
(2015) 10 BOM CK 0120

In the Bombay High Court

Case No : Criminal Writ Petition No. 112 of 2014

Dhananjai Kumar Pandey

APPELLANT

Vs

Central Bureau of Investigation/Anti Corruption Bureau

RESPONDENT

Date of Decision : 29-10-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 482
Penal Code, 1860 (IPC) — Section 120-B, 415, 420
Prevention of Corruption Act, 1988 — Section 13, 13(1)(d), 13(2)

Citation : (2015) 10 BOM CK 0120

Hon'ble Judges : F.M. Reis and K.L. Wadane, JJ.

Bench : Division Bench

Advocate : Rohit Bras De Sa, Advocate, for the Appellant; J. Vaz, Special Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

K.L. Wadane, J.—The present petition is filed by the petitioner seeking to quash and set aside the First Information Report bearing Crime No. RC/6(A)/2014/CBI/ACB/GOA dated 5.8.2014 registered by the CBI/ACB Goa under Section 420 r/w 120-B of Indian Penal Code and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

2. The brief facts of the case may be stated as follows :

"The petitioner and his wife Dr. Anju Pandey are the Scientists at the National Centre for Antarctic and Ocean Research (NCAOR) Goa, an Autonomous Research Institute under the Ministry of Earth Sciences (MOES), Government of India. On 05.8.2014, Mr. V. Ashok Kumar, Additional Superintendent of Police incharge Head of Branch CBI/ACB/Goa, lodged a complaint against the present petitioner and the other accused persons for the offence as referred above."

3. We have perused the contents of the First Information Report. In short the

allegations are as follows :

"(1) In the year 2002, the accused Nos. 1 to 4 entered into criminal conspiracy by abusing their official positions as public servants, recruited accused No. 5 Dr. Dhananjay Kumar Pandey (petitioner) as Scientist "C" in NCAOR, by grossly violating and flouting the laid down procedures and thereby shown undue favour to the petitioner who is reported to be closely associated/related with accused No. 1 Dr. P.C. Pandey.

(2) The appointment of the accused No. 5/present petitioner was done illegally without following the prescribed procedure and he was not possessing the required essential experience. The essential qualification and experience was a Master Degree with four years experience in teaching.

(3) On 7th and 8th October, 2002, the selection committee headed by the accused Nos. 1, 2 and 4, the present petitioner was selected by overlooking other suitable/eligible candidates who were having experience of more than four years whereas the present petitioner was not having the required essential experience as he was doing his Ph.D at U.K. at the relevant point of time."

4. Even as per the claim of the petitioner he was only having one year and nine months work experience as Junior Research Fellow with Department of Geo Physics with Banaras Hindu University, Varanasi, and even he has not produced the work experience certificate.

5. The selection committee overlooked this aspect with dishonest and fraudulent intention to select the present petitioner. The petitioner was further shown undue favour by extending his joining period by six months for enabling him to complete his Ph.D.

6. In the year 2004, the petitioner by abusing his official position in collusion with other accused persons had even got his wife D r. Anju Pandey, illegally recruited as Scientist on contract basis in NCAOR and finally got her posted as Scientist in the year 2012 without having prescribed educational qualifications and work experience.

7. The forged and bogus work experience certificate of Dr. Anju Pandey were also used during her selection process and inspite of that she was selected in NCAOR by showing undue favour to her. The conspiracy in this recruitment scam continued even after the retirement of Dr. P.C. Pandey/accused No. 1.

8. In the year 2005-2006, accused Nos. 2 to 4 and accused No. 7 by abusing their official positions, selected accused No. 6 Dr. N. Anil Kumar though he was not having prescribed/required qualification and work experience. It is further alleged that a different yardsticks were followed by the accused persons in short listing the candidates by second screening committee members comprising of accused No. 2 and accused No. 7.

9. It is further alleged that the several other candidates were also illegally posted

as Scientists in different grades in NCAOR during the above said period and selection of the Scientists at regular interval continuously from the period of 2002 onwards, leads to a recruitment scam in NCAOR Goa. Thus, according to the complainant the accused persons have committed the offence as referred above.

10. We have heard the arguments of Mr. Rohit Bras De Sa, learned counsel appearing for the petitioner and Mr. J. Vaz, learned Special Public Prosecutor appearing for the respondents and also perused the papers of the investigation.

11. During the course of the arguments, Mr. Rohit Bras De Sa, learned counsel has argued that the petitioner is well qualified Scientist. By referring the contents of the First Information Report, learned counsel has argued that even if the entire contents of the FIR are taken into consideration as true then also no offence is committed by the accused persons. Even prima facie there is no material on record to show that the petitioner has committed the offence under Prevention of Corruption Act or cheating.

12. As against this, Mr. J. Vaz, learned Special Public Prosecutor appearing for the respondents has argued that the First Information Report is based upon the preliminary inquiry conducted by the CBI and it is a big scam. The other accused persons have shown favour to the present petitioner at the time of his selection. The other accused persons in the aforesaid crime have not followed the procedure laid down for the purpose of selection of the candidates. The petitioner was not holding requisite work experience as well as qualification. Therefore, there is sufficient material on record to show that the petitioner has committed the very serious offence.

13. It is well settled law that the power of quashing a criminal proceeding/FIR should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. The court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. It is equally well settled that when the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

14. Keeping in mind the above well settled principles of law, we have examined the contents of the FIR. The petitioner is charged for the offence punishable under Section 420 read with 120-B of Indian Penal Code and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. Section 415 of Indian Penal Code reads as follows :

"415. Cheating.--Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the

person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

15. Looking to the ingredients of the offence of cheating, nowhere it is alleged in the FIR that the present petitioner has fraudulently or dishonestly induced the other person to deliver any property to any person or intentionally induced the person so deceived to do or omit to do anything. Therefore, if the entire contents of the FIR are taken to be true even then no ingredients of the offence of cheating are prima facie seen. The allegations against the present petitioner are that the other accused persons i.e. accused Nos. 1 to 4 have selected the present petitioner for the post of Scientist by giving go by to the procedure laid down. The entire contents of the FIR are relating to the alleged irregularities committed by the accused Nos. 1 to 4 while selecting the present petitioner/ accused No. 5 which do not constitute any offence under the Indian Penal Code or Prevention of Corruption Act. Section 13 of the Prevention of Corruption Act, 1988 reads as follows :

"13. Criminal misconduct by a public servant.--(1) A public servant is said to commit the offence of criminal misconduct.--

(a).....

(b).....

(c).....

(d) if he.--

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e).....

Explanation.--.....

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine."

16. In this connection, the Division Bench of this Court by judgment dated 27.11.2014 passed in Criminal Writ Petition No. 58 of 2014 wherein one of us (F.M. Reis, J.) was a member has observed at paras 4, 5 and 6 thus :

"4. Even otherwise, the ingredients of Section 13(1)(d) of the Act of 1988 are not attracted. The requirements to attract Section 13(1)(d) , is that the accused shall by corrupt or illegal means, obtain for himself or for any other person any valuable thing or pecuniary advantage; or by abusing his position as a public servant, obtain for himself or for any other person any valuable thing or pecuniary advantage; or while holding office as a public servant, obtain for any person any valuable thing or pecuniary advantage without any public interest. The phrase "valuable thing" refers to any thing or moveable property, whereas pecuniary advantage refers to monetary benefits. On bare perusal of the complaint, it does not disclose that the petitioner has in any other way for himself or for any other person secured any available thing or pecuniary advantage. The acts allegedly committed by petitioner do not attract provisions of Section 13(1)(d) . As such, the FIR registered alleging commission of offence under Section 13(1)(d) against petitioner deserves to be quashed. In this context, reference can be made to the judgment of the Supreme Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, . The Supreme Court in para 102 has laid down the principles of law, for exercise of inherent powers for quashing of the FIR. Para 102 reads thus:

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

5. In the matter of C.K. Jaffer Sharief Vs. State (Through CBI), , the appellant besides holding office as the Minister of Railways was the head of the two public sector undertakings in namely, RITES (Rail India Technical and Economic Services Ltd.) and IRCON (Indian Railway Construction Co. Ltd.). It is alleged that the Minister prevailed upon RITES and IRCON to take 4 employees on deputation to London so as to facilitate the Minister to take their assistance while he was undergoing medical treatment. It is alleged that the Minister in performing certain tasks connected with the duties as a Minister has committed an offence attracting provisions of Section 13(2) and 13(1)(d) of the Prevention of Corruption Act. The appellant/Minister presented proceedings seeking quashment of the FIR. While dealing with the issue, the Supreme Court has observed in paragraph 17 of the judgment:

".... It is difficult to visualise as to how in the light of the above facts, demonstrated by the materials revealed in the course of investigation, the appellant can be construed to have adopted corrupt or illegal means or to have abused his position as a public servant to obtain any valuable thing or pecuniary advantage either for himself or for any of the aforesaid four persons...."

".... If in the process, the rules or norms applicable were violated or the decision taken shows an extravagant display of redundancy it is the conduct and action of the appellant which may have been improper or contrary to departmental norms. But to say that the same was actuated by a dishonest intention to obtain an undue pecuniary advantage will not be correct. That dishonest intention is the gist of the offence under Section 13(1)(d) is implicit in the words used i.e. corrupt or illegal means and abuse of position as a public servant."

6. As has been observed above, in our opinion the complaint does not disclose allegations satisfying existence of ingredients of the offence under Section 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act. As such, the FIR to the extent of commission of the offence punishable under Section 13(1)(d) and Section 13(2) of the Protection of Corruption Act, stands quashed. It is needless to mention that if the Investigating Agency on the basis of material

brought before the agency and on the basis of allegations made by complainant in the complaint is satisfied as regards existence of grounds or circumstances necessitating further investigation or inquiry in respect of any other offence, it would be permissible for the Investigating Agency to investigate into the matter and the instant decision shall not be treated as bar for taking steps in accordance with law."

17. Taking note of the said observations and examining the FIR registered in the present case, we find that the ingredients of an offence under Section 13(1)(d) and Section 13(2) of the Prevention of Corruption Act, 1988 as against the petitioner herein are not at all satisfied. In such circumstances, if the entire contents of the FIR are accepted to be true then the ingredients of offence levelled against the present petitioner do not prima facie constitute an offence. But however, as observed in the said judgment, it is needless to mention that if the Investigating Agency on the basis of material produced before the Agency and on the basis of allegations made by the complainant in the complaint is satisfied as regards existence of grounds or circumstances necessitating further investigation or inquiry in respect of any of such offences, it would be permissible for the Investigating Agency to investigate into the matter and the instant decision shall not be treated as bar for taking steps in accordance with law.

18. Mr. Vaz, learned Special Public Prosecutor appearing for the respondent has relied upon the observations in the case of State of Madhya Pradesh Vs. Surendra Kori, in which it is observed at para 13 thus :

"13. The High Court in exercise of its powers under Section 482 CrPC does not function as a Court of Appeal or Revision. This Court has, in several judgments, held that the inherent jurisdiction under Section 482 CrPC, though wide, has to be used sparingly, carefully and with caution. The High Court, under Section 482 CrPC, 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 wide magnitude and cannot be seen in their true perspective without sufficient material. In M.M.T.C. Ltd. and Another Vs. Medchl Chemicals and Pharma (P) Ltd. and Another, , this Court held as follows:

"The law is well settled that the power of quashing criminal proceedings should be exercised very stringently and with circumspection. It is settled law that at this stage, the Court is not justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the complaint. The inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice....."

13.1. In State of Orissa and Another Vs. Saroj Kumar Sahoo, , this Court held as follows:

"Exercise of power under Section 482 of the Cr.P.C. in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the

High Court. It only saves the inherent power which the Court possessed before the enactment of the Cr.P.C. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Cr.P.C., (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "*quando lex aliquid alicui concedit, concedere videtur et id sine quo resipsae esse non potest*" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself....."

13.2. This Court, again, in *Eicher Tractors Ltd. v. Harihar Singh* (2006) 12 SCC 763, held as follows:

"When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge."

19. As against this, Mr. Rohit Bras De Sa, learned counsel appearing for the petitioner has relied upon the observations in the case of *State of Haryana and others Vs. Ch. Bhajan Lal and others*, wherein the Hon'ble Apex Court has given categories of the cases in which extraordinary power under Article 226 or the inherent powers under Section 482 of Criminal Procedure Code can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice.

"(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) Where the uncontroverted allegations made in the FIR or complaint and the

evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

20. We have gone through the facts and observations of the above cited authorities and the present case is squarely fall under the first category itself.

21. It is pertinent to note that the petitioner is still in service. His appointment has not been challenged by the unsuccessful candidates nor the Department had taken any action against the present petitioner to cancel his appointment. Therefore, on this background, it cannot be said that the procedure followed by accused Nos. 1 to 4 for the selection of the accused No. 5/present petitioner was improper. Further, it is alleged by the prosecution that subsequently the present petitioner has managed to appoint his wife Dr. Anju Pandey as a Scientist on contract basis in the year 2012 by adopting same modalities. Nowhere, it is contended that at the time of the selection of Dr. Anju Pandey, the present petitioner was a member of the selection committee.

22. If at all there were irregularities while selecting the present petitioner or his wife Dr. Anju Pandey to the particular post, the concerned Department can look into the matter and see whether really some concession was given to the present petitioner or his wife at the time of their selection. Even assuming for time being, the accused Nos. 1 to 4 have not followed the procedure and they have given some concession to the present petitioner even then such act could give rise only to initiate departmental inquiry but in any way no criminal liability can be fasten upon the accused in absence of a specific allegation in reference to the cheating or corruption. Therefore, the observations in the case of Bhajan Lal (supra) are more appropriately applicable to the facts of the present case. Allowing the subject FIR to continue on the basis of the averments made therein would lead

to injustice to the petitioner in the circumstances as we find that prima facie the complaint does not make out any offence under the provisions of Prevention of Corruption Act, 1988 as against the petitioner herein. Hence, we allow the writ petition and quash and set aside the FIR bearing Crime No. RC/6(A)/2014/CBI/ACB/GOA dated 05.08.2014 registered by the CBI/ACB Goa, against the petitioner only. Rule is made absolute in above terms. The petition stands disposed of accordingly.