating Agencies to conduct the investigation in a fair and unbiased manner, but that in exercise of its powers under Article 142 of the Constitution, the Supreme Court could also issue directions for enforcement of fundamental rights and to ensure that complete justice was done to the parties. In fact, in *Kashmere Devi's* case (supra), this Court had directed the Magistrate to exercise powers u/s 173(8) Cr.P.C. to direct the C.B.I. to make a proper and thorough investigation in an independent and objective manner and to submit an additional charge-sheet, if circumstances so required, in accordance with law.

40. There is, therefore, no doubt that in appropriate cases, the Courts may monitor an investigation into an offence when it is satisfied that either the investigation is not being proceeded with or is being influenced by interested persons.

41. We are, therefore, not inclined to interfere with the orders of the High Court impugned in these appeals and we direct the Investigating Authorities to proceed in the manner indicated by the High Court in its impugned orders. The appeals are, accordingly, dismissed.