

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELATE JURISDICTION
CRIMINAL APPLICATION NO.73 OF 2015 IN
CRIMINAL WRIT PETITION NO.4188 OF 2014

VS.

Mr.Dilip Naraindas Kamwani the applicant No.2 in person on behalf of applicant no.1
Mr.D.J.Khambata, Senior Advocate a/w Dr.Abhinav Chandrachud a/w Rebecca Gonsalves for respondent no.3
Mr.H.S.Venegavkar for the respondent Nos.5,6 and 8.

CORAM : A.S.OKA, &
A.S.GADKARI, JJ.
DATE : MARCH 13, 2015

1 We have heard the second applicant appearing in
person for himself and on behalf of the first
applicant. The first applicant appearing in person
is also present. The prayers made in this

application read thus:

“(A) Recall the order dated 5.1.2014 in Criminal W.P.No.4188 of 2014;

(B) Grant Reliefs under Prayers (I) to (XVI) made in our criminal W.P.No.4188/2014;

(C)Take Suo Motu Cognizance of JMFC Vashi Court Magistrate Mr.N.S.Lohara as per law laid down by Hon'ble Supreme Court in AIR 1996 SC 2294 for Jailing us for 3 days in Kalyan Jail on 25.1.2012 in a false case and initiate appropriate Criminal and Contempt of SC proceedings against him for violating D.K.Basu SC Guidelines;

(D) Issue directions in Criminal Writ Petition Nos.427 and 429 of 2014 to initiate criminal prosecution of 4 guilty Police Officers as per the directions of Hon'ble SC in its order dated 13.6.2013 in our SLP for granting reliefs not granted by the respondents 1 and 2 Learned Judges in their final Judgment dated 13.6.2013 in our Criminal W.P.No.1857 of 2012;

(E) Initiate Suo Motu Contempt of SC and HC by Advocate General for misguiding this Hon'ble Court on the law of “Deemed Sanction” in Subramanian Swamy's Case by playing a fraud on the Court to obtain a favourable and vitiated order and legally injure 80 year old very Senior Citizen poor widow.”

concerned, the said prayers have nothing to do with the subject matter of Criminal Writ Petition No.4188 of 2014. In fact, prayer clause (D) relates to criminal Writ Petition Nos.437 and 439 of 2013 to which the applicants are parties. The said petitions are pending in this Court before another Division Bench. Therefore, prayer clauses(C) and (D) cannot be considered on merits in the present application.

3 This application is filed for recall of the Judgment and order dated 5th December 2014 passed by this Court in Criminal Writ Petition No.4188 of 2014. The applicants herein were the petitioners in the said Writ Petition. The applicants were also the petitioners in Criminal Writ Petition No.1857 of 2012 which was partly allowed by the Judgment and Order dated 13th June 2013. the declaration sought in Writ Petition No.4188 of 2014 was as regards the said Judgment. The prayers made in the Criminal Writ Petition No.4188 of 2014 read thus:

“(i) To hold and declare that the said final Judgment Order dated 13.6.2012 passed by the Respondent Nos.1 and 2, Ld. Judges Mr.P.V.Hardas and Ms Mridula Bhatkar is biased and fraudulent due to non prosecution of 4 guilty Police Officers as per the law for our unjustified and illegal arrest and detention, violations of D.K.Basu SC 1997 Arrest Guidelines, Forgery, Perjury, False Affidavits etc and Contempt of Hon'ble SC and Hon'ble SC Directives despite clear prayers by the petitioner;

- (ii) To direct initiation of appropriate prosecution against respondent Nos.1 and 2, Ld. Judges Mr.P.V.Hardas and Ms Mridula Bhatkar u/s 217, 218, 219, 201, 191, 192, 193, 200, 465, 466, 471, 474 r/w section 120-B of Indian Penal Code;
- (iii) Grant interim compensation of Rs.2 Crore to petitioner as compensation of damages for hardship caused due to unlawful acts by Respondent Nos.1 and 2, Ld. Judges Mr.P.V.Hardas and Ms Mridula Bhatkar;
- (iv) Take suo motu cognizance of Contempt of Hon'ble Supreme Court's direction in D.K.Basu's case para 36 by Respondent Nos.1 and 2, Ld. Judges Mr.P.V.Hardas and Ms Mridula Bhatkar for not issuing directions for dismissal of guilty Police Officers for our illegal arrest and jailing and not initiating Contempt of Hon'ble Supreme Court Proceedings against police and try and punish Respondent Nos.1 and 2 under Contempt of Courts Act;
- (v) Grant ad-interim relief in terms of prayer clause (iii);
- (vi) That the petitioner has not filed any similar Writ Petition in this Hon'ble Bombay High Court or Hon'ble Supreme Court;
- (vii) Direct Respondent No.3, Registrar General of Bombay High Court to initiate Criminal prosecution under section 167, 466, 193, 191 etc of IPC against respondent Nos.1 and 2 Ld. Judges Mr.P.V.Hardas and Ms Mridula Bhatkar and also as per the Letter of Ministry of Law and

Justice sent to Hon'ble Bombay High Court Registrar General dated 2nd June 2014, Ref. No.L-19017/14/2013-Jus. on Hon'ble President's Office forwarding my complaint to Dept. of Justice as per my Grievances Regtn. No.PRESEC/E/2014/05517 of 21 March 2014 under CPGRAMS Portal;

- (viii) CBI Director be directed to register F.I.R against Respondent Nos.1 and 2, Ld. Judges Mr.P.V.Hardas and Ms. Mridula Bhatkar u/s.217, 218, 219, 201, 191, 192, 193, 200, 465, 466, 471, 474 r/w section 120-B of Indian Penal Code;
- (ix) Direct Respondent No.4 Hon'ble Chief Justice Bombay High Court to transfer Respondent Nos.1 and 2. Ld. Judges Mr.P.V.Hardas and Ms Mridula Bhatkar out of Maharashtra State till the enquiry/ investigation of the matter in order to ensure free and fair enquiry as per law laid down in 2014 Cr.L.J. 9 (S.C.);
- (x) Since the misbehavior, Criminal offences, incapacity, illegality, malafides and biasness of Respondent Nos.1 and 2, Ld. Judges Mr.P.V.Hardas and Ms Mridula Bhatkar are exfacially proved therefore, they be directed to resign from their posts in view of law laid down by 5-Judge Bench of Hon'ble Supreme Court in the case of K. Veerswami vs. Union of India 1991 (3) SCC 655;
- (xi) If Respondents No.1 and 2 Ld. Judges Mr.P.V.Hardas and Ms Mridula Bhatkar fail to

resign within 7 days then appropriate direction be issued for the forwarding reference for impeachment proceeding against Respondent Nos.1 and 2, Ld.Judges Mr.P.V.Hardas and Ms Mridula Bhatkar for their proved misbehaviour, incapacity to act as proved misbehavior, incapacity to act as High Court Judge and biased treatment to 79 year senior citizen widow of freedom fighter petitioner and also violating the mandate of article 14 of the Constitution about equality before law and equal protection of the law;

- (xii) Hon'ble Bombay HC Registrar General be directed to seize the record of the case;
- (xiii) The C.B.I be directed to collect the mobile phone details of all the accused involved in the conspiracy;
- (xiv) That the petitioner is seeking compensation of Rs.20 Crore with an Interim Relief of Rs.2 Crore but reserving her other rights for which the petitioner is filing this criminal W.P and also she is filing a private complaint for defamation under the Torts Law in the appropriate Court.
- (xv) Grant appropriate costs to the poor petitioners for this petition;
- (xvi) Grant any other relief in the interest of justice."

4 This Court after hearing the second applicant appearing in person at a considerable length has rejected the said petition by a detailed Judgment

and Order dated 5th December 2014. By this Application, the substantive prayer is for recall of the said Judgment and Order.

5 A preliminary objection raised by the learned senior counsel for the third respondent is to the maintainability of the present application. He urged that the bar created by section 362 of the Code of Criminal Procedure, 1973 will squarely apply to this application and inherent jurisdiction under section 482 cannot be invoked to override the bar created by section 362 of the said Code. The learned senior counsel relied upon the decision of the Apex Court in the case of Sooraj Devi Vs. Pyare Lal and others¹. The submission of the second applicant appearing in person is based on the decision of this Court in the case of Ravindra Narayan Joglekar².

6 Notwithstanding the objection raised by the learned senior counsel for the third respondent, we have patiently heard the second applicant appearing in person for more than one hour, though the scope of prayer clause (A) is considerably narrow. We have minutely perused the averments made in this application. The second applicant appearing in person has tendered pursis/written notes of arguments. He has read over the said pursis/written notes of arguments. In substance, the submission of the second applicant appearing in person is that the

1 (1981) 1 SCC 500

2 2008 All M.R.(Cri) 2032

Judgment and Order of this Court dated 5th December 2014 is erroneous on merits. His submission is that this Court has not correctly read the decision of the Apex Court in the case of Subramanian Swamy Vs.Manmohan Singh³. He reiterates that the said decision holds that there is a deeming fiction applicable as far as an application for grant of sanction to prosecute is concerned. He submitted that the view taken by this Court that there is no deemed sanction is completely erroneous. He went to the extent of finding fault with this Court on the ground that this Court did not direct the learned Judges of this Court to file a reply.

7 Though we have heard the second applicant appearing in person at a great length, he has made submissions as if he is arguing an appeal against not only the Judgment and Order which is sought to be recalled but also against the Judgment and Order in the main Writ Petition No.1857 of 2012 filed by the applicants which was decided by the Division Bench by Judgment and Order 13th June 2013. In fact the applicants filed a Special Leave Petition before the Apex Court for challenging the said Judgment and order. On 13th December 2013, the Apex Court disposed of the Special Leave Petition by passing the following order:

“Learned counsel for the petitioner wants to withdraw the Special Leave Petition with liberty to move the High Court. The Special

3 2012 (Vol.1) SCC (Cri) 1041

Leave Petition is dismissed as withdrawn with the aforesaid liberty."

8 As the second applicant has appeared in person, we have allowed him even to file written submissions which were read over by him in the Court. Even assuming that a Review Petition or a Petition for recall at the instance of the applicants is maintainable, we find that the second applicant wants to re-argue the Writ Petition No.4188 of 2014 which we have disposed of by the Judgment and Order dated 5th December 2014 which is sought to be recalled. His contention is that the learned Judges of this Court who decided the criminal Writ Petition No.1857 of 2012 have committed various offences as alleged by him. Suffice it to say that there is no merit in the prayer for recall of the Judgment and Order dated 5th December 2014.

9 The second submission of the second applicant appearing in person is that the learned Advocate General who appeared before this Court in Writ Petition No.4188 of 2014 did not correctly read the decision of the Apex Court in the case of Subramanian Swamy. His submission is that the learned Advocate General who appeared for the Registrar General of this Court in the said petition has misled the Court. He submitted that by playing a fraud upon this Court, the learned Advocate General obtained the Judgment and Order dated 5th December 2014 which is erroneous. He urged that the learned Advocate General has done something more than a

contempt.

10 We must note here that the learned Advocate General made legal submissions on the basis of certain decisions which were cited before this Court as precedents. The legal submissions made by him have been dealt with by this Court and the same have been accepted by this Court. By no stretch of imagination, it can be said that the learned Advocate General has committed any contempt of this Court either civil or criminal.

11 Perhaps the applicants who are appearing in person have been misguided by someone. What we have observed in paragraph 38 of the Judgment and Order dated 5th December 2014, is required to be reproduced here considering the nature of the averments made in this Application and the submissions made across the bar. The observations made in paragraph 38 apply even to the hearing of this Application as well.

"38 We find that the petitioners are involved in many litigations. The root cause of the litigations is the family dispute of the first petitioner with some of her own family members including her grand children. We presume that everything said in the petition and the written submissions is on account of frustration and desperation. It is stated by the second petitioner during the course of hearing that they are being adviced

by some lawyers and NGOs. It appears that the petitioners are not being correctly advised and perhaps, someone has misled them, which resulted in filing of this petition. Therefore, this is a fit case where leniency deserves to be shown by ignoring objectionable statements in the petition, in the written submissions and in what is canvassed before the Court. As suggested by the Apex Court in *Re. S. Mulgaonkar*, this Court is willing to ignore, "by a majestic liberalism" what is said by the petitioners. As a Court exercising jurisdiction under the Constitution, we refused to get easily provoked."

12 As observed earlier, the applicants have not been guided properly. In fact, the act of filing of this application as far as the prayer clauses (A), (B) and (E) is an abuse of process of law. However, for the reasons recorded above, we are showing restraint by not even directing the applicants to pay costs.

13 We must also note here that while dismissing the Writ Petition No.4188 of 2014 by Judgment and Order dated 5th December 2014 of which recall is sought by present application, we have specifically kept open the remedy of the petitioners. That is the observation in paragraph 39 of our Judgment.

14 Hence, we hold that there is no merit in the

prayer clauses (A), (B) and (E). The said prayers are rejected. As far as prayer clauses (C) and (D) are concerned, we have made no adjudication as the said prayers could not have been incorporated in this application.

15 Subject to what is observed above, application is rejected.

(A.S.GADKARI, J.)

(A.S.OKA, J.)