

(2024) 10 BOM CK 0010

In the Bombay High Court

Case No : Criminal Writ Petition No.848 Of 2024

Damodhar Jagannath Lokhande And Another

APPELLANT

Vs

Central Bureau Of Investigation And Another

RESPONDENT

Date of Decision : 23-10-2024

Acts Referred:

Constitution of India, 1950 — Article 226
Code of Criminal Procedure, 1973 — Section 227, 482
Indian Penal Code, 1860 — Section 120B, 302
Arms Act, 1959 — Section 25

Citation : (2024) 10 BOM CK 0010

Hon'ble Judges : Vibha Kankanwadi, J; S. G. Chapalgaonkar, J

Bench : Division Bench

Advocate : G.V. Wani, A.J. Patil, R.P. Gour, S.J. Salunke

Final Decision : Allowed

Judgement

Vibha Kankanwadi, J

1. Rule. Rule made returnable forthwith. Heard learned counsel appearing for the respective parties finally, by consent.

2. Present Writ Petition is filed under Article 226 of the Constitution of India as well as under Section 482 of the Code of Criminal Procedure for quashing and setting aside charge-sheet i.e. the proceedings in Sessions Trial No.8 of 2006 pending before the learned Sessions Judge, Jalgaon.

3. The case has a chequered history and therefore, we would like to consider the history first. The offence came to be registered vide Crime No. 242 of 2005 with Zilla Peth Police Station, Jalgaon against two unknown persons on the basis of First Information Report (for short "the FIR") given by one Mahendra P. Mahajan, under Section 302 of the Indian Penal Code. It was stated that one Mr. V.G. Patil was killed by those two unknown persons. During the investigation two persons were arrested – (1) Raju Mali and (2) Raju Sonawane, on 25th September 2005.

Thereafter the matter was investigated by State C.I.D., and even the petitioners came to be arrested in that matter and later on they were released on bail. The petitioners had preferred two different applications for quashing the proceedings initiated against them bearing Criminal Application Nos. 3331 of 2005 and 298 of 2006, respectively. During the pendency of those applications charge-sheet was filed. Those applications came to be allowed after hearing the parties concerned and the FIR as well as charge-sheet was quashed by this Court on 3rd February 2006 in respect of both the petitioners. The order passed by this Court was then challenged before the Hon'ble Supreme Court by the State by filing Criminal Special Leave Petition No.2918 of 2006. However, that Special Leave Petition came to be dismissed. It appears that the widow of the deceased V.G. Patil i.e. Smt. Rajni Patil had filed Criminal Writ Petition No.646 of 2005 before this Court for request of transfer of the further investigation from State C.I.D. to Central Bureau of Investigation (C.B.I.). That petition came to be allowed. Then the widow of the deceased filed Criminal Writ Petition No.1278 of 2007 before the Principal Bench at Mumbai for monitoring the further investigation handed over to C.B.I. During the pendency of said writ petition; second supplementary charge-sheet was filed against Raju Mali and Raju Sonawane in pending Sessions Case No.8 of 2006 by C.B.I., on 10th June 2008. Third supplementary charge-sheet came to be filed on 6th October 2008 wherein the present petitioners were added as accused. That supplementary charge-sheet was committed to the Court of Sessions. The petitioners had also filed intervention application in Criminal Writ Petition No.1278 of 2007. The said writ petition came to be disposed of by this Court on 18th July 2009. The petitioners had then moved an application for quashing supplementary charge-sheet against them by filing Criminal Application No.3679 of 2008 and also for stay to the Sessions trial against them. After hearing both the sides, the said application came to be dismissed on 15th October 2009. However, when prayer was made that the petitioners want to challenge the said order before the Hon'ble Apex Court, the earlier protection i.e. stay to the proceedings before the learned Sessions Judge was extended till 16th November 2009. Taking note of the stay, an order came to be passed by the learned Additional Sessions Judge, Jalgaon, who was dealing with the Sessions Case No.8 of 2006, regarding separation of trial in view of the fact that accused Raju Sonawane was under-trial prisoner since 2005. Prior to passing the said order of separation of the trial, the other accused, namely, Raju Mali had expired on 6th April 2007. Therefore, the trial proceeded only against accused No.2 Raju Sonawane for the offence punishable under Section 302 and 120-B of the Indian Penal Code. The charge was framed on 15th October 2009. In the meantime the petitioners had also filed an application before the learned Sessions Judge, Jalgaon on 19th December 2009 for discharge under Section 227 of the Code of Criminal Procedure. However, that application came to be rejected on 11th March 2010. The said order was challenged before this Court in Criminal Writ Petition, however, that was got withdrawn by the petitioners. The story does not end here. It appears that the widow of the deceased had moved an application to the Sessions Court for adding two more persons, namely, Gajendrasing Patil and Dr.

Ulhas Patil to be arrayed as accused Nos.5 and 6. When that application came to be allowed, those two added persons have preferred Criminal Revision Application Nos.165 of 2014 and 3749 of 2014. This Court had then stayed the sessions trial against those persons. It appears that the Criminal Revision Applications are still pending, which were preferred by those added accused persons. The trial Court proceeded only against original accused No.2 – Raju Sonawane and convicted him for the offence punishable under Section 302 and 120-B of the Indian Penal Code. He has been sentenced to suffer imprisonment for life. Said Raju Sonawane preferred appeal before this Court bearing Criminal Appeal No.75 of 2015. This Court (CORAM: SMT. VIBHA KANKANWADI AND ABHAY S. WAGHWASE, JJ.) has set aside the said conviction by Judgment and order dated 17th February 2023. Respondent No.1 herein had preferred Special Leave Petition before the Hon'ble Supreme Court, however, that stood dismissed by order dated 27th September 2023.

4. With the above chequered history, we have heard learned Advocate Mr. G.V. Wani for the petitioners, learned Advocate Mr. Patil for respondent No.1, learned APP Ms. Gour for respondent No.2 and learned Advocate Mr. Salunke for respondent No.3.

5. Learned Advocate for the petitioners submits that now the findings which have been given by this Court while deciding Criminal Appeal No.75 of 2015 are binding on all the parties. This Court has re-assessed the evidence and has come to the conclusion that the prosecution has failed to prove that said accused i.e. appellant therein, Raju Sonawane had committed murder of deceased V.G. Patil. It has also been held that the prosecution has failed to prove that accused Raju Sonawane had entered into any conspiracy with anybody. Under these circumstances, it would be futile exercise to ask the present petitioners to face the trial. The prosecution story is that the present petitioners had telephonically communicated to the deceased accused and the accused who has been acquitted by this Court, to commit murder of deceased V.G. Patil. In other words this Court has held that there is absolutely no evidence of contract killing and that the contract was given by the petitioners and therefore, the Writ Petition deserves to be allowed.

6. Per contra, learned Advocate Mr. A.J. Patil for respondent No.1, learned APP Ms Rashmi Gour for State and learned Advocate Mr. S.J. Salunke for respondent No.3 have strongly opposed the Writ Petition and submitted that plight of the widow of the deceased is required to be considered first. She was required to knock the doors of this Court each time. The acquittal of said Raju Sonawane cannot have bearing over the case against the present petitioners. The case against the petitioners can still be proved. This Court while rejecting the proceedings filed by the petitioners has observed that there is prima facie evidence against the present petitioners.

7. We have noted the chequered history. The first and foremost Judgment that is required to be taken note of, is the Judgment in Criminal Application No.3331 of

2005 with Criminal Application No.298 of 2006 decided by this Court on 3rd February 2006. The said proceedings were filed by the present petitioners for quashing the FIR as well as subsequent proceedings i.e. charge-sheet. This order was challenged by the State in Special Leave Petition No.2918 of 2006, but that was dismissed. That means even the FIR against the present petitioners or the said FIR, though the petitioner's name was not there in the FIR, still it was quashed and set aside as against the petitioners. Therefore, the question would be, whether there could have been subsequent investigation against the petitioners. We cannot sit over the order passed by this Court by Co-ordinate Bench or even learned Single Judge, when it was passed way back on 3rd February 2006. The fact then further reveals that this Court by order dated 15th October 2009 though rejected Criminal Application No.3679 of 2008, when prayer was made that the petitioners want to challenge the said order before the Hon'ble Apex Court, the earlier protection i.e. stay to the proceedings before the learned Sessions Judge was extended til 16th November 2009. However, on 12th March 2009 itself the trial Court had separated the trial of accused Raju Sonawane from the trial involving the petitioners.

8. At this stage, we are also taking note of the contents of the FIR which states that the deceased V. G. Patil, apart from being a lecturer in a college, was also active in politics. On 21st September 2005, in the early morning, he was proceeding in his Maruti Car bearing No. MH-19-R-05 to deliver lecture. Around 7.30 a.m. while he was proceeding towards Jalgaon-Dhule National Highway, according to the prosecution, his vehicle was intercepted by a motorcycle. Both, rider and pillion rider who were wearing helmet, pulled deceased out of the car and he was stabbed by means of knife i.e. after one of them holding him and the other one stabbing him. Informant Mahendra Mahajan, who was a passerby, rushed to the spot. However both accused persons fled after threatening him. People gathered at the spot. After hearing name of deceased from someone amongst the crowd, informant Mahendra rushed to the house of deceased and informed his wife, who too rushed to the spot and shifted deceased husband to hospital, where on examination he was declared as dead. Informant Mahendra set law into motion by lodging FIR.

9. Initially, the investigation was carried out by local crime branch, then it was transferred to C.I.D. and under the orders of this Court, investigation was then transferred to C.B.I. Charge-sheets were filed against four persons, as aforesaid, including the petitioners in the present Petition. It was under Section 302, 120-B of the Indian Penal Code and Section 3 punishable under Section 25 of the Arms Act. In the charge-sheet itself it was stated that accused Nos.3 and 4 i.e. present petitioners had political rivalry with the deceased and they had hatched conspiracy with accused Nos.1 and 2 and hired them to commit murder of deceased V.G. Patil. With this scenario, still the learned Additional Sessions Judge, Jalgaon, by said order dated 12th March 2009 separated the trial of the accused Raju Sonawane and it appears that, at that time the concerned Court had taken note of death of another accused Raju Mali in 2007. It appears that

the trial was conducted and ultimately came to be decided on 15th November 2014. The trial Court appears to have not taken efforts till the pronouncement of Judgment, to see as to whether as against the petitioners the proceedings are stayed or not. The stay that was granted by this Court was in respect of added parties i.e. accused Nos.5 and 6. Efforts ought to have been made to try the petitioners also along with said accused Raju Chintaman Sonawane. Then it is to be noted that though the case was committed to the Court of Sessions on 4th January 2010, the trial was over and resulted in conviction of said Raju Sonawane on 15th November 2014. He was held guilty for the offence under Sections 302, 120-B of the Indian Penal Code. In the Judgment and order dated 15th November 2014, the learned trial Judge says that the trial of the offence shall proceed against the present petitioners and they should remain present before the Court on 8th December 2014.

10. Raju Sonawane preferred Criminal Appeal No.75 of 2015 before this Court and this Court allowed the said Appeal vide Judgment and order dated 17th February 2023, to which one of the Member of this Division Bench (SMT. VIBHA KANKANWADI, J.) was party. Admittedly, the prosecution story as against the present petitioners is not that they had actually committed murder of deceased V.G. Patil. At the cost of repetition we would say that as per the prosecution story, actual murder was committed by accused Raju Mali and Raju Sonawane and the conspiracy was stated to be between them and the present petitioners and it is alleged that the present petitioners had hired those two assailants. This Court while deciding Criminal Appeal No.75 of 2015, had reassessed the entire evidence. This Court has disbelieved the informant PW-1 Mahendra Mahajan who claims to be an eye witness, PW-16 Rambhau Gobru Pawar, the second eye witness and PW-19 Jaywant Patil, the third eye witness. The observations in respect of the assessment of the evidence of these witnesses is certainly supporting the present petitioners. Definitely, they can make use of the observations of this Court regarding the assessment of the evidence of those witnesses. Therefore, this Court had come to the conclusion that the prosecution has not even proved that the murder was committed by Raju Mali and Raju Sonawane. This Court has also dealt with the conspiracy aspect alleged to have been hatched up amongst all four accused persons to carry out the murderous assault. In the Judgment dated 17th February 2023 passed in Criminal Appeal No.75 of 2015, this Court has made following observations:-

"35. By plethora of judgments, time and again the Hon'ble Apex Court has dealt with the essentials and ingredients for attracting the said charge. To establish criminal conspiracy, prosecution must adduce evidence to prove that:

- i. Accused agreed to do or cause to be done an act ;
- ii. Such an act was illegal or was done by illegal means within the meaning of penal code.
- iii. Irrespective of whether some overt act was done by one of the accused in

pursuance of the agreement.

36. Thus, in criminal conspiracy meeting of minds of two or more persons for doing illegal act is a sine qua non. To convict a person for conspiracy it is incumbent upon prosecution to show that accused persons together agreed to accomplish the unlawful object of conspiracy.

37. The above position is a residue of plethora of landmark judgments like Yash Pal Mittal v. State of Punjab ; (1977) 4 Supreme Court Cases 540, Kehar Singh and others v. State (Delhi Administration) ; (1988) 3 Supreme Court Cases 609, Firozuddin Basheeruddin and others v. State of Kerala ; (2001) 7 SCC 596, Yakub Abdul Razak Memon v. State of Maharashtra ; (2013) 13 Supreme Court Cases 1 and Mukesh and another v. State (NCT of Delhi) and others ; (2017) 6 Supreme Court Cases 1.

38. Bearing above legal requirements in mind, if the evidence in the case in hand is carefully gone into, it is seen that except gathering CDR, there is no credible and reliable evidence or even any circumstance to draw inference about accused persons hatching a conspiracy to commit the murder. There is no evidence to suggest that there was any meeting between them by any mode or say, meeting of their minds. When it was a specific case of prosecution regarding contract killing, it was expected of prosecution to demonstrate who had hired whom. There ought to have been evidence suggesting payment of blood money. But there is no evidence in that regard. Mere telephonic conversations are not sufficient to draw conclusion regarding plotting conspiracy. Resultantly, if evidence regarding contract killing is not on record, even the very motive for present appellant to commit murder vanishes in thin air. Consequently, in our opinion, when the essential requirements for attracting said charge being patently missing, it cannot be said that said charge is brought home."

11. Now, the position as it stands is that the Judgment and order passed in Criminal Appeal No.75 of 2015 dated 17th February 2023 by this Court, has been upheld by the Hon'ble Supreme Court in Special Leave Petition (Criminal) Diary No(s). 36761/2023, when C.B.I. has preferred that Petition. By order dated 27th September 2023, it has been held by the Hon'ble Supreme Court that:-

" Delay condoned.

We see no reason to entertain the Special Leave Petition.

Accordingly, the Special Leave Petition stands dismissed.

Pending application(s), if any, shall stand closed."

12. Thus, the above observations by this Court in Criminal Appeal No.75 of 2015 have attained finality and therefore, it would be unjust to ask the present petitioners to face the trial.

13. Learned Advocate for respondent Nos.1 and 3 have tried to submit that still the prosecution has an opportunity to prove the case/charge against the

petitioners. We do not agree with the same. There is no investigation after the decision of this Court on 17th February 2023 in Criminal Appeal No.75 of 2015, either on the point of actual murderous assault or on the point of alleged criminal conspiracy. Therefore, question of leading fresh evidence by the prosecution does not arise. The same witnesses cannot be called by the prosecution to say the same thing. If a trial takes place in absence of an accused, then such accused, after bringing back before the Court, has right to cross-examine the witnesses who have been examined in his absence. But the prosecution does not get any chance. Further in this particular case also, when said Raju Sonawane was facing the charge even for Section 120-B of the Indian Penal Code, the prosecution was expected to produce and adduce the entire evidence on that point and would not have withheld the same for any reason when that alleged conspiracy was between those persons with these petitioners and the charge has been said to have not been proved against one party to the conspiracy, then for other party the prosecution cannot get a fresh chance. Therefore, it would be unjust and it would be futile exercise to ask the present petitioners to face the trial. The case squarely falls within the parameters laid down in State of Haryana vs. Ch. Bhajan Lal and others, AIR 1992 SC 604, and therefore, this is a fit case where we should exercise our constitutional powers. Hence the following order:-

ORDER

(I) The Writ Petition stands allowed.

(II) The proceedings of Sessions Trial No.8 of 2006 pending before the learned Sessions Court, Jalgaon, stands quashed and aside as against petitioner No.1 – Damodhar Jagannath Lokhande and petitioner No.2 – Liladhar Purushottam Narkhede.

(III) Rule is made absolute in above terms.