

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 3313 OF 2014

Mubarak Abbasbhai Shaikh. ... Petitioner.
Versus
The State of Maharashtra & ors. ... Respondents.

Mr. Anand Chawre, advocate for petitioner.

Mr. A.P. Mundargi, Sr. Counsel a/w. Mr. S.S. Salunkhe, advocate for
respondent Nos. 2 to 10.

Mr. A.R. Patil, APP for State.

CORAM : SMT.SADHANA S. JADHAV,J

DATE : JUNE 15, 2016

P.C.:

1 Heard the learned Counsel for the Petitioner and the learned Sr.
Counsel for the respondents. Perused the papers.

2 Rule. Rule made returnable forthwith with the consent of the
parties.

3 The prayer in the present Writ Petition are as follows :

“A Quash and set aside the impugned order passed by the Hon'ble Additional Sessions Judge Pune dated 12.03.2014 in Criminal Miscellaneous Application No. 226 of 2012 in Sessions Case No. 685 of 2009. Exhibit H-2 hereto; and to allow the said Application, Exhibit H-1 hereto; and further direct the Hon'ble Sessions Judge Pune to frame charges to view of the entire material before it together in the form of charge-sheet report under Section 173(2) of the Code of Criminal Procedure 1973 together with supplementary Charge-sheet report under Section 173(8) of the Code of Criminal Procedure 1973 upon the Accused Respondents No. 02 to 10 herein.

B During the pendency of this Petition, direct the Hon'ble Sessions Judge Pune to frame charges in view of the entire material before it together in the form of Charge-sheet report under Section 173(2) of the Code of Criminal Procedure 1973 together with supplementary charge-sheet report under Section 173(8) of the Code of Criminal Procedure 1973 upon the Accused Respondents No. 02 to 10 herein.

C Ad interim relief in terms of prayer clause B above.

D Any other suitable and necessary relief may kindly be granted.”

4 The facts of the case in nutshell are as follows :

That on 19/2/2009 Crime No. 33 of 2009 was registered at Hingewadi Police Station against the accused/respondent for offence punishable under section 306 read with section 34 of the Indian Penal Code. It appears that one Abdul Gani Abbas Shaikh was working in Shivshakti Co-operative Credit Society Limited. He was transferred from Nigdi Branch, Pune to Vashi branch. He had made representation for recalling of the transfer. That on 31/1/2009 he set himself ablaze. He was admitted in the hospital with history of burn injuries. His statement was recorded. On the basis of the statement by injured Abdul Gani Abbas Shaikh, Crime No. 33 of 2009 was registered. The accused were the directors of the said Co-operative Credit Society. After completion of investigation, charge-sheet was filed under Section 173(2) of the Code of Criminal Procedure, 1973 on 18/6/2009.

5 That an application was made by the State for conducting investigation under Section 173(8) of the Code of Criminal Procedure, 1973. The said application filed by the State was allowed. In the meanwhile, the brother of the deceased had filed Criminal Writ Petition No. 1637 of 2010 seeking reinvestigation in Crime No. 33 of 2009 before this Court. The Hon'ble Division Bench(Coram : B.H. Marlapalle & U.D. Salve, JJ) by an order dated 16/6/2011 was pleased to dismiss the petition on the ground that further investigation was undertaken, which resulted in filing of the supplementary charge-sheet on 12th May, 2009 and therefore, according to the Hon'ble Division Bench, no further directions were necessary and hence, the Petition was disposed of.

6 The accused had filed an application seeking discharge. The learned Additional Sessions Judge, Pune by Judgment and Order dated 16/6/2011 was pleased to dismiss the discharge application.

The Petitioner had filed Criminal Writ Petition No. 1821 of 2011. This Court (Coram : B.R. Gavai, J) by the Judgment and Order dated 3rd August, 2011 was pleased to allow the Writ Petition. The Hon'ble Bench had placed reliance upon the Judgment of the Hon'ble Apex Court in the case of **Madan Mohan Singh v/s. State of Gujarat & anr. Reported in (2010) 8 SCC 628.** The Hon'ble Bench had perused the compilation of the charge-sheet. It was specifically observed as follows :

“Merely because a person is transferred from one branch to another branch, cannot be said that it would amount to an act which aids or abets the commission of a suicide by a person who has committed suicide. As held by the Apex Court in the aforesaid case for proceeding further against the accused under the offence punishable under Section 306 of the IPC, it is necessary for the prosecution to establish that intention of the accused was to aid or to instigate or to abet the deceased to commit suicide.”

The Hon'ble Bench was pleased to allow the Writ Petition and all the accused were discharged.

7 Present petitioner had then approached the Sessions Court by filing Criminal Misc. Application No. 226 of 2012 and had prayed for framing charges afresh in view of the filing of the supplementary charge-sheet dated 20/11/2011. The learned Sessions Court had perused the compilation of the first charge-sheet as well as the charge-sheet which was filed pursuant to the direction under Section 173(8) of the Code of Criminal Procedure, 1973 and had rejected the said application by an order dated 12th March, 2014. It was contended before the learned Sessions Judge that the accused have been discharged by the Hon'ble High Court as the supplementary charge-sheet was not before the Hon'ble High Court and the material collected in the supplementary charge-sheet could not be perused by the Hon'ble Court. Learned Sessions Court had observed that "in the supplementary charge-sheet, Investigating Officer had filed statement and duty report of the Shivshakti Co-op. Credit Bank. As such there is no material on record to show that deceased was abetted to commit

suicide. There is no material on record to frame charge on the basis of the supplementary charge-sheet filed by the Investigating Officer. As such application is devoid of merits, which is liable to be rejected.” Hence the application was rejected.

8 The learned Counsel for the Petitioner submits that the Sessions Court had directed to frame charges in view of the entire material before it in the form of the charge-sheet under Section 173(2) and 173(8) of the Code of Criminal Procedure, 1973.

9 This Court cannot be oblivious of the fact that by Judgment and Order dated 3rd August, 2011, petition filed by the accused seeking discharge was allowed. The same was not challenged by the Petitioner before the Hon'ble Apex Court and had attained finality. The application seeking relief of framing of charges was filed on 27th August, 2012. The learned Sessions Court had taken into consideration the material in the supplementary charge-sheet and had

rejected the application. There is no reason for this Court to sit over the Judgment and Order passed by the coordinate bench of this Court.

10 The learned Counsel for the Petitioner has placed implicit reliance upon the Judgment of the Hon'ble Apex Court in the case of **Raju Ramsing Vasave v/s. Mahesh Dorao Bhivapurkar & ors. reported in (2008) 9 SCC 54.** That was a case in which the issue which had fallen for consideration before the Hon'ble Apex Court was as follows :

“Whether a co-employee of the respondent No. 1 who was working as a Field Officer with the Maharashtra Pollution Control Board can maintain an independent special leave questioning the judgment of a High Court setting aside an order of the Schedule Tribe Caste Certificate (sic) Committee.

11 The learned Counsel has drawn attention of this Court to the observation of the Hon'ble Apex Court in **Raju Ramsing Vasave(cited supra)** in paragraph-23 which reads as follows :

“23. Two legal principles which would govern a case of this nature, are:

(i) A decision rendered without jurisdiction being a nullity, the principle of res judicata shall not apply.

(ii) If a fraud has been committed on the court, no benefit therefrom can be claimed on the basis of thereof or otherwise.

In paragraph 25 of the above Judgment, issue No. 2 was answered as follows :

“Fraud vitiates all solemn acts. When an order has been obtained by practising fraud on the court, it would be a nullity.”

12 According to the learned Counsel for the petitioner, in the present case, the respondent had played fraud upon this court by suppressing the compilation of the supplementary charge-sheet. It is a matter of record that the prosecution was heard by the Hon'ble Court. The learned Counsel has also drawn attention of this court to

the observations of the Hon'ble Apex Court in the above judgment, which is as follows :

“16. Reference was also made to a recent decision of this Court in [A.V. Papayya Sastry and Ors. v. Govt. of A.P. and Ors.](#) (2007) 4 SCC 221. Considering English and Indian cases, one of us (C.K. Thakker, J.) stated:

It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order --by the first Court or by the final Court-- has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings.

17. The Court defined fraud as an act of deliberate deception with the design of securing something by taking unfair advantage of another. In fraud one gains at the loss and cost of another. Even the most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam."

13 Needless to state that in the present case, which is a criminal proceedings, an order has been passed by the Coordinate Bench. It would not fall for this Court to ascertain as to whether the accused had played fraud upon the court or whether it would have amounted to fraud played upon the court.

14 The learned Counsel has then placed reliance upon the Judgment of the Apex Court in the case of **Ganapathbhai Mahijibhai Solanki vs. State of Gujarat & ors. reported in (2008) 12 SCC 353.** The learned Counsel has drawn attention of this Court to the observations of the Hon'ble Apex Court which reads as under :

““25. The law as regards the effect of an admission is also no longer res integra. Whereas a party may not be permitted to resile from his admission at a subsequent stage of the same proceedings, it is also trite that an admission made contrary to law shall not be binding on the State.”

13. We are not oblivious of the fact that the authorities of the State have made a complete goof up with the situation. By its action, it allowed subsequent events to happen, viz. sales of the lands have taken up, constructions have come up, but the question which arises for our consideration is as to whether even in such a situation, this Court would allow a suppression of fact to prevail.

It is now a well settled principle that fraud vitiates all solemn acts. If an order is obtained by reason of commission of fraud, even the principles of natural justice are not required to be complied with for setting aside the same.”

This Court has observed in the preceding paragraphs that it would not fall for this court to decide as to whether the supplementary charge-sheet was before the Court, whether it was considered or not or whether fraud had been played upon the Court.

15 The learned Counsel for the Petitioner has also placed reliance upon the Judgment of the Hon'ble Apex Court in the case of **A.V. Papayya Sastry and Ors. v/s. Government of A.P. Reported in**

(2007) 4 SCC 221, wherein the Hon'ble Apex Court has observed that -

“Now, it is well settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed; "Fraud avoids all judicial acts, ecclesiastical or temporal".

It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order by the first Court or by the final Court has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings.

16 The present petition cannot be said to be an appeal, revision or writ or any writ. Under Article 227 of the Constitution of India, this Court would have its jurisdictional powers over inferior courts or the lower courts and not against the judgment and order of the Hon'ble Single Bench of this Court. The same cannot be set aside by the

Coordinate Bench. Hence, the Writ Petition being sans merit deserves to be dismissed. The rule is discharged. The Writ Petition is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)