
(1987) 04 BOM CK 0044

In the Bombay High Court

Case No : Criminal Writ Petition No. 484 of 1986

Previnchandra Jagjivandas Gandhi

APPELLANT

Vs

Ibrahim Mohammed Merchant and Another

RESPONDENT

Date of Decision : 06-04-1987

Acts Referred:

Penal Code, 1860 (IPC) — Section 500

Citation : (1987) 3 BomCR 33 : (1987) MhLj 898 : (1987) MhLj 855

Hon'ble Judges : S.W. Puranik, J

Bench : Single Bench

Advocate : B.K. Raje, P.P., C.J. Sawant and Anil Y. Sakhare, for the Appellant;
P.R. Vakil and L.H. Hingu, for the Respondent

Final Decision : Dismissed

Judgement

S.W. Puranik, J.—In the two Writ Petitions bearing Nos. 483 of 1986 and 485 of 1986, I have already dealt with the facts in this case. However, the legal submissions therein was different than the one involved in the present case hence this petition has been separated from these two petitions.

2. The brief facts which are not in dispute may be stated as follows :

On 15-4-1980 a First Information Report was lodged by the petitioner Pravinchandra Gandhi against the first respondent alleging offence u/s 451 and 506 of the Indian Penal Code. The respondent No. 1 came to know that certain report has been lodged for a non-bailable offence against him. He therefore, approached the High Court for grant of anticipatory bail on 22-4-1980. However, it transpired from the statement made by the Government Pleader that the offence registered against him is bailable and hence the first respondent withdrew the said application. Subsequently, on 24th April, 1980, the first respondent was arrested and released on bail. He was served with the copy of the charge-sheet on 4th August, 1980 and after due trial he was honourably acquitted on 28-4-1983 wherein the Court observed that the evidence led

against him by the petitioner was total falsehood. The trial Court also directed a notice to the petitioner to show cause why he should not be asked to pay compensation to the respondent, the acquitted accused. After his acquittal the first respondent filed two complaint cases bearing Nos. 61/S and 63/S of 1983 alleging offence of defamation against the petitioner and his wife respectively with which I have already dealt with in the two Writ Petitions Nos. 483 and 485 of 1986. The third complaint Case No. 62/S of 1983 was filed by the petitioner also on the ground defamation. It was alleged in the said complaint case that the whole of the First Information Report lodged by the petitioner against the respondent No. 1 and in particular paragraph 2 of the said report was false and gravely defamatory of the respondent. This complaint was filed on 6th July, 1983. Process was issued on 20th July, 1983 against the petitioner. Initially, the petitioner challenged the said issue of process by filing a Writ Petition No. 922 of 1983 in the High Court. The said petition was dismissed on 2-2-1984 and Rule was discharged. Effective hearing of the complaint case started some time in February, 1984. During the hearing on 14th August, 1984, the petitioner filed an application before the trial Court that the complaint is liable to be dropped as the same is barred by limitation and that the delay cannot be condoned. That application came to be rejected on 27th November, 1984. The present petitioner carried Revision to the learned Sessions Judge vide Criminal Revision Application No. 29 of 1985 who also finally dismissed the same on 21st February, 1985. It is against these two concurrent orders of the courts below that the petitioner has filed this petition under Article 227 read with section 482 of the Code of Criminal Procedure.

3. Shri Sawant for the petitioner contended that the First Information Report was lodged by the petitioner against the first respondent in April, 1980 and the fact that he had approached the High Court in the third week of April 1980 seeking anticipatory bail shows that the respondent No. 1 was aware of the criminal report lodged against him. If anything defamatory was contained in the said report, the complainant-present respondent should have initiated his complaint case within three years of the said knowledge i.e. on or before 23rd April, 1983 whereas the complaint has been filed in July 1984 after the limitation had expired. Whatever the delay, it was neither explained nor condoned by the trial Court and process was issued. Hence the trial Court was barred from taking cognizance beyond the date of limitation.

4. Shri P.R. Vakil on the other hand contended that the information which the respondent received was about some non-bailable offence and as such he was required to withdraw the said application for anticipatory bail when he learnt that the offence against him was a bailable one. This clearly shows that the respondent was not aware even of the nature of offence alleged. It is for the first time after the respondent received the copy of the charge-sheet on 4th August, 1980 that he received the full extract of the First Information Report contending defamatory allegation against him and it is from that date the knowledge of defamatory statement can be attributed to the present respondent and the

complaint which is filed on 6th July, 1983 is therefore, within limitation.

5. Considering the submissions of both the parties, I find that there is no material to hold that the first respondent had received a detailed information regarding the report lodged against him and at any rate the contents of the report. It is only when he received a copy of the charge sheet that he also received the copy of the First Information Report containing the defamatory allegation. It is therefore, rightly held by the courts below that the complaint case filed within three years of the knowledge is within limitation. There was therefore, also no necessity for seeking condonation of delay much less explaining the delay. On the other hand it appears that after failing to secure quashing of process by a Writ Petition in this Court in October when the said Writ Petition was dismissed in February 1984, the present petitioner continued to participated in the complaint case from February 1984 when the effective hearing had started and it is as late as in August 1984 for the first time that he applied to the trial Court for dismissing the complaint as barred by limitation. Even the application filed by the petitioner before the trial Court is mala fide and not supported by any material on record.

6. For the above reasons therefore, I hold that the complaint filed by the respondent-complainant is within time and both the courts below have rightly rejected the application filed by the petitioner. There is no substance in this petition and the same is therefore, dismissed.

Rule is discharged. Interim stay stands vacated. There trial Court is directed to expeditiously dispose of the complaint case which is pending since 1983 for one reason or the other.