

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL REVIEW APPLICATION (APPP) NO. 1081 OF 2015

IN

CRIMINAL APPLICATION (APPP) NO. 45 OF 2015

IN

CRIMINAL APPLICATION (APL) NO. 824 OF 2014

Hruday Kumar Babulal Parate
and others.

... APPLICANTS

VERSUS

The State of Maharashtra.

... RESPONDENT

....

Applicant Shri S.M. Uke, in person.

Shri M.K. Pathan, Additional Public Prosecutor for the respondent/State.

....

CORAM : B.R. GAVAI AND
PRASANNA B. VARALE, JJ.

DATED : 14TH OCTOBER, 2015.

ORAL ORDER : (Per B.R. Gavai, J.)

1. The present review application has been filed by the present applicant who is party-in-person seeking review of the order passed by the Division Bench of this court consisting of one of us i.e. B.R. Gavai and Smt. M.R. Bhatkar, JJ., dated 16th January, 2015 in Criminal Application No. 45 of 2015.

A pursis is also filed by the present applicant to the following effect -

“1. That, the applicant/petitioner filed Civil Writ Petition (Stamp) No. 20322/2015 against Hon'ble Justice Shri B.R. Gavai and the instant matter is also a part of the said

petition.

2. That, in above circumstances it would be not proper to place this matter before Hon'ble Justice Shri B.R. Gavai.
3. That, the applicant/petitioner wants to file additional affidavit in this petition/application for bringing subsequent development on record for proper adjudication of matter."

It can thus be seen that the basic objection of the applicant is that since he has filed a petition which is on a stamp number, against one of us i.e. B.R. Gavai, J. this bench should not take up the present matter.

2. The present application has a checkered history. We are of the view that before considering the request of the party-in-person not to take up the present application by this bench, it will be necessary for us to refer to the entire background.

In this Court, two Criminal Applications i.e. Criminal Application No. 824 of 2014 (Hruday Kumar Babulal Parate and others .v. State of Maharashtra) and Criminal Application No. 825 of 2014 (Deepak Jaisingh Hiranwar and others .v. State of Maharashtra) were filed under Section 482 of the Code of Criminal Procedure for quashing of two counter cases against each other. The Division Bench of this Court consisting of B.R. Gavai and V.M. Deshpande, JJ., had allowed those two applications vide judgment and order dated 23rd December, 2014. It was observed by this Court that the parties had arrived at a settlement and decided to give an end to the criminal proceedings between them, in order to live in peace and harmony. It was also noticed by this Court that those cases pertained to the year 1991 and

since no progress was done in the matter and by passage of time, the parties had amicably settled the dispute, no purpose would be served by keeping those stale cases pending. Taking into consideration the law laid down by the Apex Court in the case of **Narinder Singh and others .v. State of Punjab and others (reported in 2014 (6) SCC, 466)**, this Court found that, since no element of public law was involved in the matter and since the parties had amicably resolved to give an end to the litigation between them, it was in the interest of justice to allow the applications and give an end to the criminal proceedings.

The applicant thereafter filed an application being Criminal Application No. 45 of 2015 thereby seeking various reliefs as under :-

- “1. Take cognizance of this application to conduct enquiry u/s 195 and 340 of Cr.P.C. and suo motu criminal contempt of court action. **OR** if Hon'ble Court thinks, this instant application may be placed before the Hon'ble Chief Justice of Bombay High Court for appropriate orders.
2. Recall the common order dated 23.12.2014 passed in Original Criminal Application (APL) 824/2014 (Hruday Kumar and others vs. State of Maharashtra).
3. Recall the common order dated 23.12.2014 passed in Original Criminal Application (APL) 825/2014 (Deepak Hiranwar and others vs. State of Maharashtra).
4. Examine legality, propriety and illegality of the order and the conduct of the parties in obtaining order including office objections.
5. Suitable action under Section 195 read with 340 of Criminal Procedure Code be proceeded against the concerned parties and concerned Advocates therein including Government Pleaders.
6. Initiate suo motu criminal contempt action under the provisions of Contempt of Courts Act read with Article 215 of Constitution of India against the concerned parties and

concerned Advocates including Government Pleaders.

OR

In alternative the said proceeding may kindly be forwarded to the Hon'ble the Chief Justice of Bombay High Court, Fort, Mumbai.

7. Grant any other relief to which this Hon'ble Court may deem fit and proper in the facts and circumstance of the case.”

The Division Bench of this Court consisting of B.R. Gavai and Smt. M.R. Bhatkar, JJ., heard the application and decided the same on 16th January, 2015. Perusal of the said order would reveal that, the main contention as raised by the applicant in the said application was that Shri Devendra Gangadhar Fadnavis, the Chief Minister of Maharashtra and Smt. Bharti Dangre, the Government Pleader were college-mates and as such they had hatched the conspiracy along with Shri M.B. Parate to get the orders from this Court. The Division Bench of this Court, after considering all the relevant aspects and considering that the earlier Division Bench had passed the order taking into consideration the law laid down by the Apex Court in the case of Narinder Singh and others .v. State of Punjab and others (cited supra), found that there was no merit in the application and as such rejected the same. The Court also found that the applicant was totally stranger and had no locus to file such an application.

The reasons given by the Division of this Court are self speaking and we would not like to burden the present order by again reproducing them.

The order passed by the Division Bench of this Court dated 16th

January, 2015 was challenged before the Hon'ble Apex Court by way of Special Leave Petition. Their Lordships of the Apex Court were pleased to pass the following order on 17th August, 2015 :-

“Heard the petitioner, who has appeared in person.

No ground for interference is made out, in exercise of our jurisdiction under Article 136 of the Constitution of India.

The special leave petition is dismissed.

As a sequel to the above, interlocutory applications are disposed of.”

It can be seen from the order of the Hon'ble Apex Court that it has observed that no ground for interference is made out under Article 136 of the Constitution of India and dismissed the said SLP. It could thus be seen that the Hon'ble Apex Court did not find any ground to interfere with the orders passed by the Division Bench of this Court on 16th January, 2015.

3. Now the applicant has filed the present application seeking review of the said order dated 16th January, 2015.

4. It will be relevant to refer to Section 362 of the Code of Criminal Procedure.

“362. Court not to alter judgment – Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.”

Perusal of the aforesaid provision would reveal that no Court, when it has signed the judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error. Undisputedly, what the present applicant is seeking is not a correction of the clerical or an arithmetical error but a review of the order passed by the Division Bench of this Court on merits.

5. It could further be seen that the sequence in which the present application arises is as under.

That two rival parties who had lodged the counter FIRs against each other in the year 1991 on a trivial dispute, approached this Court almost after a period of 23 years contending therein that the case has not progressed much and that in order to have peace and harmony, they had decided to resolve their dispute and, therefore, prayed this Court for exercising its jurisdiction under Section 482 of the Code of Criminal Procedure for giving an end to the criminal litigation. The Division Bench of this Court, taking into consideration the law laid down by the Hon'ble Apex Court in the case of Narinder Singh and others .v. State of Punjab and others (cited supra), allowed those applications.

The present applicant, who is a stranger, approached this Court by way of Criminal Application No. 45 of 2015 not only seeking to recall those orders but also praying for taking action under Section 195 read with Section 340 of the Code of Criminal Procedure against the concerned persons. The main grievance of the applicant, as could be seen, was that one of the parties in the said proceedings happens to be the Chief Minister of Maharashtra and

that the Government Pleader, who had appeared in the matter, was in the same college wherein Shri Devendra Fadnavis, the Chief Minister was a student of law. Finding that the applicant had no locus and that serious and baseless allegations were made by the applicant against high officials, the Court rejected the application. The applicant being aggrieved by the order passed by the Division Bench of this Court, challenged the same before the Hon'ble Apex Court. The Apex Court found no reason to interfere with the order passed by the Division Bench of this Court and as such dismissed the Special Leave Petition.

6. After all this, the applicant now wants to again reopen the issue. The applicant now wants that since he has filed petition against one of us i.e. B.R. Gavai, J., the review application should not be taken by the bench of which B.R. Gavai, J. is a member.

7. In this respect, it will be relevant to refer to sub Rule (2) of Rule 3 of Chapter XXX of the Bombay High Court Appellate Side Rules, 1960.

“(2) Where the order has been passed or the judgment has been delivered by a Division Bench, such application shall be placed before that Division Bench :

Provided however that where One Judge of the said Division Bench has ceased to be the Judge of the High Court, or has ceased to sit at the particular Bench, such application shall be placed before another Division Bench of which the other Judge is a Member :

Provided further that when both the Judges have ceased to be the Judges of the High Court, or have ceased to sit at the particular Bench, such application shall be placed before a Division Bench dealing with -

- (a) Writ Petitions, if the original order had been passed in a Writ Petition;
- (b) First Appeals, if the original order had been passed in a First Appeal;
- (c) Criminal Appeals, if the original order had been passed in Criminal Appeal or a Criminal Application.”

It could thus be seen that the High Court Appellate Side Rules require that review should be placed before the same bench, if the bench is available and if one of the judges of the said bench is not available, then the matter should be placed before the bench of which the other judge is a member. The order which is sought to be reviewed was passed by the bench consisting of B.R. Gavai and Smt. M.R. Bhatkar, JJ. At present Smt. Bhatkar, J. is not available at Nagpur Bench. In that view of the matter, the matter will have to be placed before the bench to which one of us i.e. B.R. Gavai, J. is a member.

8. Now, the question that arises is, as to whether merely because the applicant who claims to have filed some petition against one of us i.e. B.R. Gavai, J. the Bench should adhere to his wishes and refuse to exercise the jurisdiction which we are required to exercise in law. The question would be whether this Court should succumb to the pressure of a disgruntled litigant and not pass the order in accordance with law.

9. It will be relevant to refer to the order of the Division Bench of this Court dated 16th January, 2015 in Criminal Application No. 45 of 2015.

This Court has elaborately considered the law laid down by the Apex Court in the case of **N. Natrajan .v. B.K. Subba Rao (reported in AIR 2003 SC, 541).** Relying on the observations of the Apex Court, it has been held that the observations made by the Apex Court in the case of **N. Natrajan .v. B.K. Subba Rao (cited supra)** aptly apply to the applicant before this Court. Incidentally the applicant before us is also the same. The Apex Court in an unambiguous term has held that on half-backed knowledge of law, a stranger/complainant engages in a vexatious litigation. 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 clarified that the complainant therein shall not engage in such kind of litigation hereinafter and restrained him from making any applications of the same nature and also observed that if any such application is made before any Court, the same shall be dismissed in limine and appropriate proceedings be initiated against the said litigant.

10. The present applicant before us happens to be a lawyer and member of Bar Council of Maharashtra and Goa. As an officer of the Court, it is lawyer's duty to uphold the majesty of law and assist in the administration of justice. However, the entire conduct of the applicant as can be reflected in the present application itself would reveal that rather than having any respect for the majesty of law, he has involved time and again in making serious allegations against the sitting Judges of this Court, the Chief Minister and the Government Pleader.

11. We make it clear that in the present case we are not concerned about the allegations made by the party-in-person against one of us i.e. B.R. Gavai, J., in a writ petition, which, as is evident from the pursis, has been filed by him for appropriate reliefs against one of us i.e. B.R. Gavai, J. We are sure that the appropriate bench before which the matter will be placed, would take decision in the said petition in accordance with law. In any case, since one of us i.e. B.R. Gavai, J. is a party to that petition, the bench to which B.R. Gavai, J. is a party would never be able to take up the matter. However, we will have to consider the question as to whether the present application which is seeking the review of the order passed by the Division Bench of this Court, to which B.R. Gavai, J. is a party, should also be not entertained by us, only on the basis of the allegations made by the applicant-in-person, which have no concern with the present review application.

12. Insofar as the present application is concerned, the allegations made by the applicant in the application against B.R. Gavai, J. are thus. That the present applicant had filed writ petition before this Court challenging the appointment of Justice Shri N.W. Sambre and Justice Shri A.M. Badar and those two additional judges have been made the respondents in their personal capacity. The apprehension of the applicant is that Justice B.R. Gavai has disliked the present applicant because of this reason. It is stated that on 09th June, 2015, B.R. Gavai, J. has passed an order as “not before me” in the said petition. It is further stated that the applicant's allegations are not, therefore, baseless. It is further stated that the Hon'ble Court and Shri B.R. Gavai, J. ought not to have taken up the matter in the interest of

justice.

The applicant has gone on making further allegations that much after the order was passed by the Division Bench of this Court on 16th January, 2015, the father of Justice B.R. Gavai left this abode on 25th July, 2015 and after the sad demise, when the mortal remains of the father of Justice B.R. Gavai were brought to the official residence of B.R. Gavai, J., Shri Devendra Fadnavis, the Chief Minister visited the residence of B.R. Gavai, J. and also gave his reaction to the press. He has reproduced the quote of Shri Devendra Fadnavis stating therein that he had personal relations with late Shri R.S. Gavai.

It will not be out of place to mention that the father of one of us i.e. B.R. Gavai, J., late Shri R.S. Gavai was an active politician for a period of almost 60 years. If a father of a judge happens to be a politician and after the mortal remains are brought to his residence and if the politicians visit the residence to pay their last respect, is it the expectation of the applicant, that the judge concerned should ask the guards at his house to stop the visitors and politicians.

13. The averments made in the present application remind us of the observations made by the Apex Court in the case of **Charan Lal Sahu .v. Union of India and another (reported in 1988 (3) SCC, 255)**. It will be useful to reproduce the said observations.

- “3. The writ petition has been drafted in a careless manner. At several places the pleadings are meaningless. At several other places they are contradictory. The allegations are clumsy and several irrelevant facts have

been put into the petition to inflate its size.

4. The petitioner has left out no institution from his attempt of mud-slinging. We have a feeling that while drawing up the petition the petitioner has considered himself to be the only blemishless person and everyone else including social institutions to be blameworthy. We are surprised that an advocate practising in this Court with considerable experience has chosen to act in such an irresponsible manner. The writ petition, in our opinion, therefore, deserves to be dismissed. We, accordingly, dismiss the writ petition.”

Again in the case of **Roshan Lal Ahuja in RE (reported in 1993 Supp (4) SCC, 446)**, the Apex Court considered a case wherein a litigant had made various casting aspersions against the Hon'ble Judges of the Supreme Court. The Hon'ble Apex Court observed thus :-

- “11. The tendency of maligning the reputation of judicial officers by disgruntled elements who fail to secure an order which they desire is on the increase and it is high time that serious note is taken of the same. No latitude can be given to a litigant to browbeat the Court. Merely because a party chooses to appear in person, it does not give him a licence to indulge in making such aspersions as have the tendency to scandalise the Court in relation to judicial matters.”

The Apex Court in the case of **Nandlal Balwani, RE (reported in 1999 (2) SCC, 743)** also had an occasion to consider a case of a contemner who claimed to be an Advocate enrolled with the Bombay Bar Association and had shouted slogans in the open Court and thereafter hurled his shoe towards the Court thereby interrupting the Court proceedings. The Apex Court observed thus :-

“4. ... Law does not give a lawyer, unsatisfied with the result of any litigation, licence to permit himself the liberty of causing disrespect to the Court or attempting, in any manner, to lower the dignity of the Court.”

We may also gainfully refer to the observations of the Apex Court in the case of **Leila David .v. State of Maharashtra (reported in 2009 (10) SCC, 337)**, as under :-

“... This is one of such cases where no leniency can be shown as the contemnors have taken the liberal attitude shown to them by the Court as licence for indulging in indecorous behaviour and making scandalous allegations not only against the judiciary, but those holding the highest positions in the country. The writ proceedings have been taken in gross abuse of the process of Court, with the deliberate and wilful intention of lowering the image and dignity not only of the Court and the judiciary, but to vilify the highest constitutional functionaries.”

14. We would have been happy to direct the matter not to be placed before us, and direct it to be placed before another bench, but the question is as to whether a disgruntled litigant who happens to be a lawyer of this Court should be permitted to make baseless allegations and resort to forum hunting. We find that if such a trend is not stopped, a disgruntled litigant would go on making allegations after allegations against constitutional functionaries including High Court Judges, Ministers, Chief Minister and bring disrespect not only to the institution of the administration of justice but also to the entire constitutional framework.

15. The Apex Court recently in the case of **Subrata Roy Sahara .v. Union of India and others (reported in 2014 (8) SCC, 470)** had an occasion

to consider the request made by the Counsel for the petitioner to recuse it from hearing the case, Their Lordships in para 11 of the judgment, reproduced the observation made by Hon'ble Shri Justice Manmohan Sarin (Delhi High Court) in Criminal Miscellaneous No. 9955 of 2007 with approval which reads thus :-

“The path of recusal is very often a convenient and a soft option. This is especially so since a Judge really has no vested interest in doing a particular matter. However, the oath of office taken under Article 219 of the Constitution of India enjoins the Judge to duly and faithfully and to the best of his knowledge and judgment, perform the duties of office without fear or favour, affection or ill will while upholding the Constitution and the laws. In a case, where unfounded and motivated allegations of bias are sought to be made with a view of forum hunting/Bench preference or brow-beating the Court, then, succumbing to such a pressure would tantamount to not fulfilling the oath of office.”

Their Lordships have also reproduced the observations made by the Apex Court affirming the aforesaid judgment of Delhi High Court in the case of **R.K. Anand .v. Delhi High Court (reported in 2009 (8) SCC, 106)** as under :-

“263. The above passage, in our view, correctly sums up what should be the court's response in the face of a request for recusal made with the intent to intimidate the court or to get better of an 'inconvenient' Judge or to obfuscate the issues or to cause obstruction and delay the proceedings or in any other way frustrate or obstruct the course of justice.”

After quoting aforesaid observations, Their Lordships observed thus :-

“In fact, the observations of the High Court of Delhi and those of this Court reflected exactly how it felt, when the learned counsel addressed the Court at the commencement of the hearing. If it was the learned counsel's posturing antics, aimed at bench-hunting or bench-hopping (or should we say, bench-avoiding), we would not allow that. Affronts, jibes and carefully and consciously planned snubs could not deter us from discharging our onerous responsibility. We would at any time during the course of hearing walk out and make way for another Bench to decide the matter, if ever we felt that that would be the righteous course to follow. Whether or not it would be better for another Bench to hear this case will emerge from the conclusions, we will draw, in the course of the present determination.”

Their Lordships in para 136 have quoted its observations in the case of **Jaswant Singh .v. Virender Singh (reported in 1995 Supp (1) SCC, 384)**, as under :-

“... The appellant is an advocate and it is painful that by filing the application and the petition as a party in person, couched in an objectionable language, he permitted himself the liberty of indulging in an action, which ill behoves him and does little credit to the noble profession to which he belongs. An advocate has no wider protection than a layman when he commits an act which amounts to contempt of court. It is most unbefitting for an advocate to make imputations against the Judge only because he does not get the expected result, which according to him is the fair and reasonable result available to him. Judges cannot be intimidated to seek favourable orders. Only because a lawyer appears as a party in person, he does not get a license thereby to commit contempt of the court by intimidating the Judges or scandalising the courts. He cannot use language, either in the pleadings or during arguments, which is either intemperate or unparliamentary. These safeguards are not for the protection of any Judge individually but are essential for maintaining the dignity and decorum of the courts and for upholding the majesty of law. Judges and courts are not unduly sensitive or touchy to fair and reasonable criticism of their judgments. Fair comments, even if, outspoken,

but made without any malice or attempting to impair the administration of justice and made in good faith, in proper language, do not attract any punishment for contempt of court. However, when from the criticism a deliberate, motivated and calculated attempt is discernible to bring down the image of judiciary in the estimation of the public or to impair the administration of justice or tend to bring the administration of justice into disrepute the courts must bestir themselves to uphold their dignity and the majesty of law. The appellant, has, undoubtedly committed contempt of the court by the use of the objectionable and intemperate language. No system of justice can tolerate such unbridled licence on the part of a person, be he a lawyer, to permit himself the liberty of scandalising a court by casting unwarranted, uncalled for and unjustified aspersions on the integrity, ability, impartiality or fairness of a Judge in the discharge of his judicial functions as it amounts to an interference with the due course of administration of justice.”

After quoting the aforesaid observations in the case of Jaswant Singh .v. Virender Singh (cited supra), Their Lordships in para 137 observed thus :-

“137. The observations recorded in the above judgment in *Jaswant Singh case* are fully applicable to the mannerism and demeanour of the petitioner Mr. Subrata Roy Sahara and some of the learned Senior Counsel. We would have declined to recuse from the matter, even if the “other side”, had been a private party. For, our oath of office requires us to discharge our obligations, without fear or favour. We therefore also commend to all courts, to similarly repulse all baseless and unfounded insinuations, unless of course, they should not be hearing a particular matter, for reasons of their direct or indirect involvement. The benchmark, that justice must not only be done but should also appear to be done, has to be preserved at all costs.”

(emphasis supplied)

It could thus be seen that Their Lordships have in unequivocal

terms held that the office of a Judge requires it to discharge its obligations without fear or favour. As a matter of fact, Their Lordships have commended to all courts to similarly repulse all baseless and unfounded insinuations. However, this is with the rider that the Court should not be hearing a particular matter for reasons of their direct or indirect involvement.

16. As discussed hereinabove, we are unable to find as to how the allegations made hereinabove are even remotely concerned with the order which is sought to be reviewed. The allegations pertain to some of the events which have taken place much after the said order under review was passed. At the cost of repetition, the Hon'ble Apex Court found that the order under review was not of such a nature which required interference by the Hon'ble Apex Court and dismissed the SLP challenging the same. In that view of the matter, we are not inclined to accept the request made by the applicant that this Bench should not hear the present application and we reject his prayer in that regard.

17. Needless to state that we have considered the present matter only with regard to the question as to whether this Bench should or should not hear the present application. Insofar as the writ petition which is filed against one of us i.e. B.R. Gavai, J. is concerned, we are not even aware about as to what are the allegations made against the said Judge in the writ petition. As already stated hereinabove, since one of us is a party in the said petition, the said petition even cannot be heard by us. We are fully confident that our brethren is competent and dispassionate enough, to decide the said petition

impartially even against the brother judge of this Court.

18. That leads to consider as to whether the present application for review of the order passed by this Court on 16th January, 2015, needs to be considered or not. As already discussed above, there is a statutory bar under Section 362 of the Code of Criminal Procedure, quoted hereinabove. Apart from that when a reasoned order delivered by this Court having been assailed before the Hon'ble Supreme Court and the Hon'ble Supreme Court dismissing the SLP, observing that no ground for interference was made out, the present application is nothing but an abuse of process of law. The application is, therefore, rejected.

The present order along with the copies of all the relevant proceedings shall be forwarded forthwith to the Hon'ble the Acting Chief Justice of this Court, the learned Advocate General of Maharashtra, the Chairman of the Bar Council of Maharashtra and Goa for considering as to whether anything needs to be done in the matter.

JUDGE

JUDGE

*rrg.