

(2005) 03 GUJ CK 0043
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No's. 4584 and 4643 of 1997 with Special Criminal Application No. 1040 of 1997 with Criminal Miscellaneous Application No. 4066 of 1998 in Special Criminal Application No. 1040 of 1997 with Criminal Miscellaneous Applic

Pratapbhai Punjabhai Asari	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 17-03-2005

Acts Referred:

Bombay Police Act, 1951 — Section 161(1)
Bombay Prohibition Act, 1949 — Section 116(B), 65, 65(A)(E), 66(B)
Criminal Procedure Code, 1973 (CrPC) — Section 197, 482
Penal Code, 1860 (IPC) — Section 114, 166, 167, 176, 193

Citation : (2005) 03 GUJ CK 0043

Hon'ble Judges : C.K. Buch, J

Bench : Single Bench

Advocate : S.V. Raju and S. Raju, for the Appellant; A.J. Desai, Id. APP, for the Respondent

Judgement

C.K. Buch, J.—Heard Ms. S. Raju, learned counsel appearing on behalf of Mr. S.V. Raju and Mr. A.J. Desai, Id. APP, appearing on behalf of the respondent-State.

2. By invoking jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, the petitioner has approached this Court for quashing the FIR/complaint being C.R. No.I-144 of 1997, registered with Dahod Police Town Station on 13th August, 1997, for the offences punishable under Sections 166, 167, 193, 342, 465 and 114 of the Indian Penal Code. The orig. complainant is one Mr. Manoj Agarwal, District Superintendent of Police (DSP), Panchmahalts District. The petitioner on the day of the complaint was serving with the State of Gujarat through Police Department and he was Deputy Superintendent of Police (Dy.S.P.). Prior to his posting in the Panchmahals District, he has served in various parts of the State. It is submitted that the petitioner has been implicated in the crime in question though according to the petitioner, he is not involved in

the alleged offence. In paras:3 to 7 of the petition, the petitioner has described the incident and other details leading to filing of the complaint in question by the Deputy Superintendent of Police. In the same way, the State of Gujarat has also described the details as to why the complaint in question has been filed and the application was filed for vacating the interim protection granted to the petitioner. For the sake of brevity and convenience, I would like to reproduce the facts stated by the respondent-State in the application in brief. The gist of the complaint is that the present petitioner is one of the prime accused, who has concocted story of involvement of one Sudhirkumar Gupta in the offence punishable under the Bombay Prohibition Act and got prepared the set of documents to justify the creation of false case against the said Sudhirkumar Gupta. The allegation against the present petitioner is that relations of one Motisinh Mali being cordial with the Police Department, this false case has been created and Sudhirkumar Gupta was compelled to vacate a rented premises. The cause of animosity between this Motisinh Mali and Sudhir Gupta is also indirectly emerging from record. But that detail being not relevant so far as present petition is concerned, the Court is not inclined to discuss the same in detail. As per the complainant, the said Motisinh Mali and the present petitioner having good relation, at the instance of Mr. Mali, the present petitioner created a false case against the said Sudhir Gupta for the offence punishable under Sections 65, 65(A)(E) and 116(B) of the Bombay Prohibition Act and the State mainly relied and, therefore, on the record prepared by the police officials an offence came to be registered vide Prohibition C.R. No.I-266 of 1997 including panchnama drawn on or about 6th May, 1997. Over and above assailing the story put forward before the prosecution in the complaint, on number of grounds mentioned in the memo of the petition, Ms. Raju, Id.counsel appearing for the petitioner, has mainly argued that in view of the scheme of Section 161(1) of the Bombay Police Act, the case against the present petitioner is not sustainable being hopelessly time barred and no Court is competent to take cognizance on a time barred complaint. When the aforesaid matter was listed for hearing being Criminal Misc. Application No.4067 of 1998, Ms. Raju has pointed out the details and has argued that in the present case the interim protection granted should not be vacated. In response thereof, Mr. Desai, Id. APP, had agreed that this petition can be heard on merit and the same can be disposed of without dealing with the application filed by the State in detail and without passing any formal orders because if the State succeeds, then automatically the interim relief becomes infructuous. So the Court has heard the arguments of the Id. counsel appearing for the parties in detail. While concentrating her arguments, Ms. Raju has placed reliance on the decision in the case of Virupaxappa Veerappa Kadampur Vs. The State of Mysore, and the subsequent decision in the case of K.K. Patel and Another Vs. State of Gujarat and Another,

3. Obviously, both the decisions are in reference to the police officials and the allegation against Mr. K.K. Patel in the cited decision of K.K. Patel (supra), was just similar to the allegations which are made against the present petitioner. The

allegation against Mr. K.K. Patel in the cited decision was that he had committed offence punishable under Sections 166, 167, 176, 201, 219, 220, 342 and 417 of the Indian Penal Code. Referring to the relevant para from both the decisions, Ms. Raju has argued that the time limit of initiation of proceedings, if any, is prescribed in Section 161(1) of the Bombay Police Act. Undisputedly, the alleged acts that were done by the petitioner were in the capacity of a police officer and while performing his duty in the relevant area. Ms. Raju has further argued that the such prosecution could have been initiated in the prescribed time limit i.e. within a period of one year from the date of alleged prosecution. She has also stated that the complainant was very well aware about all the details at least prior to 24th or 25th July, 1996, because the D.S.P., Panchmahals at Godhra, had sent a detailed report to his superior vide letter No.GNR/RB/170/96 dated 26th July, 1996, which was addressed to Special Inspector General, Vadodara Range, Vadodara, wherein he has also expressed a positive opinion that the present petitioner is the person responsible in creating a false case against Mr. Sudhir Gupta. How false documents have been created is also shown in the conclusive part of the report. Even then, the complaint against the accused for the reasons best known to the complainant has been filed on 13th August, 1997 i.e. after more than one year from the date of discharge of the report to the higher officer. I would like to refer to the relevant part from the decision of K.K. Patel (supra), referred by Ms. Raju, at the time of hearing of this petition, which is as under :

"14. The sub-section imposed a ban on the court from entertaining a prosecution for an offence falling within the purview of the sub-section and was committed by a police officer, if the prosecution was instituted more than one year after the date of the act complained of. The only exception to the said ban is, if the complainant gets sanction from the State Government to prosecute the police officer the aforesaid period of one year would get enlarged to two years. Offences falling within the purview of the sub-section relate to those acts done "under the colour or in excess of any duty or authority as aforesaid". The sub-section then widens the net a little further by bringing within its sweep those offences committed through any acts done which are "of the character aforesaid". The expression "aforesaid" in the sub-section is evidently with reference to what is mentioned in Sections 159 and 160 of the same enactment. Those provisions afford an absolute immunity to a public servant from any penalty or liability to pay damages in respect of any "act done in good faith" in pursuance of or intended pursuance of "any duty imposed or any authority conferred on him by any provision of this Act or any other law for the time being in force or any rule, order or direction made or given thereunder". Such absolute immunity is not afforded in respect of any offence or wrong alleged to have been done by such public servant, if it was done "under colour or in excess of any such duty or authority as aforesaid". Nonetheless the said statute has fixed a time limit for initiation of prosecution proceedings in such cases against the public servant. If prosecution proceedings were not initiated within such time limit, they cannot be commenced thereafter.

15. A three Judge Bench of this Court in Virupaxappa Veerappa Kadampur Vs. The State of Mysore, has considered the amplitude of the expression "under the colour of any duty or authority" as envisaged in the sub-section. After making reference to some of the earlier decisions rendered by the Bombay High Court and after noticing the meaning of the expression "colour of office" given in Law lexicons, learned Judges observed thus : "Whether or not when the act bears the true colour of the office or duty or right, the act may be said to be done under colour of that right, office or duty, it is clear that when the colour is assumed as a cover or a cloak for something which cannot properly be done in performance of the duty or in exercise of the right or office, the act is said to be done under colour of the office or duty or right. It is reasonable to think that the legislature used the words "under colour" in S. 161(1) to include this sense..... It appears to us that the words "under colour of duty" have been used in S. 161(1) to include acts done under the cloak of duty, even though not by virtue of the duty. When he (the police officer) prepares a false Panchnama or a false report he is clearly using the existence of his legal duty as a cloak for his corrupt action or to use the words in Stroud's Dictionary "as a veil to his falsehood." The acts thus done in dereliction of his duty must be held to have been done under colour of the duty."

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17. The indispensable ingredient of the said offence is that the offender should have done the act "being a public servant". The next ingredient close to its heels is that such public servant has acted in disobedience of any legal direction concerning the way in which he should have conducted as such public servant. For the offences under Sections 167 and 219 of IPC the pivotal ingredient is the same as for the offence u/s 166 of IPC. The remaining offences alleged in the complaint, in the light of the averments made therein, are ancillary offences to the above and all the offences are parts of the same transaction. They could not have been committed without there being at least the colour of the office or authority which appellants held."

4. Mr. A.J. Desai, Id. APP, in response to the submissions made by Ms. Raju, learned counsel appearing for the petitioner, has submitted that the ratio of the decision in the case of K.K. Patel (supra) would not help the present petitioner because the facts of the case in the case of Viruppa Viruppaxappa (supra) are distinctly different than the present case.

5. The following aspects emerging from the facts of the present case are important :

5.1 One Sudhir Gupta was prosecuted for the offence punishable u/s 66(B), 65(A) (E) and 116(B) of the Bombay Prohibition Act on 6th May, 1996 and the Police had recovered muddamal liquor worth Rs.8,160/-. A detailed complaint was filed and a Panchnama in presence of two panchas was drawn in time between 01-15 a.m. to 02-00 a.m. on 6th May, 1996. The statements of 10

witnesses were also recorded.

5.2 Sudhir Gupta, the accused of the crime, complained before the Special I.G., Vadodara Range, Vadodara, stating that he has been falsely implicated in a prohibition case by Mr. P.P. Asari, Dy.S.P.

5.3 The Special I.G., Vadodara Range, Vadodara, ordered inquiry into the matter and the D.S.P., Panchmahals at Godhra, was entrusted with the said inquiry. The D.S.P., Panchmahals submitted his report on 26th July, 1996 to Special I.G., Vadodara Range, Vadodara and submitted that Sudhir Gupta has been falsely implicated in a prohibition case i.e. in C.R. No.III-272 of 1996.

5.4 It was noticed by the D.S.P., Panchmahals, that only with a view to create a false case, the Station Diary was kept open/blank and this aspect had come on record during the course of inquiry in the statement of one Mr. Sharma, Police Sub Inspector. The finding in the last paragraph of the inquiry report is that Mr. P.P. Asari, S.D.P.O., a senior officer, has created a false case with the help of C.P.I. Damor, Police Sub Inspector Sagar and such conduct of Mr. Asari is shameful.

5.5 At the instance of Special I.G., Vadodara Range, Vadodara, the complaint in question dated 30th August, 1997, came to be filed.

5.6 So for the sake of argument, if it is accepted that Mr. Sudhir Gupta was falsely implicated and to implicate him some false panchnamas were prepared and certain documents, including the entries in Station Diary have been created at the instance of Mr. P.P. Asari and other police officials, it will not be possible for this Court to say that the offences are not falling within the purview of Section 161(1) of the Bombay Police Act.

6. In view of above facts, it is very clear that there is no scope for contending that "acts done under the colour or in excess of duty or authority of such police officer. The alleged wrong has been committed as they were able to do the same in the capacity of a Police Officer. The very reading of the ingredients of the offence narrated in the complaint would show that such offences could not be committed without being in the cloak of a public servant; especially the Police Officer. The petitioner was at least under the colour of his office. Time and place of the incident are also found relevant. So the complaint at least must have been filed within one year from the date of commission of the offence. Even for the sake of prosecution, sanction was required in view of the scheme of Section 197 of the Code of Criminal Procedure, even then by completing that formality, a formal complaint ought to have been filed within a period of one year. The time limit specified by a special enactment cannot be stretched any further, irrespective of the other Sections punishable under the Indian Penal Code, the complaint/prosecution cannot sustain, if the same is filed after expiry of the prescribed time limit i.e. one year.

7. It is also relevant to note that on account of the complaint filed against Sudhir

Gupta, after investigation he was chargesheeted and the chargesheet was filed in the Court of Judicial Magistrate First Class, Dahod and till date of filing of the complaint in question, it was not dismissed saying that the alleged accused Sudhir Gupta has been falsely implicated.

8. For short, the petitions filed by the petitioners-accused i.e. Special Criminal Application No.1040 of 1997, Criminal Misc. Application Nos.4584 of 1997 and 4643 of 1997, are hereby allowed. The complaint/FIR being C.R. No.I-144 of 1997, registered with Dahod Town Police Station, on 13th August, 1997, is hereby quashed and set aside and the proceedings initiated in respect thereof stands terminated, as the complaint in question is filed after expiry of the prescribed time limit u/s 161(1) of the Bombay Police Act. Obviously, the Criminal Misc. Application Nos.4066 of 1997 and 4067 of 1997, for vacating interim relief filed by the respondent-State herein are dismissed. Rule is made absolute, so far as Special Criminal Application No.1040 of 1997, Criminal Misc. Application Nos.4584 of 1997 and 4643 of 1997 are concerned and Rule is discharged so far as Criminal Misc. Application Nos.4066 of 1997 and 4067 of 1997 are concerned.