

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Criminal Application(APPP) No.45/2015
in
Criminal Application (APL)No.824/2014
(Hruday Kumar Babulal Parate and ors. .vs. The State of Maharashtra through
PSO, Sitabuldi, Nagpur.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Applicant Mr. S.M. Uke, in Person.
Mr. Mehroz Pathan, A.P.P. for Respondent/State

CORAM : B.R. Gavai &
Mrs. Mridula Bhatkar, JJ.
DATED : January 16, 2015.

1. The applicant who, as stated in the application is an Advocate by profession and practicing in various Courts in Maharashtra, has approached this Court by way of present application basically for action under Section 195 read with 340 of the Cr.P.C. against the concerned parties and the concerned Advocates therein including the Government Pleader. The applicant has also prayed for initiating suo motu criminal contempt action under the provisions of Contempt of Courts Act read with Article 215 of the Constitution of India against the concerned parties and concerned Advocates. The applicant has also prayed for recalling common order dated 23.12.2014 passed in Criminal Application (APL) No. 824/2014 (Hruday Kumar and ors. .vs. State of Maharashtra and Criminal Application (APL) No.825/2014 (Deepak Hiranwar and ors. .vs. State of Maharashtra). The applicant has in the alternative prayed for

forwarding the proceeding to the Hon'ble The Chief Justice of Bombay High Court, Mumbai.

2. Heard Mr. S.M. Uke- the applicant, who appears in person. The applicant basically contends that the parties in Criminal Application No.824/2014 and Criminal Application 825/2015 have indulged into fabrication and manipulation of the record, thereby interfering in the administration of the justice and resultantly acting in a manner which amounts to contempt of this Court. It is the contention of the applicant that applicant no.2 i.e. Madanlal Babulal Parate in Criminal Application No.824/2014 had appeared in the matter as a party in person for himself, as well as a counsel for other applicants and did not have Vakalatnama for the other applicants. It is submitted that the other applicants in the said criminal application have subsequently signed on the Vakalatnama and that too in the name of the other lawyer. It is, therefore, submitted that a case is made out against the said applicants for the offences punishable under Sections 193, 199 and 200 of the Indian Penal Code thereby warranting an action under Sections 340 read with Section 195 of the Cr.P.C.

3. Mr. Uke further submits that the applicant no. 4 in Criminal Application No.824/2014 namely Mr. Devendra Gangadhar Fadnavis, though is presently working as the Chief Minister of the Maharashtra, has fraudulently written his occupation as a Social Worker in the cause title. Certain other allegations have been

made with regard to Mrs. Bharti Dangre, who is presently working as the Government Pleader, contending that said Mrs. Bharti Dangre and Mr. Devendra Gangadhar Fadnavis were college-mates and they have hatched a conspiracy along with Mr. M.B. Parate.

4. The perusal of the record would reveal that the Division Bench of this Court (to which one of us i.e. Gavai J. was a party) vide order dated 23.12.2014 had allowed two criminal applications i.e. 824/2014 and 825/2014 thereby quashing and setting aside two counter cases being Criminal Case Nos. 144/1991 and 145/1991. The perusal of the record would reveal that the first informants at the behest of whom the respective first information reports were lodged and criminal proceedings were set into motion and some of the accused were personally present in the Court, when the applications were heard and allowed. Neither of the first informants has approached this Court contending therein that the matter was not amicably settled between the rival parties and that they had not agreed for giving an end to the criminal proceedings initiated against each other.

5. Under Section 340 of the Cr.P.C. the Court is required to make a preliminary inquiry before the proceedings could be initiated under Section 340.

6. It is the contention of the applicant that offences under Sections 193, 199 and 200 of the I.P.C.

are made out in the facts of the present case and that various persons are liable to be prosecuted for the said offences. It will be relevant to refer to Sections 193, 199 and 200 of the I.P.C.:-

“S.193. Punishment for false evidence. – *Whoever intentionally gives false evidence in any stage of a judicial proceedings, or fabricates false evidence for the purpose of being used in any stage of a judicial proceedings, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;*

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

S.199. False statement made in declaration which is by law receivable as evidence. – *Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.*

S.200. Using as true such declaration knowing it to be false. – *Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any*

material point, shall be punished in the same manner as if he gave false evidence."

7. We do not find that even by any stretch of imagination, the ingredients to constitute the offences in the afore-stated sections, would be made out.

8. Without going into the correctness or otherwise of the allegations, even for a moment if it is found that a lawyer has appeared in the matter without there being a Vakalatnama, the matter at the most may amount to some act which would fall exclusively within the jurisdiction of the Bar Council under the provisions of the Advocates Act.

9. It is not even the contention of the applicant that any statement which was false or which is either known to be or believed to be false touching any point, material object for which the declaration is made or used, was made in any of the applications.

10. At the cost of the repetition, it is to be stated that the aforesaid two criminal applications were allowed by this Court, since the matter was amicably settled between the first informants and the accused in both the cases, which arose out of the same incident. The compromise was arrived at in order to keep peace and harmony, inasmuch as the first informants and the accused were residents in the vicinity. It is not as if any of the first informants is coming before the Court and saying that no such compromise was arrived at or he

had not filed a petition for giving an end to the criminal proceedings. It is further to be noted that the applicant has also not impleaded any persons which according to him are liable to be proceeded further for the offences charged with.

11. Insofar as locus of the applicant herein is concerned, though Mr. Uke, relying on the judgment of the Apex Court in the case of **N.Natarajan .vs. B.K. Subba Rao** reported in **AIR 2003 Supreme Court 541** submits that even a third person has right to file an application under Section 340 of the Cr.P.C, we do not find that the said judgment would be applicable to the facts of the present case. In the said case, the allegation was made that the conduct of a public prosecutor in Bombay Blast case in making contradictory submissions would attract provisions of Sections 192 to 196 and 227 of the Cr.P.C. No doubt that the Apex Court held that an application under Section 340 could be entertained even at a behest of a stranger. However, it will be relevant to refer to the observations of the Apex Court in the said case which reads thus:-

“In the Bombay Boms Blast case, the hearing as to framing of charges has gone on for nearly eight month. Considering the nature of the charges to be framed in the case, the voluminous record of the case presented before the Court, the seriousness and magnitude of the matter when several hundred or persons have been killed and property worth crores of rupees has been destroyed, in what manner the case should be conducted is a very serious

affair. If the public prosecutor had been supporting at one stage of the proceedings the charge sheet that had been laid in respect of the offences arising under Sections 121 and 121A, Indian Penal Code, later on he realises that evidence is not available at that stage of the case, seeks that for the time being these charges need not be proceeded with, and if further investigation discloses such offences as having been committed, supplementary charge sheet would be filed before the Court later, such shift in the stand would not attract offences enumerated under Section 195, Cr.P.C. This is one of those rare cases where Court that ought to exercise powers in the interests of administration of justice to restrict the hands of the stranger complainant to engage in this kind of vexatious litigation. On half-backed knowledge of law, he proceeds to present argument before the Court with an analysis of facts which is tendentious and waste the time of the Court by trying to cite decisions which have no relevance to the case. Court clarifies that the complainant shall not engage in this kind of litigation hereafter and he is restrained from making any applications of this nature and if any such application is made before any Court, the same shall be dismissed in limine and appropriate proceedings be initiated against him."

12. The perusal of the aforesaid observations would reveal that the Apex Court in unequivocal terms has held that the contentions as raised by the applicant therein are without substance and baseless. Not only that, but the Apex Court found that it was one of those rare cases where Court ought to have exercised powers

in the interests of administration of justice to restrict the hands of the stranger complainant to engage in this kind of vexatious litigation. The Apex Court has further found that on half-backed knowledge of law, he proceeds to present argument before the Court with an analysis of facts which is tendentious and waste the time of the Court by trying to cite decisions which have no relevance to the case. The Apex Court has further observed that the complainant shall not engage in this kind of litigation hereinafter and is restrained from making any applications of this nature. It has been further observed that if any such application is made before any Court, the same shall be dismissed in limine and appropriate proceedings be initiated against him. We find that the present application is also of the similar nature. We find that the present applicant also deserves the same compliments which have been given by the Apex Court to the applicant in the case before it.

13. Merely because one of the applicants before this Court is the Chief Minister, does not change the legal position, when the Court exercises its jurisdiction under Article 226 of the Constitution of India or under Section 482 of the Cr.P.C. The same law would be applicable to each and every case irrespective of the fact as to who is the applicant before the Court. When the parameters for exercising of powers under Section 482 of the Cr.P.C. or under Article 226 of the Constitution of India for quashing of the criminal proceedings are laid down by the Apex Court in various judgments including in the case of **Narinder Singh .vs.**

State of Punjab reported in **(2014) 6 Supreme Court Cases 466** and if the Court finds that the law laid down has to be applied in the facts of the case, then merely because one of the applicants happens to be the Chief Minister, the Court is not supposed to apply different yardstick.

14. Insofar as the allegations that though Mr. Devendra Gangadhar Fadnavis is presently the Chief Minister, he has not written the same in the cause title and has shown his occupation as Social Worker and, therefore, it amounts to playing fraud, making false statement or a forgery is concerned, in our view can only be a figment of an ingenious mind.

15. Furthermore the contention that because the Government Pleader appearing in the matter Mrs. Bharti Dangre and Mr. Devendra Fadnavis were students of the same college and have, therefore, acted in conspiracy with Mr. M.B. Parate, also appears to be a product of the wild imagination.

16. As laid down in the case of **Narinder Singh** (supra), if the parties arrive at a settlement and decide to give an end to the criminal proceedings between them in order to live in peace and harmony and when neither the first informants nor any of the parties related thereto has any grievance, we do not find that a third party would have any locus and pray for recalling of that order.

17. From the tenor of the allegations made in the application, it is apparent that the applicant has made very serious and baseless allegations against the persons who are holding the offices of the Chief Minister of the State of Maharashtra and the Government Pleader of High Court of Bombay, Nagpur Bench. We have no hesitation to hold that such a conduct depicts of a thoroughly irresponsible behaviour. However, without going into that aspect, we find that the present application is without substance. We find that upon perusal of the entire application, no case is made out for invoking the powers under Section 340 read with 195 of the Cr.P.C. We also do not find that any averments can be said to be sufficient enough to make a case for proceeding against anyone for having committed contempt of this Court. The application is, therefore, without any substance and as such is dismissed.

JUDGE

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