(1996) 01 BOM CK 0046

In the Bombay High Court

Case No : Criminal Writ Petition No. 1145 of 1994

Padmakar Balkrishna Samant and others APPELLANT

Vs

State of Maharashtra and others RESPONDENT

Date of Decision : 23-01-1996

Acts Referred:

- Constitution of India, 1950 — Article 14, 226
- Criminal Procedure Code, 1973 (CrPC) — Section 195, 195(1), 340, 482
- Evidence Act, 1872 — Section 123
- Penal Code, 1860 (IPC) — Section 420
- Prevention of Corruption Act, 1988 — Section 5(2)

Citation : (1996) 3 BomCR 528 : (1996) CriLJ 2476

Hon'ble Judges : G R Majithia, J;D K Trivedi, J

Bench : Division Bench

Advocate : Vijay Pradhan and Rajiv Patil, for the Appellant; R.V. Govilkar, Govt. Pleader, C.J. Sawant, R.S. Desai and S.P. Kanuga, for the Respondent

Judgement

Majithia, J.—The petitioners, Padmakar Balkrishna Samant, Mrinal K. Gore, Kamal V. Desai and Jagannathrao S. Jadhav, have moved this Court for initiation of proceedings for the offence of perjury against Shri A. R. Antulay, in this Criminal Writ Petition.

2. The factual matrix is as under :

Writ Petition No. 1490 of 1981 and Writ Petition No. 1495 of 1981 were filed by Madhu R. Dandavate, and 5 others and by the present petitioners, respectively, against Shri A. R. Antulay and others. The gravamen of the complaint in these writ petitions was that Shri A. R. Antulay (hereinafter "the respondent") misused his position and power as the Chief Minister of Maharashtra, in collusion with Shri R. W. Adik, who was, at the relevant time, the Finance Minister and created fictitious trusts and appointed trustees who were his friends and relations. The respondent gave an impression that the trusts were created by the Government of Maharashtra and large amounts were secured from the Government as well as from several organisations. The six trusts so created were as under :-

1. Indira Gandhi Pratibha Pratishthan,

2. Konkan Unnati Mitra Mandal,

3. Mhasle Taluka Pratishthan,

4. Raigad Zilla Pratishthan,

5. Ambet Pratishthan,

6. Shrivardhan Matdar Sangh Pratishthan.

These trusts were registered as public charitable trusts under the Bombay Public Trusts Act, 1950 without following the procedure required under the provisions of the Act and the Rules and the trusts also secured exemption from payment of Income Tax in respect of the amounts donated to them. On registration of the trusts, a large amounts was donated by the Government of Maharashtra to Indira Gandhi Pratibha Pratishthan by giving an impression that the trust is created by the Government of Maharashtra. The respondent imposed his power and started receiving money for release of cement, increase of floor space index, allotment of Government lands, etc. towards donations to these trusts. These trusts were not the Government trusts but the private trusts set up by the respondent and were run by his family members. The allegations were denied by the respondent.

3. The present petitioners, in Writ Petition No. 1495 of 1981, prayed for the following declarations and directions :-

"(a) for the following declarations of this Hon''ble Court :

(i) that the 3rd respondent trust is without the authority of law, contrary to law and consequently bad in law;

(ii) that the grant of Rs. 2 crores to the 3rd Respondent trust made by the 1st Respondent and assented to by the State Legislature is mala fide, illegal, contrary to law, ultra vires Article 14 null and void and of no legal effect whatsoever; and further that Respondent Nos. 2 to 11 are bound in law to return and/or refund the same to the Consolidated Fund of the Respondent No. 1;

(iii) that the registration of the 3rd Respondent trust under the provisions of the Bombay Public Trust Act, 1950 by the 12th Respondent is based on the misrepresentations of the 2nd Respondent and is consequently illegal, contrary to law, null and void and of no legal effect whatsoever;

(iv) that the Income Tax exemption certificate granted by the 15th Respondent on 25th November, 1980 under S. 80-G of the Income Tax act, 1961, to the 3rd Respondent Trust is arbitrary, unreasonable, ultra vires Article 14, contrary to law, null and void and of no legal effect whatsoever;

(b) for a writ of certiorari or a writ direction or order in the nature of certiorari or any other appropriate writ direction or order under Article 226 of the constitution of India against the respondents calling for the records of (a) the said donation of Rs. 2 crores made by the 1st Respondent to the 3rd Respondent in two installments of Rs. 10 lakhs by cheque No. 666072 drawn on the Reserve Bank of India on 29th October, 1980 and Rs. 1,90,00,000/- made by cheque No. 925433 drawn on the Reserve Bank of India on 3rd August 1981; (b) the said Registration Certificate given to the 3rd Respondent Trust by the 12th Respondent on 25th November, 1980 under the provisions of the Bombay Public Trusts Act, 1950; (c) the said Income Tax exemption certificate granted by the 15th respondent to the 3rd respondent trust on 25th November, 1980 under S. 80-G of the Income Tax Act 1961 and after considering the legality and validity of the same, may quash and set aside the same;

(c) for a writ of mandamus or a writ direction or order in the nature of mandamus or any other appropriate writ, direction or order under Article 226 of the constitution of India against the Respondents; (a) direction and ordering Respondents 2 to 11 to forthwith return to the 1st respondent the sum of Rs. 2 crores purported to have been donated to the 3rd respondent trust on the fraudulent misrepresentation of the 2nd Respondent that the said Trust was an official trust of the State Government and that the 2nd Respondent headed the said trust in his official capacity as Chief Minister of the State with interest on the said sum of Rs. 2,00,00,000/- at the rate of 18% per annum or at such other rate as has been earned by Respondent No. 3, from 29-10-1980 on the sum of Rs. 10 lacs and from 3-8-1981 on the sum of Rs. 1,90,000/-, (b) directing and ordering Respondent Nos. 2 to 11 to forthwith return to the sugar Co-operative the sum of Rs. 2,75,00,000/- fraudulently collected by the said Respondents under coercion and/or misrepresentation that the said trust was an official trust of the State Government, that the 14th Respondent had consented to her name being associated with the said trust that the 2nd Respondent headed the 3rd Respondent trust in his official capacity as Chief Minister of the State with interest on the said sum of Rs. 2,75,00,000/- or such other amounts as may have been collected from the Sugar Co-operative including Respondent Nos. 16 to 18 at the rate of 18% per annum or at such other rate as has been earned by the Respondent No. 3 from the respective dates of collection of the said various amounts from the various sugar co-operatives, (bb) directing and ordering the Respondent No. 3 and its present trustees to return to the various donors the amounts received by it from the said donors with accrued interest thereon at the rate of 18% per annum or such other rates as this Hon''ble Court directs from the date of payment/collection of such amounts from the various donors, (c) directing the 12th respondent to forthwith withdraw and cancel the said Registration Certificate granted to the 3rd respondent trust under the provisions of the Bombay Public Trusts Act, 1950 and to take over all the assets including Bank balances and other investments of and made by the respondent No. 3 and supervise the repayment of the aforesaid various amounts with accrued interest within such period of time as this Hon''ble Court directs and report back to this Hon''ble Court compliance with the said orders and directions, (d) directing the 15th Respondents to forthwith withdraw and cancel the said Income Tax

Exemption Certificate granted by him to the 3rd Respondent Trust on 25th November, 1980 under S. 80-G of the Income Tax Act, 1961; (e) restraining Respondents Nos. 2 to 11 by themselves, their servants agents and officers from in any manner whatsoever collecting any donations from any person for the purpose of the 3rd Respondent Trust;

(d) that pending the hearing and final disposal of this petition Respondents 2 to 11 by themselves or by their agents, servants and officers be restrained by an order and injunction of this Hon''ble Court from in any manner whatsoever collecting any donations from any person for the purpose of the 3rd Respondent trust and further that pending the hearing and final disposal of this petition Respondents 2 to 11 be restrained by an order and injunction of this Hon''ble Court withdrawing and/or spending and/or utilising any money whatsoever from the funds of the 3rd Respondent trust in any manner whatsoever under the provisions of clauses 14 to 17 of the said Trust Deed (Exhibit ''C'') hereto."

4. Writ petitions No. 1490 of 1981 and 1495 of 1991 were disposed of by a Bench of this Court by judgment and order dated March 17, 1994 observing thus :-

"In our judgment, it is necessary to give direction to the Charity Commissioner to undertake the exercise as set out hereinabove. The Charity Commissioner shall give a public notice and thereafter hold the enquiry to determine whether any of the six trusts were properly registered or not. The Charity Commissioner will permit all the parties in the present proceedings as well as any responsible person who will appear before the Charity Commissioner in pursuance of public notice to lead evidence, both oral and documentary. The Charity Commissioner shall, after marshalling the entire evidence, record finding as to whether the six trusts or any of the six trusts are required to be registered. In case the Charity Commissioner comes to the conclusion that the trust does not exist or not a public trust, then the registration of the trust carried out earlier should be immediately cancelled. In case the Charity Commissioner comes to the conclusion that the trust exists and such trust is public trust, then the Charity Commissioner should further examine whether any of the property collected is the property of the said trust. It hardly requires to be stated that enquiry of the Charity Commissioner shall be one like one in a suit and the Charity Commissioner shall exercise all the powers conferred under the CPC including summoning of the witnesses and calling for the documents.

It is also necessary to direct that the Charity Commissioner shall attend to the matter personally and complete the enquiry by end of December, 1994. The Charity Commissioner will personally undertake the enquiry and not leave it to Deputy or Additional Charity Commissioner. In case the Charity Commissioner is unable to hold the enquiry because of busy schedule or for any other reason, then the Government is directed to appoint an experienced judicial officer as the officer on special duty subject to the consent of the Chief Justice of High Court, Bombay to hold the enquiry on payment of remuneration. The officer on special duty so appointed will have all the powers conferred upon the Charity Commissioner while holding the enquiry. The Officer on special duty will also have to conclude the enquiry by end of December, 1994. In case officer on special duty is appointed by the Government, then the Government shall provide the necessary infrastructure including the office space for holding the enquiry."

5. The two sets of writ petitioners challenged the above order in SLP (Civil) No. 7984 of 1994 and SLP (Civil) No. 8773 of 1994, respectively in the Apex Court. These Special Leave Petitions were disposed of by order dated May 9, 1994 observing thus :-

"One of the contentions raised in the present petitions is that the impugned order dated 17-3-1994 was passed by the Division Bench of the Bombay High Court without hearing arguments from Counsel for the petitioner. When those matters were called on for hearing we told the Learned Counsel for the Petitioner that if this averment is correct the proper thing to do would be to have the High court to recall the order or review the same on that ground. The counsel for the petitioner thereupon stated that he does not press that contention.

In the year 1980, six trusts were created by the then Chief Minister of Bombay and they were registered under S. 20 of the Bombay Public Trusts act, 1950 (hereinafter called the Act) by the Deputy Charity Commissioner, Bombay. The petitioners contend that these trusts were registered without holding a proper enquiry as required by S. 19 of the Act. If the trusts were registered without following the procedure laid down by S. 19 the remedy was to file an appeal under S. 70 of the Act. That remedy was not persued. The other alternative was to move the Charity Commissioner under S. 70-A of the Act with a request to call for and examine the record and proceedings of the enquiry held by the Deputy Charity Commissioner and satisfy himself as to the correctness or otherwise of the finding or order recorded by him. Instead of taking recourse to Ss. 70/70A the petitioners herein and others moved the High Court of Bombay by way of a writ petition for cancelling the registration of the aforesaid trusts. Any person aggrieved by the decisions of the Charity Commissioner recorded under Ss. 70 or 70A can question that decision under S. 72 of the Act. This being the scheme of the Act, the High Court was justified in concluding that the proper course was to direct the Charity Commissioner to exercise power under S. 70A with a view to ascertaining whether or not the trusts were registered after due and proper enquiry under S. 19 of the Act. We, therefore, do not see any reason to interfere with this part of the order of the High Court.

The Charity Commissioner while deciding the question regarding the registration of these six trusts will follow the procedure laid down under the Act and where permissible the procedure under the CPC in regard to summoning of witnesses, calling for documents, etc. The enquiry will be held strictly in accordance with the provisions of the Act so that its outcome does not become vulnerable on account of the failure to follow the laid down procedure.

The High court has rightly pointed out that as far possible the Charity Commissioner should himself personally enquire into the matter and not leave it to a subordinate official, but if for some reason he is unable to hold the enquiry personally, there can be no objection to entrust the enquiry to a Joint Charity Commissioner who is or has been a District Judge or a Judge of the City Civil Court, Bombay. It would not be advisable to ask the Government to appoint another officer on special duty because that would be outside the purview of the Act and may make the enquiry vulnerable.

Lastly, counsel for the petitioner argued, rather vehemently, that after creating the trusts in question the ex-Chief Minister had donated a large amount from the Government treasury to the Indira Gandhi Pratibha Pratishthan giving an impression that the trust was a Government trust whereas in fact it was not so. They contended that this would not be matter falling within the purview of the Charity Commissioner and ought to have been answered by the High Court. Whether the trust is of the nature averred by the petitioner would depend on the outcome of the enquiry to be made by the Charity Commissioner. It would, therefore, be premature to say anything in that behalf at this stage. We would, however, say that if any matter which was the subject matter of the writ petition is found to be outside the scope of the enquiry to be held by the Charity Commissioner fund not dealt with by him on that account the petitioner would be at liberty to move the High court for reviving the writ petition and if the High Court sees substance in it, it may permit the same. With these observations we dispose of both the petitions."

The Petitioners in Writ Petition No. 1490 of 1981 filed Review Petition No. 931 of 1994 in SLP (Civil) No. 7924 of 1994. The same was dismissed on September 20, 1994 observing thus :-

"Delay condoned.

We have perused the petition for review and the relevant documents. In our opinion, no case for review is made out. Hence, the Review Petition is dismissed."

6. The first petition in Writ Petition No. 1495 of 1981 filed a complaint against the respondent charging him with having committed offences under Ss. 161, 384, 420 of the Indian Penal Code and S. 5(1)(a), S. 5(1)(c), and S. 5(1)(c) of the Prevention of Corruption Act, 1947. Another complaint, on identical allegations, was registered as Special Case No. 24 of 1982. These complaints were pending before a Special court in Bombay. Under the order of the Supreme Court in Criminal Appeal No. 356 of 1983 dated February 16, 1984, these cases were withdrawn from the Court of the Special Judge and were transferred on the files of this court. These complaints were entrusted to D. N. Mehta, J. for decision. The following charges were framed against the respondent :-

"FIRSTLY -

That you on or about the 29th day of October, 1980 at Bombay, being a public servant, to wit, the Chief Minister of the State of Maharashtra, by corrupt and/or illegal means and/or by abusing your office as the Chief Minister of Maharashtra did obtain a sum of Rs. 10 lacs by means of a cheque from the Exchequer of the Maharashtra State for yourself and/or the Indira Gandhi Pratibha Pratishthan of which you were the Chairman and you thereby committed an offence punishable under S. 5(1)(d) read with S. 5(2) of the Prevention of Corruption Act, 1947, and within my cognizance;

SECONDLY -

That, you on or about the 3rd day of August, 1981 at Bombay being a Public Servant, to wit, the Chief Minister of the State of Maharashtra, by corrupt and/or illegal means and/or by abusing your office as the Chief Minister of Maharashtra did obtain for yourself and/or the Indira Gandhi Pratibha Pratishthan of which you were the Chairman an amount of Rs. 1 crore and 90 lacs by means of a cheque from the Exchequer of the Maharashtra State and you thereby committed an offence punishable under S. 5(1)(d) read with S. 5(2) of the Prevention of Corruption Act, 1947, and within my cognizance;

THIRDLY -

That you Abdul Rehman Antulay during your tenure as Chief Minister, fraudulently and dishonestly induced the Cabinet, the Maharashtra legislative Assembly and the Maharashtra Legislative Council to deliver to the Indira Gandhi Pratibha Pratishthan a sum of Rs. 10 lacs and Rs. One crore and ninety lacs and that you thereby cheated the Cabinet of the Government of Maharashtra of which you were the Chief Minister, as also the Legislative Assembly and the Legislative council, and you thereby committed an offence punishable u/S. 420 of the Indian Penal code and within my cognizance."

On the basis of the charges and the evidence led by the prosecution, the learned Judge formulated the following issued for adjudication :-

1. Whether the Accused abused his position as the Chief Minister of Maharashtra and thereby obtained from the Cabinet of the Maharashtra Government by corrupt and/or illegal means i.e. by misrepresenting to the Cabinet of the Maharashtra Government that the Indira Gandhi Pratibha Pratishthan was a Government sponsored Trust, a sum of Rs. 2 crores as grant-in-aid ?

2. Whether the Accused abused his position the Chief Minister of Maharashtra and thereby obtained from the Maharashtra Legislative Assembly by corrupt and/ or illegal means i.e. by misrepresenting to the Legislative Assembly of Maharashtra that the Indira Gandhi Pratibha Pratishthan was a Government Sponsored Trust, a sum of Rs. 2 crores as grant-in-aid and

3. Whether the accused abused his position as the Chief Minister of Maharashtra and thereby obtained from the Maharashtra Legislative Council by corrupt and/or illegal means i.e. by misrepresenting to the Legislative Council of Maharashtra that the Indira Gandhi Pratibha Pratishthan was a Government sponsored trust, a

sum of Rs. 2 crores as grant-in-aid ?"

The learned Judge answered these issues in the negative. In the result, he hold that the prosecution had failed to bring home the first charge u/S. 5(1)(d) and the second charge under S. 5(1)(d) of the Prevention of Corruption act and that since the main charge under S. 5(1)(d) of the Prevention of Corruption Act had failed, the third charge, which was an ancillary charge under S. 420 of the Indian Penal Code, also failed. The respondent was accordingly acquitted.

7. The petitioners have prayed for initiating proceedings for the offence of perjury under the provisions of Ss. 482, 340 read with S. 195(1)(b) of the Code of Criminal Procedure on the ground that the respondent in his affidavit dated July 6, 1988 (stated as Sept. 6, 1988 in writ petition) and February 13, 1989 filed in Writ Petition No. 1495 of 1981 deliberately made false statements in respect of cabinet decision dated October 6, 1980 for forming Indira Gandhi Pratibha Pratishthan. The Petitioners alleged that from the documents now produced on the file of this Writ Petition, it will be clear that the respondent filed false and misleading affidavits, making him liable for the offence of perjury and for prosecution as prayed for.

8. The Writ Petition was placed before a Division Bench of this Court (Appellate Side) and the Bench, on April 4, 1995, passed the following order :-

"This petition in substance seeks to initiate the proceedings against respondent No. 2 Shri A. R. Antulay for the alleged offence of perjury committed by him. The petition clearly shows that the alleged offence was committed in relation to proceedings which were heard by the Division Bench of this Court dealing with writ petitions on the Original Side.

In view of the provisions of S. 340 of the Code of Criminal Procedure, we are of the clear view that such an application will have to go before the Court in relation to the proceedings before which the offence is alleged to have been committed. If the application can lie under S. 340 of the code of Criminal Procedure and when the provisions of the said section clearly indicate the Court to which such application will lie, we are of the clear opinion that merely because the petition is also preferred under Art. 226 of the Constitution of India and u/S. 482, Cr.P.C. this Bench will not have jurisdiction to deal with the matter.

Accordingly the matter is directed to be placed before appropriate Bench. Liberty to mention the matter.

On August 4, 1995, the Hon''ble Chief Justice of this Court directed that this petition be placed before the Division Bench hearing contempt matters. The petition was so placed but was not heard and disposed of and ultimately it was placed for disposal before this Bench.

9. Before we delve into the contentions raised by the learned Counsel for the petitioners, it will be relevant to reproduce the conclusions arrived at but the Charity Commissioner, Maharashtra State, Bombay, pursuant to the directions

given by this Court in the Writ Petitions referred supra and they are as under :-

"To sum up, this Judgment I come to the conclusion that all six Trusts exist and they are public trusts. However, it is necessary to give direction to the present trustees to file the Change Reports under S. 22 of the Act for bringing the Trust property on Sch. I of each and every trust. Objectors are at liberty to move the Hon''ble High Court to ascertain the legality of the Constitutional issues. Till the further decision of the Hon''ble High Court it can be said that the property acquired by these Trusts after registration including grant from Govt. of Maharashtra and plot allotted to Kokan Unnati Mitra Mandal is the property of those respective trusts ....".

The judgment rendered by this Court in Writ Petition Nos. 1490 of 1981 and 1495 of 1981 was affirmed by the Apex Court in SLP (Civil) No. 7924 of 1994 and SLP (Civil) No. 8773 of 1994. The Judgment of this Court merged in the judgment of the Apex Court and it stood implemented. The Petitioners did not raise the plea now raised in this petition, which was available to them, either before the Bench of this Court hearing the Writ Petitions or before the Apex Court.

10. Learned Counsel for the petitioners submitted that in the affidavits filed by the respondent in reply to the allegations made in Writ Petition No. 1495 of 1981, the respondent has stated that Pratibha Pratishthan, formerly known as Indira Gandhi Pratibha Pratishthan, was at no time, and is not, a Government trust. The respondent did not create personal trusts and he did not usurp the powers of management of the trusts. The documents now placed on record conclusively establish that these averments were false and knowingly made so. The learned counsel also referred to the judgment passed by a Judge of this Court while disposing of the plea of privilege claimed by the official-respondents under S. 123 of the Evidence Act. On these premises, the learned Counsel submits that the prosecution be ordered as prayed for.

11. We find no merit in the submissions made. This Court decided Writ Petition Nos. 1490 of 1981 and 1495 of 1981 after taking due note of the pleadings of the parties. The petitioners did not urge before the Court that the defence taken by the respondent was false. Keeping in view the rival contentions of the parties, the Court issued the directions to the Charity Commissioner referred supra, and the Charity Commissioner after examining the contentions of the parties and holding detailed enquiry, held that the six trusts were public trusts and these were validly registered under S. 20 of the Bombay Public Trusts Act, 1950. He also issued directions to the trustees to file change report as envisaged by S. 22 of the Act. The allegations of the petitioners remained unsubstantiated even on elaborate enquiry. In the criminal complaint, where charges were framed on the same set of plea as was taken in the writ petitions, the charges remained unsubstantiated.

12. Section 195 of the Criminal Procedure Code (for short "the Code") describes the offences in respect of which a complaint is necessary and S. 340 of the Code

prescribes the procedure for making a complaint by a Court. The principle underlying S. 195 is plainly this. Where an act amounts to the offence of contempt of the lawful authority of public servants (Sections 172 to 188, I.P.C.), or to an offence against public justice, such as giving false evidence (Section 193, I.P.C.) or to an offence relating to documents actually used in a Court (Section 471, I.P.C.), private prosecutions are barred absolutely and only the Court in relation to which the offence was committed can initiate proceedings. Sections 340 and 195 are intended really to prevent indiscriminate prosecution under the various sections mentioned therein.

13. The petitioners'' contention is that the respondent perjured himself in judicial proceedings and filed false affidavits. The principal proceedings in respect of which perjury is stated to have been committed was finalised on March 17, 1994. A prayer for prosecution for perjury ought to be made in the principal proceeding in respect of which the perjury is stated to have been committed while it was pending. The Court which is seized of the principal proceedings has to be informed that a party before it has committed perjury and action for the same be initiated. The Bench decided the lis on the basis of the pleadings before it and no plea was raised that the defence was false and taken on the basis of the non-genuine documents. The decision has attained finality and reopening it will amount to travesty of justice.

14. For the reasons stated above, this petition is devoid of any merits and is dismissed.

15. Petition dismissed.

