

(1994) 07 BOM CK 0089

In the Bombay High Court

Case No : Criminal W.P. No's. 107 and 108 of 1990

Pradeep Phalak and Another

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 21-07-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 156(1), 482
Penal Code, 1860 (IPC) — Section 34, 409, 467, 471

Citation : (1995) 2 BomCR 341 : (1995) 97 BOMLR 926

Hon'ble Judges : A.D. Mane, J

Bench : Single Bench

Advocate : A.G. Godhamgaonkar, for the Appellant; P.B. Varale, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

A.D. Mane, J.—These two writ petitions arise out of the charge-sheet filed by the Police in Two different Crimes being Crimes No. 36/82/I and 36/87/2 registered with the Mahur Police Station for commission of the offences punishable under sections 467, 471, 409 read with section 34 of the Indian Penal Code. In these writ petitions the petitioners seek to invoke the inherent powers of this Court for quashing the charge-sheet filed by the police for the aforesaid offences in the Court of Judicial Magistrate, First Class, Kinwant, sofar as the petitioners are concerned. There involves a common question of law and the facts and therefore, these writ petitions filed by common petitioners are disposed of by the common judgment.

2. In nutshell the facts as averred by the petitioners are these:

There is a public Trust known as "Shri Jagadamba Shikshan Sanstha" at Mahur. It runs a high school known as "Jagadamba High School". There is a students hostel known as "Shri Gurumurthi Dattaram Mahant Bharati B.C. Hostel". The institute is managed by the Managing Committee consisting off all members

inclusive of the respondent No. 2 - original complainant. Respondent No. 2 is the President of the said Institution. Respondent No. 3 at the relevant time was appointed as Secretary of the Institution. In the complaint filed by the respondent No. 2 the President of the institution it has been averred that the school, college and the Hostel run by the institution are distinct and separate in financial and other matters. A separate record about the school, hostel and the college are maintained. In the complaint dated 4-5-1987 Exhibit A annexed to the petition it has been stated that the respondent No. 3 as the Secretary was entrusted with the management of the hostel as well as High School during the year 1983-84 under the resolution passed by the Managing Committee. The respondent No. 3 was looking after the day to day management of the hostel as well as High School during the relevant years. He dealt with the accounts of these institutions till 13-6-1984. On 24-6-1984 the authority from the respondent No. 3 was withdrawn and one Shri Anandrao Populwar was entrusted with the authority to manage these institutions. Shri Populwar worked till November, 1984 and thereafter showed his inability to work in place of the respondent No. 3. The respondent No. 3 was again entrusted with the said job and he worked for the year 1984-85. It has been alleged that the account books for the years 1983-84 and 1984-85 were misplaced by the respondent No. 3 and his successor. Not only that but on 22-9-1984 the respondent No. 3 resigned as Secretary and in his place one Shri Digamber Shivanna was appointed as Secretary. Shri Shivanna checked the record of the school and the hostel as well as the trust and it was found that the respondent No. 3 has mis-appropriated certain amount. It has been specifically stated in the complaint that the respondent No. 3 mis-appropriated Rs. 24,000/- in the year 1983-84 and Rs. 36,853/- in the year 1984-85. In this context it was stated that the Managing Committee passed certain resolutions to hold inquiry into the said mis-appropriation and the complainant in his complaint gave the details of the amounts which came to be mis-appropriated during the years 1983-84 and 1984-85. After giving the details of the mis-appropriated amounts the complainant charged the respondent No. 3 for mis-appropriation of the amount of the institution. On receiving that complaint, it appears that the aforesaid crimes were registered for two different years.

3. In the charge-sheet that has been submitted on 12-6-1988 after investigation into the offences alleged in the first information report lodged by the respondent No. 2 - President, the names of the present petitioners have been arrayed as the accused Nos. 3 and 4 alongwith the respondent No. 3 - Secretary as accused, besides, Clerk Shri Shiram Bhaode. In the charge-sheet it has been alleged that these petitioners to whom the audit work was entrusted prepared certain vouchers falsely with a view to suppress the mis-appropriation and therefore, it was alleged that these petitioners during the course of their audit work helped, aided or abetted the commission of the offences with which the respondent No. 3 - Secretary was charged. It may be stated that no return has been filed on behalf of the respondents.

4. Mr. Godhamgaonkar, learned Counsel for the petitioners, in the first place, submitted that the allegations in the first information report lodged by the respondent No. 2 - President on the basis of which the aforesaid two crimes were registered with the Mahur Police Station did not make out the alleged offences against the petitioners. It has been submitted that this is a clear case where the police officer who investigated into the crime can be said to have transgressed the circumscribed limits and improperly and illegally exercised his investigating powers in breach of the provisions contained in the Code of Criminal Procedure and as such, caused serious prejudice to the personal liberty of the petitioners _____ on these two grounds alone this Court would be justified to invoke the inherent powers for quashing the charge-sheet so far as it was filed against the petitioners.

5. There appears substance in the arguments of Mr. Godhamgaonkar, learned Counsel appearing for the petitioners. In the recent decision of the Supreme Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, , the Supreme Court set-out certain categories of the cases in which the High Court may in exercise of its powers either under Article 226 of the Constitution of India or u/s 482 of the Code of Criminal Procedure, interfere with the proceedings relating to the cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of justice, with the caution that such powers should be exercised sparingly and that to in the rarest of rare cases. To quote some of those cases, they are :

(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 u/s 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 F.I.R., or complaint and the evidence collected in support of the same do not disclose the commission of any offence or make out a case against the accused.

(4) Where the allegations in the F.I.R. 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 Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the F.I.R. 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...."

In the instant case there is no quarrel that the allegations in the first information

report filed by the respondent No. 2 the President of the Institution no accusation is made against either of the petitioners of their helping the respondent No. 3 Secretary in making false record so as to suppress the defalcation committed during the relevant period. It cannot be forgotten that the First Information Report came to be lodged by the respondent No. 2 only after due inquiry and it was against the respondent No. 3 alone. There is nothing in the charge-sheet, on the basis of which an inference can be drawn that during the investigation the police could discover such other materials to involve the petitioners for aiding or abetting the commission of the aforesaid alleged offences. By no stretch of imagination it can be said that either of the petitioners could have aided or abetted the commission of the offences, when they were entrusted with the work of audit of the institution. The offences alleged have taken place much earlier to the date of the audit. Assuming that some vouchers were prepared during the work of audit by the respondent No. 3, it cannot be said that any of the petitioners were party to that act of the respondent No. 3 for preparation of the vouchers. It is, therefore, evident from the allegations in the first information report as well as the charge-sheet filed by the police that no cognizable offence could be disclosed against any of the petitioners. In other words, the present case is one which falls under the category of cases mentioned at serial No. 3 as aforesaid. In that view of the matter, the petitioners were justified in approaching this Court for exercising the extra-ordinary or inherent powers for quashing the charge-sheet filed by the police against them.

6. There is also merit in the submission of Mr. Godhamgaonkar, learned Counsel for the petitioners, that in the absence of any material to show that any of the petitioners aided or abetted the commission of offence of defalcation of the amounts of the institution by the respondent No. 3, arraying the petitioners as accused with the respondent No. 3 in the charge-sheet is indeed an exercise of powers by the police in breach of the statutory provisions causing serious prejudice to the personal liberty and property of the petitioners and as such the petitioners would also be entitled for quashing the charge-sheet on the ground that the police transgressed the circumscribed limits and improperly and illegally exercised the investigatory powers in breach of section 156(1) of the Code of Criminal Procedure. This argument, in my opinion, is well founded in the facts and circumstances of the case. In this context, emphasis may be laid on the observations of Their Lordships in the case cited supra in para 62 of the report as follows :

"The investigation of a cognizable offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code and the Courts are not justified in obligating the track of investigation when the investigation agencies are well within their legal bounds as aforementioned. Indeed a noticeable feature of the scheme under Chapter XIV of the Code is that a Magistrate is kept in the picture at all stages of the police investigation but he

is not authorised to interfere with the actual investigation or to direct the police how that investigation is to be conducted. But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provisions causing serious prejudice to the personal liberty and also property of a citizen, then the Court on being approached by the person aggrieved for the redress of any grievance has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of our Constitution. Needs no emphasis that no one can demand absolute immunity even if he is wrong and claim unquestionable right and unlimited powers exercisable up to unfathomable cosmos. Any recognition of such power will be tantamount to recognition of "Divine Power" which no authority on earth can enjoy."

7. In the result, the writ petitions are allowed. Rule is made absolute. It is hereby directed that the names of the petitioners be deleted as accused persons from the array of accused in the charge-sheet submitted by the police in Crime Nos. 36/87/1 and 36/87/2. The trial Magistrate is directed to proceed with the case against other remaining accused.