

(2015) 07 GUJ CK 0014

In the Gujarat High Court

Case No : Special Criminal Application (Quashing) No. 4248 of 2015

Shaileshkumar Labhshankar Pandya

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 15-07-2015

Acts Referred:

Commissions of Inquiry Act, 1952 — Section 6
Constitution of India, 1950 — Article 136, 21, 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 161, 173, 482, 91
Evidence Act, 1872 — Section 145, 146(1), 153, 155(3)
Penal Code, 1860 (IPC) — Section 114, 302, 323, 506(1)

Citation : (2015) CriLJ 4388

Hon'ble Judges : Abhilasha Kumari, J.

Bench : Single Bench

Advocate : I.H. Syed and S.M. Vatsa, for the Appellant; Prakash K. Jani, Addl. Advocate General, Mitesh Amin, Public Prosecutor, Percy C. Kavina, Senior Advocate and P.Y. Divyeshwar, for the Respondent

Final Decision : Dismissed

Judgement

Abhilasha Kumari, J.—Rule. Mr. Mitesh Amin, learned Public Prosecutor waives the service of notice of Rule for the respondent. Considering the facts and circumstances of the case, the petition is being heard and decided finally, at this stage, with the consent of the learned counsel for the respective parties. This petition under Articles 226 and 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 ("the Code") has been preferred by the petitioner, who is accused No. 3, in Sessions Case No. 35 of 2001, pending before the Court of learned Additional Sessions Judge, Khambhalia, District: Jamnagar, with the following prayers:

"(A) Your Lordships be pleased to admit and allow this application;

(B) Your Lordship be pleased to issue a writ of certiorari or any other writ, order or direction setting aside the impugned orders passed below (a) Exhibit 260

dated 26.06.2015, (b) Exhibit 287 dated 07.07.2015 and (c) Exhibit 303 dated 07.07.2015, all by the 6th Additional District and Sessions Judge, Khambhalia, District: Jamnagar, in Sessions Case No. 35 of 2001;

(C) Pending admission hearing and final disposal of this petition, Your Lordship be pleased to stay the further proceedings of Sessions Case No. 35 of 2001 pending before the learned Additional District and Sessions Judge, Khambhalia, District: Jamnagar;

(D) Your Lordship be pleased to pass such other and further orders as may be deemed fit, just and proper in the peculiar facts and circumstances of the present case."

2. In order to appreciate the contentions raised in the petition, a brief factual background would be necessary. Widespread communal violence, including incidents of loot, arson and rioting, took place at Jamjodhpur on 30.10.1990. A police team was deputed to control the riots. One hundred and thirty three persons were arrested from the mob, including one Amrutlal Madhavji Vaisnani, the complainant, and Prabhudas Madhavji Vaisnani, the brother of the complainant (deceased). The deceased was remanded to judicial custody along with the other accused persons. On 01.11.1990, the deceased complained to the jail authorities about back pain and was treated by the jail doctors. Thereafter, on 03.11.1990, the deceased was sent to the Government Hospital and ultimately, he died on 18.11.1990, in the hospital. The body was handed over to his brother, the complainant, without any medico legal case being registered or postmortem being conducted. The death certificate was issued by the hospital authorities, stating that the cause of death is acute renal failure with cardio respiratory arrest. An application was moved for conducting the postmortem, which was registered as an FIR, being, C.R. No. 1102/1990, at Jam Jodhpur Police Station, against seven police officers, including the present petitioner, for offences punishable under Sections 302 , 323 , 506(1) and 114 of the Indian Penal Code, for the death of Prabhudas Vaisnani. The said FIR was then sent to the CID Crime, which investigated it. Thereafter, the CID Crime submitted a "C summary report to the learned Judicial Magistrate, First Class, Jam Khambhalia, on 20.12.1995. The State Government challenged the aforesaid order before the Sessions Court, Jamnagar, by filing Criminal Revision Application No. 21 of 1996.

3. When Criminal Revision Application No. 21 of 1996 filed by the State Government was at the stage of hearing, a decision was taken to withdraw the aforesaid revision application. The said revision application was, therefore withdrawn on 15.07.2011.

4. It appears that in the interregnum, a number of applications were submitted and proceedings initiated, by other accused persons in various courts.

5. The case was committed to the Court of the learned Sessions Judge in the year 2001, and the charge was framed against the accused persons on 18.11.2012. On 04.12.2012, the prosecution provided the list of documents and

witnesses.

6. Several applications were filed by one or the other accused persons, the last of which are the three applications at Ex. 260, 287 and 303, decided by the impugned orders dated 26.06.2015 and 07.07.2015, which are the subject-matter of challenge before this Court.

7. The application at Ex. 260 has been preferred by four accused persons, namely Pravinsinh Bavubha Jhala (accused No. 4), Pravinsinh Jorubha Jadeja (accused No. 5), Kesubha Dolubha Jadeja (accused No. 7) and Anopsinh Mobatsinh Jethva (accused No. 6). The applicants in the application at Ex. 260, have sought production of certain documents under Section 91 of the Code. This application has been rejected by the impugned order dated 26.06.2015, passed by the learned Additional Sessions Judge, Khambhalia, by relying upon a judgment of the Supreme Court in *Kehar Singh and Others Vs. State (Delhi Administration)*, .

8. The application at Ex. 287 has been filed on 02.09.2014, by one of the accused persons who is not specifically named therein. Upon a query being raised by the Court to the learned advocate for the petitioner in this regard, during the course of hearing, it is replied by Mr. I.H. Syed, learned advocate for the petitioner, that Ex. 287 was moved by Dipak B. Shah, accused No. 2. This application has been rejected by an order dated 07.07.2015, on similar grounds.

9. Insofar as the application at Ex. 303 is concerned, it has been filed by five accused persons, namely Dipak B. Shah (accused No. 2), Pravinsinh Bavubha Jhala (accused No. 4), Pravinsinh Jorubha Jadeja (accused No. 5), Kesubha Dolubha Jadeja (accused No. 7), and Anopsinh Mobatsinh Jethva (accused No. 6). This application also came to be rejected by an order dated 07.07.2015, on similar grounds.

10. Mr. I.H. Syed, learned advocate for Mr. S.M. Vatsa, learned advocate for the petitioner, has submitted that the Trial Court has not only committed an error of fact but has also committed an error of law, while rejecting the above three applications. It is submitted that the documents sought to be produced were the statements of witnesses recorded by the Commission of Inquiry headed by Shri B.B. Desai, retired Chief Judge, Small Causes Court, Ahmedabad, appointed by the State Government to inquire into the incidents of alleged police excesses in Jamjodhpur, District Jamnagar, from 30.10.1990 to 03.11.1990. It is submitted that out of the list of witnesses examined by the Commission, a statement of one witness at Sr. No. 193 was sought for. However, by the impugned orders, the applications have been rejected on the ground that Section 6 of the Commissions of Inquiry Act, 1952, provides that no statement made by a person in the course of giving evidence before the Commission shall subject him to, or to be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence for such statement.

11. It is submitted that the Trial Court has not taken into consideration the

aspect that the Commission of Shri B.B. Desai was not appointed under the Commissions of Inquiry Act, 1952, therefore, the bar of Section 6 would not be applicable for providing the statements and other documents sought for by way of the applications. It is submitted that the reason for the rejection of the applications, on the basis of Section 6 of the Commissions of Inquiry Act, 1952, is nothing short of a legal error which necessitates the quashing and setting aside of the said orders.

12. It is next submitted that there is a factual error in the order dated 07.07.2015 passed by the learned Additional Sessions Judge passed below Ex. 303, inasmuch as it is recorded that "moreover it is very clear that the present accused have filed such type of applications vide Exhs.198, 213, 216 and 228 for the same relief which has been rejected by this Court and the said order has been challenged before the Hon"ble High Court of Gujarat in Spl. Cr. Application No. 3323-11 which has been also rejected by the High Court". It is submitted that the applications at Exs. 198, 213, 216, and 228, had not been filed seeking the same relief as is sought in the applications at Exs. 260, 287 and 303, therefore, this finding of the Sessions Court is factually incorrect.

13. It is further submitted that in the impugned orders, the Sessions Court has rejected the applications mainly on the ground that the said applications appear to have been filed for the purpose of delaying the trial. It has been observed by the Sessions Court that the trial is pending for more than twenty one years. The Sessions Court has quoted an observation from the order of the High Court dated 26.12.2011, passed in Special Criminal Application No. 3323 of 2011, wherein it is observed that the trial is pending for more than twentyone years and therefore it is required to be disposed of as early as possible. It is contended by the learned advocate for the petitioner that the delay in the trial cannot be attributed to the petitioner as the revision application filed by the State Government was pending from 1995 to 2011. Therefore, it cannot be said that the present application has been filed for the purpose of delaying the trial at the behest of the petitioner.

14. It is next submitted that during the course of cross-examination of prosecution witness No. 2, an objection was taken by the learned District Government Pleader, that no xerox copy of a document can be shown to the witness but only an authentic or certified copy can be shown. However, when applications are filed under Section 91 of the Code for production of documents, those applications are rejected. The petitioner is unable to obtain the original copy which is in possession of the State Government.

15. It is submitted that as per the judgments of the Supreme Court, any previous statement can be used under Section 145 of the Evidence Act, 1872, to contradict the witness and under Section 155(3) of the said Act, to impeach the credibility of the witness. It is not necessary that such statements should be those recorded under Section 161 of the Code. A statement recorded by a Commission appointed by the State Government can also be used to contradict

the witness or to impeach his credibility. That the petitioner has no objection if the statement of the witness is provided and given a tentative exhibit number, as he has no intention of delaying the trial. However, this course of action has not been taken by the learned Sessions Judge. It is further submitted that the petitioner, being an accused person, has a right to a fair trial and this right should not be compromised in any manner.

16. It is contended by the learned advocate for the petitioner that Section 91 of the Code stipulates that production of a document can be directed if it is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceedings under the Code. By passing the impugned orders, the Trial Court has not taken into consideration the aspect whether the documents sought for by the petitioner are necessary or desirable, but has proceeded to reject the said applications on the ground of the bar of Section 6 of the Commissions of the Inquiry Act, 1952, which is not applicable in the present case.

17. In support of the above submissions, learned advocate for the petitioner has placed reliance upon the following judgments:

"(a) Charanjit and Others Vs. State of Punjab and Another, . The relevant paragraphs relied upon by the learned advocate for the petitioner are as below:

"14. We have considered the contention of Mr. Parekh on behalf of the appellants that PW3 has sought to falsely implicate the appellants on account of her close links with the terrorists and on account of the pressure from the terrorists, but no evidence as such has been led on behalf of the defence to show that PW3 has implicated the appellants under the influence of the terrorists. Mr. Parekh relied on Ext. DW1/B dated 09.02.1989 said to have been signed by 32 villagers in which it is stated that the villagers believe that terrorists were frequenting the house of PW3 and staying in her house and taking their meals and, therefore, PW3 should be brought and interrogated about those terrorists, but Ext. DW1/B is no proof of the fact that PW3 has made the allegations of rape against the appellants on the pressure of the terrorists. We have also considered the submission of Mr. Parekh that PW3 had herself given a statement in the inquiry conducted by the Superintendent of Police, Mr. Harbhajan Singh Bajwa, that she had made the complaint against the appellants at someone's instigation and she does not want any action to be taken on her complaint. This statement of PW3 is not substantive evidence before the Court and at best can be treated as a previous statement to contradict the substantive evidence of PW3 given in Court. Section 145 of the Indian Evidence Act states that a witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. In the cross-examination of PW3, a question was put whether S.P. Mr. Harbhajan Singh Bajwa conducted the inquiry and recorded her statement and she has stated that he did conduct an inquiry but she does not know what he had recorded. She has further stated that her

signatures were obtained on the statement but she knew only how to write her name and cannot read or write Punjabi except appending her signatures. In view of the aforesaid statement made by PW3 in her cross-examination, her statement recorded in the inquiry conducted by S.P. Mr. Harbhajan Singh Bajwa cannot be used to contradict the evidence of PW3 given in Court.

15. We have also considered the submission of Mr. Parekh that in the petition dated 13.02.1989 to the Governor (Ex. PW3/A), PW3 had not mentioned that PW1 and PW2 were present when she was released at the intervention of the Panchayat of village Paili, Otal Majarh and Unaramour on 10.02.1989. This statement of PW3 in the petition dated 13.02.1989 is not substantive evidence before the Court and can only be treated as a previous statement to contradict the substantive evidence of PW3 given in Court by putting a question to PW3 in course of her cross-examination under Section 145 of the Indian Evidence Act. If such a question was put in the cross-examination, PW3 would have got an opportunity to explain why she had not specifically stated in the petition dated 13.02.1989 to the Governor (Ex. PW3/A) that her husband (PW1) and the neighbour (PW2) were also present when she was released at the intervention of the Panchayat of village Paili, Otal Majarh and Unaramour on 10.02.1989. In absence of any such question put to PW3 in her cross-examination, the omission of the names of PW1 and PW2 in the petition dated 13.02.1989 to the Governor (Ex. PW3/A) cannot be taken as contradictory to the evidence of PW3. Hence, the evidence of PW3 as well as that of PW1 and PW2 that on 10.02.1982, PW1 and PW2 were present when PW3 was released at 4.30 p.m. could not have been disbelieved by the Court."

(b) Ghanshyambhai Madhavlal Patel v. State of Gujarat and anr. . Reliance has been placed upon Paragraph 43 which is as below:

"43. Thus, the CD itself is a primary and direct evidence admissible as to what has been said and picked up by the recorder. A previous statement made by a witness and recorded on CD can be used not only to corroborate the evidence given by the witness in the Court, but also to contradict the evidence given before the Court as well as to test the veracity of the witness and also to impeach his impartiality. Thus, apart from being used for corroboration, the evidence is admissible in respect to three other matters i.e. under Section 146(1) of the Evidence Act, which provides questions lawful in cross-examination. The said Section provides that when a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend to test his veracity. Section 153 provides exclusion of evidence to contradict answers to questions testing the veracity."

(c) State of Orissa Vs. Debendra Nath Padhi, . The paragraphs relied upon by the learned advocate for the petitioner are as below:

"24. On behalf of the accused a contention about production of documents relying upon Section 91 of the Code has also been made. Section 91 of the Code

reads as under:

"91. Summons to produce document or other thing-- (1) Whenever any Court or any officer-in-charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) and (3)...."

25. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is "necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code". The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the Court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. Insofar as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it whether police or accused. If under Section 227 what is necessary and relevant is only the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91 summons for production of document can be issued by Court and under a written order an officer in charge of police station can also direct production thereof. Section 91 does not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof."

(d) Bipin Shantilal Panchal Vs. State of Gujarat and Another, . Reliance has been placed upon the following paragraph:

"14. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial Court can make a note of such objection and mark the objected document tentatively as an exhibit

in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the Court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the Court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed."

(e) Majid etc. Vs. State of Haryana, . Learned advocate for the petitioner has placed reliance upon the following paragraph:

"14. If the former statement was in writing or was reduced to writing, Section 145 of the Act requires that attention of the witness must be called to those parts of it which are used for the purpose of contradicting him. Here the statement allegedly made by PW6 to DW1 was not in writing, nor was it reduced to writing. Nonetheless if the object of examining DW1 as a Witness was to discredit PW6 it is only fair to insist that PW6 himself should have been given an opportunity to explain it. Without PW6 being asked about that aspect, it is unreasonable to expect PW6 to explain about it. Hence it is immaterial that the statement claimed by DW1 as made to him by PW6 was not reduced to writing."

18. The submissions advanced by the learned advocate for the petitioner have been strongly opposed by Mr. Prakash K. Jani, learned Additional Advocate General appearing with Mr. Mitesh Amin, learned Public Prosecutor, for the respondent State of Gujarat, by submitting that the Court may take into consideration that several orders have been passed by this Court, in various proceedings, directing that the trial be completed as expeditiously as possible, in view of the fact that the victim died in the year 1990. That, the filing of successive applications is a well-planned game on the part of the accused persons, so as to protract the trial. The charge has been framed on 18.11.2012 and this Court has issued directions in several proceedings, for the expeditious hearing and conclusion of the trial.

19. The learned Additional Advocate General has taken a strong preliminary objection that the present petition filed by the petitioner, who is accused No. 3 before the Trial Court, is not maintainable. It is submitted that the petitioner is challenging the orders passed by the learned Sessions Judge below the applications at Exs. 260, 287 and 303. However, if the said applications are perused, copies of which are available on the record, it is evidently clear that the petitioner is not the applicant in any of the three applications. Not having filed the abovementioned applications, the petitioner cannot seek to challenge the orders passed in those applications, by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India and its supervisory jurisdiction under Article 227 of the Constitution of India.

20. It is further submitted that this aspect has not been mentioned by the

petitioner in the memorandum of the petition and an impression is sought to be given to the Court that the petitioner is one of the signatories to the applications and is an aggrieved party, as those applications have been rejected by the impugned orders.

21. It is submitted by the learned Additional Advocate General that the petition may be rejected with exemplary costs for suppressing material facts, misleading the Court and wasting its precious time.

22. Considering the nature of the preliminary objection raised by the learned Additional Advocate General, this Court considers it appropriate to examine the said objection in the first instance.

23. This petition was listed yesterday, that is on 14.07.2015, and the entire afternoon session was taken up in the hearing of the petition. Arguments of the parties concluded on 14.07.2015. However, due to paucity of time, the Court could not dictate the order on that day and the learned counsel were informed that the order would be dictated in the Court the next day i.e. on 15.07.2015, in the afternoon session.

24. It may be noted that during the course of hearing of the petition on 14.07.2015, Mr. Percy C. Kavina, learned Senior Advocate with Mr. P.Y. Divyeshwar, learned advocate, appeared for the original complainant and objected that the original complainant of the FIR, being C.R. No. I102/1990 registered with the Jam Jodhpur Police Station, has not been made a party to the present petition, though he was party to the previous petitions filed by the accused persons in this Court. Mr. Percy C. Kavina, learned Senior Advocate, was permitted to address the Court and made short submissions, mostly in tune with the submissions advanced by the learned Additional Advocate General. He further pointed out that the filing of the present petition is nothing but a ploy to delay the trial when the complainant, whose brother has died, has been waiting for justice for the past 25 years.

25. Mr. Prakash K. Jani, learned Additional Advocate General and Mr. Percy C. Kavina, learned Senior Advocate have both taken the Court through the orders of this Court dated 26.12.2011, passed in Special Criminal Application No. 3323 of 2011, filed by another accused person, wherein this Court has stated thus:

"[6.2] Considering the fact that the alleged incident is of 1990 and the learned Magistrate has directed to issue process against the accused persons as far as back in the year 1995 and even the case has been committed to the learned Sessions Court in the year 2001, the learned Sessions Court is justified in proceeding further with the hearing of the Sessions Case No. 35/2001 and to frame the charge which is after a period of 21 years of the date of alleged incident. It is very unfortunate that even after a period of 21 years of the alleged incident and after 16 years of the order passed by the learned Magistrate directing to issue process against the accused persons who are police officers, the case is still at the stage of framing of charge. It is required to be noted that

the allegation against the accused persons who are police officers are with respect to violation of human rights also. The original complainant being the victim and brother of the deceased, who has died, has a legitimate expectation of getting justice at the earliest and to see to it that accused persons who are found to be guilty are punished at the earliest. Any attempt on the part of the accused persons to delay the trial should be dealt with iron handedly and is required to be viewed very seriously, more particularly, when the accused persons are police officers.

[6.3] In the case of Nirmal Singh Kahlon Vs. State of Punjab and Others, , the Hon"ble Supreme Court has specifically observed that an accused is entitled to a fair investigation. It is further observed that fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Article 21 of the Constitution of India. But the State has a larger obligation i.e. to maintain law and order, public order and preservation of peace and harmony in the society. It is specifically observed that a victim of a crime. thus, is equally entitled to a fair investigation.

Thus, whatever the rights are available to the accused, somewhat similar rights are available to the victim inclusive of fair trial and fair investigation as well as speedy trial. Thus, a victim of the crime has always a legitimate expectation that real culprits who have in fact committed the offence are booked and they are punished."

(Emphasis supplied)

26. In order to examine the preliminary objection taken by the learned Additional Advocate General, this Court has perused the copies of the applications at Exts.260, 287 and 303 produced at running pages 141, 142 and 143 of the paperbook. The first application at Ex. 260 has been preferred by four accused persons, namely, Pravinsinh Bavubha Jhala (accused No. 4), Pravinsinh Jorubha Jadeja (accused No. 5), Kesubha Dolubha Jadeja (accused No. 7), and Anopsinh Mobatsinh Jethva (accused No. 6). Admittedly, the petitioner - Shaileshkumar Labhshanker Pandya, (accused No. 3) is not an applicant in the said application.

27. The application at Ex. 287 has been moved on behalf of one of the accused who is not named in the said application. Mr. I.H. Syed, learned advocate for the petitioner, has stated, after taking instructions, that Mr. Dipak B. Shah (accused No. 2) is the applicant of this application. It, therefore, transpires that the petitioner is not an applicant in this application, as well.

28. Now, coming to the application at Ex. 303, it is seen that this application has been preferred by five accused persons, namely," Dipak B. Shah (accused No. 2), Pravinsinh Bavubha Jhala (accused No. 4), Pravinsinh Jorubha Jadeja (accused No. 5), Kesubha Dolubha Jadeja (accused No. 7), and Anopsinh Mobatsinh Jethva (accused No. 6). In this application as well, the petitioner is not an applicant.

29. The sum and substance of the above exercise is that, by way of the present

petition, the petitioner is challenging the orders passed by the Sessions Court in the above three applications, none of which have been filed by me petitioner and to which the petitioner is not a party.

30. This Court has carefully perused the entire memorandum of the petition, drafted by Mr. S.M. Vatsa, learned advocate on record for the petitioner. It is nowhere stated therein that the petitioner is the applicant in any of the three applications, the orders of which are challenged before this Court. On the contrary, the petition has been so cleverly drafted that an impression is sought to be given to the Court that the petitioner is the aggrieved party by the passing of the impugned orders. No specific statements have been made regarding the petitioner having filed the said applications in the petition and, as rightly pointed out by Mr. Percy C. Kavina, learned Senior Advocate, the passive voice has been used throughout.

31. The question then arises whether the challenge to the impugned orders, at the behest of the petitioner, who is not an applicant of those applications that have been rejected, is maintainable under Articles 226 and 227 of the Constitution or not. The answer, in the view of this Court, is in the negative.

32. This Court is constrained to observe that while drafting the petition and claiming the relief prayed for, an attempt has been made to weave a clever web of subterfuge, in order to give a wrong impression to the Court, as though the petitioner herein is the aggrieved party whose applications have been rejected. As is evident and an admitted fact, the petitioner has not filed any of the applications which have resulted in the impugned orders. Such non disclosure of material facts reflects the conduct of the petitioner, who has invoked the extraordinary jurisdiction of this Court in a manner that deserves to be deprecated.

33. Not only is it incumbent upon a litigant to come to the Court with clean hands but he must also come with a clean mind and heart. In this regard, the observations of the Supreme Court in *Kishore Samrite Vs. State of U.P. and Others*, , are apposite and are, therefore being reproduced below:

"32. The cases of abuse of the process of court and such allied matters have been arising before the Courts consistently. This Court has had many occasions where it dealt with me cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of the process of court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:

32.1 Courts have, over the centuries. frowned upon litigants who, with intent to deceive and mislead the Courts, initiated proceedings without full disclosure of facts and came to the courts with "unclean hands". Courts have held that such litigants are neither entitled to be heard on the merits of the case nor entitled to

any relief.

32.2 The people, who approach the Court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.

32.3 The obligation to approach the Court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

32.4 Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of false-hood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have overshadowed the old ethos of litigative values for small gains.

32.5 A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.

32.6 The Court must ensure that its process is not abused and in order to prevent abuse of the process the court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the Court would be duty bound to impose heavy costs.

32.7 Wherever a public interest is invoked, the Court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.

32.8 The Court, especially the Supreme Court, has to maintain strictest vigilance over the abuse of the process of court and ordinarily meddlesome bystanders should not be granted "visa". Many societal pollutants create new problems of unredressed grievances and the Court should endure to take cases where the justice of the lis well justifies it.

(Refer: Dalip Singh Vs. State of U.P. and Others, ; Amar Singh Vs. Union of India (UOI) and Others, and State of Uttaranchal Vs. Balwant Singh Chaufal and Others, ."

....

35. With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral

acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs.

36. The party not approaching the Court with clean hands would be liable to be nonsuited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make "full and true disclosure of facts". (Refer: Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, ; A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam Represented by Its President etc., ; Chandra Shashi Vs. Anil Kumar Verma, ; Abhyudya Sanstha Vs. Union of India (UOI) and Others, ; Narmada Bachao Andolan Vs. State of Madhya Pradesh and Another, ; Kalyaneshwari v. Union of India) (2011 AIR SCW 2010).

37. The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equifundamentals of judicious litigation. The legal maxim *jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiores*, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of the process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with clean hands.

38. No litigant can play "hide and seek" with the courts or adopt "pick and choose". True facts ought to be disclosed as the Court knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of the court. K.D. Sharma Vs. Steel Authority of India Ltd. and Others, .

39. Another settled canon of administration of justice is that no litigant should be permitted to misuse the judicial process by filing frivolous petitions. No litigant has a right to unlimited drought upon the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be used as a licence to file misconceived and frivolous petitions. Dr. Buddhi Kota Subbarao Vs. K.Parasaran and others, .

40. In light of these settled principles, if we examine the facts of the present case, next friends in both the petitions are guilty of suppressing material facts, approaching the court with unclean hands, filing petitions with ulterior motive and finally for abusing the process of the court."

(Emphasis supplied)

34. Examined on the touchstone of the principles of law enunciated by the Supreme Court, as quoted hereinabove, it is amply clear that the present case is nothing short of an abuse of the process of the Court. It was incumbent upon the petitioner to disclose the correct facts in a proper and straightforward manner. Instead of doing that, an attempt is being made to pull the wool over the Court's eyes by clever drafting, so as to obtain favourable orders in respect of proceedings that have not been filed by the petitioner at all. As stated by the Supreme Court in Paragraph 36 of the abovequoted judgment, a party not approaching the courts with clean hands would be liable to be non-suited, as such a party who has succeeded in polluting the stream of justice by making patently false statements, cannot claim relief. It is settled law that a party who invokes the Extraordinary jurisdiction of the Court under Article 226 of the Constitution of India must come with clean hands.

35. As it transpires, it is an admitted position that the present petitioner is not an applicant in any of the three applications that have been rejected by the impugned orders. This fact has not been disclosed by the petitioner in the memorandum of the petition. For this reason, this Court is of the view that the petition does not require to be entertained at all and deserves to be rejected outright, at this stage. In any case, the petition is not maintainable as the petitioner is not a party to the proceedings, the order of which he has impugned.

36. It deserves to be noted that though this Court announced on 14.07.2015 after the conclusion of arguments by the learned counsel for the respective parties that the order would be dictated in the afternoon session on 15.07.2015, the learned advocate for the petitioner made a mention before the Court in the morning today (15.07.2015) to move an application in view of the objection taken by the other side regarding joining of a party. The only objection that was taken during the course of hearing on 14.07.2015 was at the behest of Mr. Percy C. Kavina, learned Senior Advocate for the complainant, who stated that the complainant has not been joined as party respondent in the present petition. The Court permitted the circulation of the application, which was registered as Criminal Miscellaneous Application No. 13630 of 2015, as an impression was

given that it was for joining a party (the original complainant, to be precise). When the said application was taken up by the Court today, it transpired that the relief claimed was not for joining the complainant, but for joining the other accused persons, who were parties to the applications at Exhibits 260, 287 and 303. No clear disclosure of this aspect was made before the Court while seeking permission for circulation. Had this fact been disclosed, the Court would not have permitted the circulation of the application as the matter had already been heard the previous day when arguments were concluded. It had been admitted by the learned advocate for the petitioner that the petitioner was not a signatory to the applications at Exs. 260, 287 and 303. The application was ultimately withdrawn by Mr. I.H. Syed, learned advocate for the applicant, on 15.07.2015.

37. The precious judicial time consumed by the hearing of the present petition is considerable. Two entire afternoon sessions of the Court have been devoted to this case, in spite of the fact that 201 cases were listed on 14.07.2015 and 192 on 15.07.2015, on the Board. The time consumed in deciding this matter could have been more productively utilised in hearing and deciding cases of genuinely aggrieved litigants. Not only has the time of the Court been wasted, but the manner in which the petition has been filed by suppressing true facts, as described above, is a sheer abuse of the process of the Court. As stated by the Supreme Court in Paragraph 35 of the abovequoted judgment, the tendency to file petitions such as the present one, has to be curbed by imposing costs.

38. The petitioner is not an uneducated person who is not aware of the law. On the contrary, he is a retired Police Officer and an advocate, as is stated in Paragraph 1 of the petition. Such a litigant is expected to know better than to file a petition disclosing only selected facts and withholding material facts that would go to the root of the matter. What has pained the Court more is the fact that the cause of the petitioner is being espoused by able lawyers who are officers of the Court and are bound to act as such.

39. From the above conduct of the petitioner, the Court can only deduce that the miscellaneous application to join the other accused persons was moved only with a view to filling up the lacuna in the present petition at the stage when the judgment was to be dictated.

40. The Court cannot appreciate or condone such a practice and is pained to observe that such tactics are now being adopted before a constitutional Court in order to achieve personal ends and gains.

41. Mr. I.H. Syed, learned advocate for the petitioner, has sought permission to withdraw Criminal Miscellaneous Application No. 13630 of 2015 (for joining parties), with liberty to file a substantive petition. Permission to withdraw the same has been granted. This order was passed after the application was forcefully opposed by the learned Additional Advocate General.

42. The Court thinks it fit to mention this aspect with a view to illustrating the conduct of the petitioner, to which the principles of law laid down by the Supreme

Court as reproduced above are fully applicable. There can be no two views about this petition. It deserves outright rejection.

43. For the aforesaid reasons, the petition is rejected, with costs of Rs. 25,000/-, that shall be deposited by the petitioner with the Gujarat State Legal Services Authority, within a period of fifteen days from the date of the receipt of a copy of this order.

44. Rule is discharged.

45. After the dictation of the order, learned advocate for the petitioner has prayed that costs may not be imposed. This Court is unable to accept this request, for reasons stated hereinabove. At this stage, Mr. I.H. Syed, learned advocate for the petitioner, has stated that he has initiated proceedings only on the instructions of his client. Be that as it may, the Court has made observations regarding the conduct of the petitioner and not regarding Mr. I.H. Syed, who has argued the petition for the learned advocate on record. However, learned counsel for the petitioner must appreciate that a little caution in such matters is not only necessary but advisable.