

(2016) 04 BOM CK 0216

In the Bombay High Court

Case No : Criminal Application No. 1236 of 2015.

Pravin P. Wategaonkar

APPELLANT

Vs

The Central Bureau of Investigation and another

RESPONDENT

Date of Decision : 12-04-2016

Acts Referred:

Bombay High Court (Appellate Side) Rules, 1960 — Rule 2
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2016) ALLMRCri 2216 : (2016) 2 BomCR(Cri) 781 : (2016) 5 MhLJCrI 679

Hon'ble Judges : Sadhana S. Jadhav, J.

Bench : Single Bench

Advocate : Pravin Wategaonkar, Advocate, for the Appellant; Rebecca Gonsalvez, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sadhana S. Jadhav, J. - Heard Applicant in person and learned counsel for Respondent C.B.I.

2. Applicant has filed present application seeking relief as under :

"(a) To issue appropriate Writ, Sentence, Finding, Order or Directions, in the interest of Justice, to Respondent no. 1/CBI to register a case against Shri. Shivajirao Nilangekar Patil, who was part of the decision making process, for his acts of commission and omissions as then public servant, in the approval of grant of land in possession of Defence Department to Adarsh Housing Society u/s Section 120-B, Criminal Conspiracy, Indian Penal Code;. Criminal Misconduct by a Public Servant - Section 13 (2) r/w Section 13 (1) (d) of The Prevention of Corruption Act, etc and file a report within time stipulated by this Hon"ble Court."

3. Learned counsel appearing for the CBI has drawn the attention of this Court to the prayer clause in Criminal Application No. 25 of 2013 in Criminal Public

Interest Litigation No. 20 of 2011. Prayer clause (a) reads as :

"(a) That the Application be allowed and this Hon"ble Court may be pleased to pass appropriate writ, order and/or direction to Resp. no. 1/CBI to immediately file FIR naming Shri. Shivajirao Patil Nilangekar, along with such other unnamed, as an accused in the Adarsh Society Conspiracy and action be taken against him and such others as per law, in the interest of Justice."

4. The said application was heard by Hon"ble Division Bench (Coram: P. V. Hardas and A.S. Gadkari, JJ). CBI had filed an affidavit - in - reply. In para 3 of the said affidavit, it was stated that the charge - sheet filed vide Special C.C. No. 42 of 2012 before Special Court for CBI cases at Mumbai. The role of Shivajirao Patil Nilangekar and others in relation to Adarsh Co - operative Housing Society has already been looked into by CBI. The material unearthed during the course of investigation did not warrant any action against them, except against the persons/investigation against whom charge - sheet has been filed in the light of the Prevention of Corruption Act and any other Law and therefore, they are not included as accused in the charge - sheet. It is contended in para 7, 8 and 9 of the affidavit as follows :

"7. I say that with regard to the role Shri Shivajirao Patil Nilangekar as Revenue Minister, the investigation carried out by CBI earlier in this case did not find any prosecutable evidence against him to arraign him as an accused in the Charge Sheet filed.

8. I say that there is no material on hand to suggest that Shri Shivajirao Patil Nilangekar had extended undue favours to Adarsh Society and also to suggest that his son-in-law Dr. Arun Dhawle was given the membership in the Society and eventually allotted a flat as a quit-pro-quo.

9. I say that allegations made in the application do not make out any cognisable case against Shri Shivajirao Patil Nilangekar so as to call for registration of a separate FIR against him. Without prejudice, it is submitted that while taking any decision at the level of govt. there would be recommendations and queries at various levels before the final decisions are taken by the competent authority. In the process, simple recommendations made at various levels by various officers cannot be deemed to be acts amounting to criminal misconduct. In the light of the above facts and circumstances, it is submitted that the prayer made in the application is devoid of any merits."

5. Applicant had sought liberty to withdraw the application as he intended to avail such remedy as is available to him in law. Accordingly, application was dismissed on the statement of the applicant who appeared in person.

6. Thereafter, present applicant had filed Misc. Application No. 60 of 2014 in the Court of Special Judge, CBI U/Sec. 156 (3) of Code of Criminal Procedure, 1973. Applicant had prayed as follows :

"(a) This Hon"ble Court be pleased to direct opponent no. 2/CBI to register a

criminal case against opponent no. 1/accused/ Shri. Shivajirao Nilangekar Patil and Such others, under Criminal Conspiracy (120-B, IPC) and Criminal Misconduct by a public Servant Section 13 (2) r/w Section 13 (1) (d) of the Prevention of Corruption Act, among others in the Adarsh Society case, take appropriate actions as per law, and file a report within time stipulated by this Hon''ble Court."

7. CBI had filed reply and had reiterated the contentions raised before Hon''ble Division Bench as follows.

"5. That a Supplementary Charge-sheet, vide Spl CC No. 17 of 2014 has been filed before the Hon''ble Court against 45 additional accused persons, who were found involved in Benami Transactions for offences punishable U/Sec. 120-B, 420 IPC and Section 3 of Benami Transactions Prohibitions Act, 1988. In the said Charge-sheet, for the role played by A-36 Dr. Arun Dawle and A-37 Shri Sampat Khidse in acquiring flats as Benamidars on behalf of M/s. Jay Maharashtra Consumers Pvt. Ltd. represented by A-3 Late Shri. K. L. Gidwani and A-28 Shri Sunil Gidwani, they have been held liable.

6. That with regard to the role of Shri Shivajirao Patil Nilangekar as Revenue Minister, the investigations carried out by CBI in this case did not find any prosecutable evidence against him to arraign him as an accused in the Charge Sheets filed."

8. It is reported that investigation carried out by CBI did not find any prosecutable evidence against Shri Shivajirao Patil Nilangekar to arraign him as an accused in the charge-sheet filed. Learned CBI Special Judge by an order dated 25/02/2015 was pleased to reject the Criminal Application No. 60 of 2014. Learned Special Judge had taken into consideration the Judgment of the Hon''ble Apex Court in the case of CBI through S.P. Jaipur v. State of Rajasthan and another (2001 Cri. L. J. 968) and had rightly held that :

"Considering the ratio of above rulings of Hon''ble S.C. and Hon''ble Bom. H.C., it is clear that, only the constitutional court can direct the CBI to investigate into the case after examining the allegation and Section 5 and 6 of Delhi Special Police Establishment Act, 1946 do not confer power on Magistrate to direct CBI under section 156 (3) of Cr.P.C. to conduct investigation by the CBI."

9. Learned Magistrate has assigned justifiable reasons for rejecting the said application and had rightly held that in the capacity of the Magistrate, Court is not empowered to investigate against a particular person.

10. Applicant has then filed Criminal Writ Petition No. 1429 of 2015 seeking prayer as follows :

"(a) That this petition be allowed and this Hon''ble Court may be pleased to pass appropriate writ, order and/or directions, in the interest of justice, to Respondent no. 1 / CBI to file FIR against Shri. Shivajirao Patil Nilangekar as erstwhile Revenue Minister for his acts of commission and omission in the approval of

grant of land in possession of Defence Department to Adarsh Housing Society under Criminal Misconduct by a Public Servant - Section 13 (2) r/w Section 13 (1) (d) of the Prevention of Corruption Act and such other laws as applicable, and file a report within time stipulated by this Hon"ble Court."

11. Matter was heard by Hon"ble Division Bench (Coram : Ranjit More and Smt. Anuja Prabhudessai, JJ.). The Hon"ble Division bench was pleased to pass an order as follows.

"The Petitioner in - person seeks leave to withdraw the writ petition with liberty to challenge the order dated 25th February 2015 passed by the Special Judge, CBI in Miscellaneous Application No. 60 of 2014 before the learned Single Judge of this Court. Leave with liberty as prayed for is granted. Petition stands disposed of."

12. Applicant herein submits that before Hon"ble Division Bench, he had not challenged the order passed by the Special Judge, refusing to issue directions under section 156 (3) of Code of Criminal Procedure, 1973 directing CBI to register an offence against Shri. Shivajirao Patil Nilangekar. In the present application filed under section 482 of Code of Criminal Procedure, 1973 applicant has also not prayed seeking relief of setting aside of the order passed by Special Judge CBI refusing to issue directions under section 156 (3) of Code of Criminal Procedure, 1973.

13. It is apparent on the face of the record that learned Special Judge had categorically held that CBI Special Court had no powers to issue directions. Applicant submits that this Court shall issue appropriate writ. There is no prayer for setting aside the order passed by the Special Judge. It is a matter of record that on two occasions the same prayer was withdrawn before Hon"ble Division Bench. There is no occasion to consider the said prayer on the third occasion as a Single Judge cannot issue directions of the said nature. The Bombay High Court Appellate Side Rules has prescribed the Jurisdiction of Single Judge. Chapter I Rule 2 sub clause (II) reads as follows :

"II Criminal -

(a) -----

(b) -----

(c) -----

(d) Applications for the exercise of the Court's revisional jurisdiction under section 401 of the Code of Criminal Procedure, and reports of cases of which record is called for on examination of criminal returns or otherwise.

(e) Applications for leave to appeal under section 378 (4) of the Code of Criminal Procedure against acquittals wherein the offence with which the accused was charged is one punishable on conviction with a sentence of fine only or with a sentence of imprisonment not exceeding [ten years] or with such imprisonment

and fine.

(f) Application for bail or stay, not arising in or out of or relating to any appeal or application already pending in the High Court.

(g) Application for leave to appeal to the Supreme Court under Article 134 of the Constitution of India in matters disposed of by a single Judge.

(h) All miscellaneous applications, including applications for bail or stay in or out of or relating to matters under items (a) to (c) above.

(i) All applications under Article 227 of the Constitution of India challenging the orders and decisions of the Courts constituted under the Code of Criminal Procedure.

(j) All applications under section 482 of the Code of Criminal Procedure except those applications seeking review, modification or setting aside any order passed by a Division Bench."

14. This Court is not empowered to issue directions to CBI to register a case against Shri. Shivajirao Patil Nilangekar as prayed for. It would lie within the jurisdiction of the Division Bench. In any case, the said prayer was withdrawn before the Hon"ble Division Bench.

15. Learned counsel appearing for CBI upon instructions submits that CBI has filed charge-sheet and thereafter has filed two supplementary charge-sheets with regard to Benami transactions and therefore, according to her, the role of CBI is over, as far as investigation is concerned.

16. It is abundantly clear that the applicant appearing in person has filed the third application seeking the same relief. On both the earlier occasions the applications were withdrawn only to reiterate the same prayers before one or the other forum. Filing of successive petitions/applications seeking the same relief is not only a waste of judicial time but is an abuse of process of Law. Moreover, the stand taken by CBI has not changed.

17. This Court is of the opinion that courts should normally refrain from interfering with the investigation unless it is apparent on the face of record that the investigation in a particular manner would result into miscarriage of justice. This application is filed under section 482 of Code of Criminal Procedure, 1973. It is well settled that the inherent powers U/Sec 482 of Code of Criminal Procedure can be exercised only when no other remedy is available to the litigant. The powers are inherent powers and therefore have to be exercised sparingly. In the present case the prayer for impleading Shri. Shivajirao Patil Nilangekar has been withdrawn twice before the Hon"ble Division Bench which has powers to direct investigating agency under Article 226 of Constitution of India.

18. The Hon"ble Apex Court in the case of Shalini Shyam Shetty v. Rajendra Shankar Patil [(2010) 8 Supreme Court Cases 329] has held as follows.

"A writ under Article 226, is a proceeding under original jurisdiction of the High Court."

The Hon"ble Apex Court also held :

"In certain cases where there is infringement of fundamental right, the relief under Article 226 of the Constitution can be claimed ex debito justitiae or as a matter of right."

The Hon"ble Apex Court further observed :

"The power to issue writs underwent a sea change with the coming of the Constitution from 26-1-1950. Now writs can be issued by the High Courts only under Article 226 of the Constitution and by the Supreme Court only under Article 32 of the Constitution."

19. In view of the above observations, application stands dismissed in limine with no order as to costs.