

(2013) 01 SC CK 0105

In the Supreme Court Of India

Case No : Criminal Appeal No. 176 of 2013 (Arising out of S.L.P. (Criminal) No. 1962 of 2011)

C.P. Subhash

APPELLANT

Vs

Inspector of Police Chennai and Others

RESPONDENT

Date of Decision : 23-01-2013

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 195, 195(1), 482
Penal Code, 1860 (IPC) — Section 468, 471

Citation : (2013) 2 AD 258 : (2013) AIRSCW 4014 : (2013) 81 ALLCC 337 : (2013) CriLJ 3684 : (2013) 1 Crimes 242 : (2013) 2 JT 270 : (2013) 1 LW(Cri) 415 : (2013) 4 RCR(Criminal) 535 : (2013) 2 SCALE 19 : (2013) 11 SCC 559 : (2013) 1 Supreme 603 : (2013) 1 UC 725

Hon'ble Judges : T.S. Thakur, J;Gyan Sudha Misra, J

Bench : Division Bench

Advocate : K.K. Venugopal, D. Ramkrishna Reddy, D. Bharathi Reddy and Ankur Talwar, for the Appellant; Jayant Bhushan U.A. Rana, Mrinal Majumdar, Himanshu Mehta, Gagrati and Company, Praveen Jain, T.S. Sidhu, Tanu Pirya, M.V. Kini and Associates, B. Balaji, Guru Krishna Kumar, Yogesh Kanna and Prasanna Venkat, for the Respondent

Final Decision : Allowed

Judgement

T.S. Thakur, J.—Leave granted.

2. This appeal arises out of a judgment and order dated 15th February, 2011 passed by the High Court of Madras whereby Criminal O.P. No. 15917 of 2010 filed by Respondents 2, 3 and 4 has been allowed, FIR No. 41/10 dated 25th March, 2010 registered in Police Station Tambaram for offences punishable under Sections 468 and 471 of the Indian Penal Code, 1860 and the ongoing investigation into the said FIR quashed.

3. The complainant-Appellant in this appeal is the General Manager of SNP Ventures Pvt. Ltd. while Respondents 2, 3 and 4 were during the relevant period

working with M/s. Gorden Woodroff Limited (for short 'GWL') as legal advisers/ Senior Managers. GWL has, it appears, filed O.S. No. 169 of 2008 before the District Court, Chengalpattu seeking a decree for declaration of its title qua 11.75 acres of land situated at Jameen Pallavaram Village, Tambaram in the State of Tamil Nadu. In support of its claim of ownership over the suit property GWL appears to be placing reliance upon two sale deeds one dated 10th March, 1922 (document No. 1551 of 1922) and the other dated 27th June, 1922 (document No. 1575 of 1922). SNP Ventures Pvt. Ltd. who claims to be in actual physical possession of the suit property in the meantime appears to have approached the Sub-Registrar's office at Saidapet to verify the genuineness of the two sale deeds relied upon by GWL. Verification revealed that both the sale deeds in question pertained to transactions between some private parties and had no connection whatsoever with GWL. The Sub-Registrar also informed the complainant that there was no transaction during the year 1922 in respect of the subject lands at Jameen Pallavaram.

4. It was on the basis of the above information that the complainant filed a complaint against the Respondents alleging commission of offences punishable under Sections 468 and 471 of the Indian Penal Code. Crime No. 41/10 was accordingly registered in the Central Crime Branch, Chennai Suburban, St. Thomas Mount for the said offences against Respondents 2, 3 and 4. Aggrieved, the Respondents filed Criminal O.P. No. 15917 of 2010 for quashing of the FIR as also investigation in connection therewith which petition was heard and allowed by a Single Judge of the High Court of Madras by an order dated 15th February, 2011 quashing registration of the case as also the proceedings based on the same. The High Court called in aid two precise reasons for doing so. Firstly, the High Court held that the allegations made in the complaint even if accepted in their entirety did not prima facie constitute an offence or make out a case against the Respondents herein. Secondly, the High Court held that no Court could, in view of the bar contained in Section 195 Code of Criminal Procedure, take cognizance of offences in question except on a complaint in writing made by the court or the public servant concerned. The present appeal assails the correctness of the said order passed, as already noticed above.

5. Appearing for the Appellant, Mr. K.K. Venugopal, learned senior counsel, argued that the High Court had fallen in a palpable error in interfering with the ongoing investigation. The complaint filed by the Appellant, argued the Learned Counsel, made specific allegations against the Respondents which could not be brushed aside without a proper verification of the correctness thereof in the course of investigation. In support of his submission he placed reliance upon the decision of this Court in State of Karnataka and Another Vs. Pastor P. Raju, . He urged that the High Court could not interfere with an ongoing investigation except under compelling circumstances or where the complaint did not make out any case even if the allegations made therein were taken at their face value. He further contended that the High Court was in error in relying upon Section 195 of Code of Criminal Procedure while quashing the investigation. Section 195, argued

Mr. Venugopal, was applicable to cases in which the alleged fabrication of the document had taken place while the same was in the custody of the court. That was not the position in the case at hand. Reliance in support of that contention was placed by Mr. Venugopal upon a Constitution Bench decision of this Court in the case of Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Another, .

6. Per contra, Mr. Jayant Bhushan, learned senior counsel appearing for the Respondents 2, 3 and 4 argued that while the complaint and the registration of the case was not hit by the provisions of Section 195 of the Code of Criminal Procedure in the light of the decision of the Constitution Bench of this Court referred to above, yet keeping in view the fact that the question of validity and genuineness of the sale deeds relied upon by GWL was the subject matter of a pending civil suit it would be an unnecessary and avoidable harassment for the Respondents if the investigation is allowed to proceed even before the Civil Court records a finding regarding the genuineness of the sale deeds.

7. The legal position regarding the exercise of powers u/s 482 Code of Criminal Procedure or under Article 226 of the Constitution of India by the High Court in relation to pending criminal proceedings including FIRs under investigation is fairly well settled by a long line of decisions of this Court. Suffice it to say that in cases where the complaint lodged by the complainant whether before a Court or before the jurisdictional police station makes out the commission of an offence, the High Court would not in the ordinary course invoke its powers to quash such proceedings except in rare and compelling circumstances enumerated in the decision of this Court in State of Haryana and others Vs. Ch. Bhajan Lal and others, . Reference may also be made to the decision of this Court in Rajesh Bajaj Vs. State NCT of Delhi and Others, where this Court observed:

...If factual foundation for the offence has been laid down in the complaint the Court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an FIR. (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence.

8. To the same effect is the decision of this Court in State of Madhya Pradesh Vs. Awadh Kishore Gupta and Others, where this Court said:

...The powers possessed by the High Court u/s 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual

or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers u/s 482 of the Code....

9. Decisions of this Court in V.Y. Jose and Another Vs. State of Gujarat and Another, and Harshendra Kumar D. Vs. Rebatilata Koley Etc., reiterate the above legal position.

10. Coming to the case at hand it cannot be said that the allegations made in the complaint do not constitute any offence or that the same do not prima facie allege the complicity of the persons accused of committing the same. The complaint filed by the Appellant sets out the relevant facts and alleges that the documents have been forged and fabricated only to be used as genuine to make a fraudulent and illegal claim over the land owned by complainant. The following passage from the complaint is relevant in this regard:

...Thus evidently these two sale deeds being produced by GWL i.e. 1551/1922 dated: 10th March 1922 and 1575/1922 dated 27th June 1922 are forged and fabricated and after making the false documents they were used as genuine to make fraudulent and illegal claim over our lands and go grab them. The representatives of GWL Properties with dishonest motive of grabbing our lands having indulged in committing forgery and fabrication of documents and with the aid of the forged documents are constantly attempting to criminally trespass into our lawful possessed lands and have been threatening and intimidating the staffs of our company in an illegal manner endangering life and damaging the land. The representatives of GWL properties also have been making false statements to the Government Revenue Authorities by producing these forged and fabricated documents with dishonest intention to enter their name in the Government Records. The present Director-in-charge and responsible for the affairs of the GWL Properties Limited is Mrs. V.M. Chhabria and all the above mentioned acts and commission of offences have been committed with the knowledge of the Directors of GWL Properties Ltd., and connivance for which they are liable. Mr. A.V.L. Ramprasad Varma representing M/s. GWL Properties Limited has registered a civil suit in the District Court, Chengalpet using the forged documents, Mr. Satish, Manager (Legal), Mr. Shanmuga Sundram, Senior

Manager, (Administration), have assisted in fabricating the forged documents and used the same to get patta from Tahsildar, Tambaram, thus cheating the Govt. Officials. Hence we request you to register the complaint and to investigate and take action in accordance with law as against the said company M/s. GWL Property Limited represented by Mr. Satish, Manager (Legal) Mr. Shanmudga Sundaram, Senior Manager (Administration), A.V.L. Ramprasad Varma, Directors, and their accomplice who have connived and indulged in fabricating and forging documents for the purpose of illegally grabbing our lands and for all other offences committed by them.

11. Equally untenable is the view taken by the High Court that the bar contained in Section 195(1)(b)(ii) could be attracted to the case at hand. In Iqbal Singh Marwah's case (supra) a Constitution Bench of this Court had authoritatively declared that Section 195(1)(b)(ii) Code of Criminal Procedure was attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in any court and during the time the same was in custodia legis. This Court while taking that view approved the ratio of an earlier decision in Sachida Nand Singh and Another Vs. State of Bihar and Another, where this Court held:

12. It would be a strained thinking that any offence involving forgery of a document if committed far outside the precincts of the Court and long before its production in the Court, could also be treated as one affecting administration of justice merely because that document later reached the court records.

xx xx xx xx

23. The sequitur of the above discussion is that the bar contained in Section 195(1)(b)(ii) of the Code is not applicable to a case where forgery of the document was committed before the document was produced in a court.

12. Mr. Venugopal was, therefore, correct in contending that the bar contained in Section 195 against taking of cognizance was not attracted to the case at hand as the sale deeds relied upon by GWL for claiming title to the property in question had not been forged while they were in custodia legis.

13. In the light of the above, the High Court was wrong in quashing the FIR on the ground that the allegations did not constitute an offence even when the same were taken to be true in their entirety. It was also, in our view, wrong for the High Court to hold that the Respondents were not the makers of the documents or that the filing of a civil suit based on the same would not constitute an offence. Whether or not the Respondents had forged the documents and if so what offence was committed by the Respondents was a matter for investigation which could not be prejudged or quashed by the High Court in exercise of its powers u/s 482 of Code of Criminal Procedure or under Article 226 of the Constitution of India.

14. In the result this appeal succeeds and is hereby allowed. The judgment and

order dated 15th February, 2011 passed by the High Court is set aside and Criminal O.P. No. 15917 of 2010 filed by the Respondents dismissed. We make it clear that neither the investigating agency nor the Court before whom the matter may eventually come up for trial and hearing upon conclusion of the investigation shall be influenced by any observation made by this Court regarding the merit of the case.