

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION No. 4593 No. OF 2015

- 1] Shailendra S. Mishra
2] Rajneeshkumar Anil Dubey. ..Petitioners.
Versus
State of Maharashtra & Others. ..Respondents.

WITH

WRIT PETITION No. 4594 No. OF 2015

- Ashok Rajnarayan Pande. ..Petitioner.
Versus
State of Maharashtra & Others. ..Respondents.

WITH

WRIT PETITION No. 4595 No. OF 2015

- 1] Anad Ashok Pande.
2] Sanjay Motilal Prajapati @ Popat. ..Petitioners.
Versus
State of Maharashtra & Others. ..Respondents.

WITH

WRIT PETITION No. 316 No. OF 2016

- 1] Kekshushru Noshir Tavakkuli.
2] Mrs. Shital w/o Arjun Tadke (Maney) ..Petitioners.
Versus
State of Maharashtra & Others. ..Respondents.

Mr. Shirish Gupte, Senior Advocate along with Mr. B. P. Pandey i/b Kenny Thakkar for the Petitioner in W.P. No. 4593 of 2015.
Mr. R. A. Thorat, Senior Advocate along with Mr. R. P. Ojha for the Petitioner in W. P. No. 4594 of 2015.
Mr. V. A. Thorat, Senior Advocate i/b Legal Vision for the Petitioner in W.P. No. 4595 of 2015.
Mr. A. P. Mundargi, Senior Advocate along with Mr. Bhavesh Thakur i/b Rahul Arote for the Petitioner in W. P. No. 316 of 2016.
Mr. P. M. Havnur, Ms. Chitra Salunkhe i/b Rizwan Merchant & Associates for Respondent No. 3 (Complainant).

Mr. S. K. Shinde, PP with Mrs. M. M. Deshmukh, APP for the State.

Coram : RANJIT MORE &
S. C. GUPTA, JJ.

Date on which Arguments were heard : **June 24, 2016.**

Date on which Judgment was Pronounced : **September 26, 2016.**

Oral Judgment [Ranjit More, J.]:

1. The Petitioners in all these petitions are seeking quashment of an FIR registered against them at the instance of Haridasan Narayan Keerithodi [Respondent No.3 herein] for the offences punishable under sections 420, 467, 468 and 471 read with 34 of the Indian Penal Code, 1860, being FIR No. 132 of 2015 of Colaba Police Station. For the sake of convenience and brevity, abbreviation "WP No." is used for "Writ Petition No."

2. The Petitioner in WP No.4594 of 2015 is the practicing advocate. Petitioner No.1 in WP No. 4595 of 2015 is the Advocate-son of the Petitioner in WP No. 4594 of 2015 and Petitioner No.2 in WP No.4595 of 2015 is the peon working with the Petitioner in WP No. 4594 of 2015. The Petitioners in WP No. 4593 of 2015 are the junior advocates attached in the Chambers

of Petitioner in WP No. 4594 of 2015. Petitioner No.1 in WP No. 316 of 2016 is on the panel of Senior Counsel of the Municipal Corporation for Greater Mumbai [for short “the MCGM”] and Petitioner No.2 is the Assistant Law Officer and the advocate appointed by the MCGM. Respondent No. 3 in all these petitions is one Haridashan Narayan Keerithodi at whose instance the subject FIR came to be registered with Colaba Police Station against the Petitioners herein.

3. Respondent No.3 had his garage at plot of land bearing Plot No.344, CTS No. 419, Opposite Bezzola Complex, ST Road, Chembur, Mumbai 400071. The said garage of the Complainant was demolished by the employees of MCGM on 12th June 2014 and 17th June 2014 alleging the same to be unauthorised structure and they have taken away three cars of the Complainant from the said garage. Respondent No.3 approached the Petitioner in WP No. 4594 of 2015 to challenge the actions of the MCGM of demolishing his garage and of taking away three cars from his garage. Accordingly, the Petitioner in WP No. 4594 of 2015 filed a suit in the Bombay City Civil Court in

the name of his son, i.e., Petitioner No.1 in WP No. 4595 of 2015, being Long Cause Suit No.1705 of 2014. In the said suit, prayer was made for direction to the MCGM to restore said three cars to Respondent No.3. A notice of motion was taken out in the said suit for urgent orders of injunction restraining the MCGM from taking any further action in respect of the said garage of Respondent No.3 and also for return of the said three vehicles to Respondent No.3. On 27th June 2014, the City Civil Court granted an order of status quo in the notice of motion taken out by the Petitioner in WP No.4595 of 2015 on behalf of Respondent No.3. Thereafter another notice of motion was taken out on behalf of Respondent No.3 by the Petitioner in WP No.4594 of 2015 for return of vehicles taken away by the MCGM during demolition work. On 1st August 2014, both the notices of motion were placed before the City Civil Court. It is the case of the Petitioners that at the hearing of the notices of motion, Court expressed a *prima facie* view that the MCGM could not have taken away said three cars of Respondent No.3 and the same will have to be returned back to Respondent No.3. On behalf of the MCGM, at that time submission was made that Respondent No.3 is not the owner of

those three vehicles and therefore if Respondent No.3 gives a indemnity bond to the MCGM that in case any third party claims the said cars, then, Respondent No.3 shall indemnify the MCGM for any loss and damages for any civil or criminal action against the officers of MCGM for return of the said cars to Respondent No.3. It is further case of the Petitioners that the Court orally directed the law officer of MCGM to give consent pursis so as to enable the Court to pass an appropriate order. Accordingly, the advocate for the MCGM had prepared a pursis wherein it is written that the MCGM shall return the said cars to the Complainant [Respondent No.3] on the Complainant's giving indemnity bond to the effect that if any person claims any right over the said three cars, then, the officers of the MCGM should be indemnified for all the actions of the third person which the said third person may take against the MCGM for return of the said cars. It is also case of the Petitioners that the consent pursis was written by the advocate for MCGM which was corrected by the advocate for Respondent No.3, i.e., the Petitioner in WP No.4594 of 2015 and thereafter the same was signed by Respondent No. 3. Respondent No.3 was asked to annexe the documents of

these three cars which Respondent No.3 had brought. Accordingly, Respondent No.3 had annexed the said documents to the consent pursis. Respondent No.3 was also asked to annexe the documents about his own identity and accordingly he provided his PAN card, a copy of which was too annexed to the said consent pursis. The Court thereafter took the said consent pursis on record and passed order whereby the said notices of motion were made absolute in terms of prayer clause (c) wherein MCGM was directed to restore the possession of the said cars to Respondent No.3. In terms of the said consent pursis, Respondent No.3 was required to give indemnity bond to the MCGM. Thereafter on 5th August 2014, Respondent No.3 came to the office of the Petitioner in WP No. 4595 of 2015 along with the stamp paper of Rs.100/- and indemnity bond was prepared on 5th August 2014 by the Petitioner in WP No.4595 of 2014. After preparing the said indemnity bond, Petitioner No.2 in WP No. 4595 of 2015 took Respondent No.3 to the notary public and got executed the said indemnity bond with the signature of Petitioner No.1 in WP No.4595 of 2015 as identifying the executant, namely, Respondent No.3. Despite execution of the indemnity bond on

5th August 2014, Respondent No. 3 kept the same with himself. He did not give it to the MCGM. Thereafter suit filed on behalf of Respondent No.3 came to be adjourned on many occasions. In April 2015, Respondent No.3 wanted to engage another advocate to represent him in the said suit. He therefore approached Petitioner No.1 in WP No.4595 and took "no objection" from him. Respondent No.3 thereafter engaged another advocate to represent him in the said suit. On or about 13th October 2015, the Petitioners came to know that Respondent No.3 has filed the FIR in Colaba Police Station against them. The sum and substance of the FIR is that on 1st August 2014, he (Respondent No.3) was not present in the City Civil Court and he has not signed the consent pursis and said consent pursis was filed without his instructions/consent by the Petitioner in WP No. 4594 of 2015 and order was taken from the Court with regard to the return of vehicles to Respondent No.3. On the basis of this complaint, FIR was registered by Colaba Police Station against the Petitioners for the offence punishable under sections 420, 467, 468 and 471 read with 34 of the Indian Penal Code, 1860.

4. The learned Senior Counsel appearing for the Petitioners submitted that Respondent No.3 was very much present in the City Civil Court Bombay on 1st August 2014 when the consent pursis was prepared and filed and on the basis of which the City Civil Court passed the order directing the MCGM to return the vehicles to Respondent No.3. They also submitted that there is no gain to the Petitioners due to filing of said consent pursis and it is Respondent No.3 alone who was to be benefited by the orders passed by the City Civil Court. They further submitted that consent pursis specifically provides *that it is filed without prejudice to the rights and contentions of the Complainant [Respondent No.3]* and the indemnity bond was to be given only for the purpose of getting the possession of the cars and therefore no right of Respondent No.3 was curtailed by the said consent pursis. There was no reason for the Petitioner in WP No.4594 of 2015 to file consent pursis without instructions from Respondent No.3 inasmuch as in pursuant of the consent pursis, order favourable to Respondent No.3 was passed, keeping open his rights. It was also submitted by the learned Senior Counsel appearing for the Petitioners that consent pursis

mentions the chasis numbers of the cars, which were within the exclusive knowledge of Respondent No.3 only. The documents annexed to consent pursis were also in the possession of Respondent No.3 only. These facts show that Respondent No.3 was personally present at the time of filing of the consent pursis and the same was filed only after Respondent No.3 signed it. It is further submitted that admittedly Respondent No.3 has signed the indemnity bond therefore he was aware about the consent pursis. But, he kept mum for the period of more than one year and with malafide intentions filed the present FIR. The learned Senior Counsel appearing for the Petitioners submitted that action initiated by Respondent No.3 against the Petitioners by way of FIR is after-thought, malafide and sheer abuse of the process of law. They lastly submitted that even if the allegations made against the Petitioners are taken at their face value, the same do not disclose any offence as alleged and FIR deserves to be quashed.

5. The learned Counsel appearing for the Respondent No.3 strongly opposed the petitions. He submitted that inherent

powers under section 482 of the Code of Criminal Procedure, 1973 read with Article 226 of the Constitution of India has to be exercised sparingly and in the rarest of rare cases. He submitted that in normal course, quashment of the FIR should be done as an exception inasmuch as the genuineness of the averments made in the FIR cannot be examined and gone into by the Court while examining the possibility of its quashment under section 482 of the Code of Criminal Procedure, 1973 read with Article 226 of the Constitution of India. It was submitted that FIR is not the encyclopedia of the entire events and cannot contain the minutest details of the events. Since the FIR is not the document which requires the decision with exactitude, nor is it a document which requires mathematical accuracy and nicety, but only requires to communicate or be indicative of disclosure of an offence, quashment of the same at such a premature stage of investigation would deprive not only the Complainant but also the investigating officer of a free and fair chance to investigate into the allegations of the Complainant.

. The learned Counsel appearing for the Respondent

No.3 also contended that the Respondent No.3 was not present in the Bombay City Civil Court on 1st August 2014 and his signature on the consent pursis was forged by the Petitioners in collusion with each other and thereby Respondent No. 3 was put to loss inasmuch as in the light of said forged consent pursis, Respondent No. 3 is precluded from taking any action against the MCGM for causing great injury / loss to him. The learned Counsel appearing for the Respondent No.3 submitted that petition is devoid of any merit and the same deserves to be dismissed.

6. We have gone through the petitions and annexures thereto including the complaint, indemnity bond and consent pursis. The allegations against the Petitioners in WP No. 4594 of 2015 in the subject FIR are that though Respondent No.3 was not present in the City Civil Court on 1st August 2014 and he had not signed the consent pursis dated 1st August 2014, yet his signature was made on the said pursis and the same was filed in the Court thereby putting Respondent No.3 into great loss inasmuch as because of the said consent pursis, Respondent No.3 was unable to challenge the actions of MCGM. The allegations against the

Petitioners in WP No.4595 of 2015 in the subject FIR are that the indemnity bond which was prepared on 5th August 2014 was not signed by the said Petitioner but in fact it was signed by Petitioner No.2 in WP No. 4595 of 2015 who is clerk of Petitioner No.1 in WP No. 4595 of 2015. The allegations against the Petitioners in WP No.4593 of 2015 are that they are the juniors of the Petitioner in WP No. 4595 of 2015 and they were attending 3rd Respondent's suit in the City Civil Court, Bombay and therefore they have also participated in the said offence which was registered with Colaba Police Station. The allegations against the Petitioners in WP No.316 of 12015 are that they in collusion with the Petitioners in WP No.4594 of 2015, prepared the bogus document and submitted the same before the Court on 1st August 2014 with the knowledge that the same are bogus document.

7. There is no dispute that on 12th June 2014 and 17th June 2014, garage of 3rd Respondent was demolished by the MCGM employees and three vehicles were towed away by the demolition squad and Respondent No. 3 thereafter filed a suit in the City Civil Court, Bombay and took out two notices of motion

through the Petitioner in WP No.4595 of 2015. There is also no dispute that the said notices of motion were placed before the City Civil Court on 1st August 2014 and during the course of hearing, consent pursis was prepared and filed in the Court and on the basis of that pursis the City Civil Court directed the MCGM to return the said vehicles to Respondent No.3. The fact that Respondent No.3 thereafter signed the indemnity bond on 5th August 2014 is also not in dispute. The consent pursis contains the description of the chasis number of the said vehicles. The record also discloses that along with the said consent pursis, copy of the PAN card of Respondent No.3 was annexed as and by way of proof of his identity. Respondent No.3 however alleges that he was not present in the Court on 1st August 2014 and consent pursis was prepared by the Petitioners in collusion with each other by forging his signature and have thus put him to irreparable loss inasmuch as he now cannot sue the MCGM for the damages.

8. We are conscious about the settled position of law that powers under section 482 of the Code of Criminal Procedure,

1973 and Article 226 of the Constitution of India are to be exercised sparingly and in very rarest of rare cases. We are also aware about the position that veracity of the allegations made in the FIR cannot be gone into at the stage of quashment of FIR. Equally it is the settled position of law that if the allegations made in the FIR are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence, in that case, the High Court in exercise of its inherent powers can quash the FIR. The High Court in order to prevent the abuse of the process of any Court or otherwise to secure the ends of justice can also exercise the inherent powers to quash the FIR. Reference can be made to *Bhajanlal v/s State of Harayana [1994 AIR 604]*

9. In the light of above settled position of law, let us consider the allegations made by Respondent No.3 in the subject FIR. As stated above, FIR is registered for the offence punishable under sections 420, 465, 468 and 471 read with 34 of the Indian Penal Code, 1860. The first section of the Indian Penal Code, 1860 alleged against the Petitioners is section 420. Upon carefully going through the record, we really fail to understand as

to how the offence under section 420 IPC could be alleged against the Petitioners on the basis of so called forgery. It is not even allegation of Respondent No.3 that there is any representation made to him by any of the Petitioners. There is no allegation in the entire FIR that any of the Petitioners induced Respondent No.3 to do any act. Therefore in our opinion, the applicability of section 420 of IPC is out of question.

10. This takes us to consider the allegations made by Respondent No.3 in the subject FIR against the Petitioners for offence under sections 465, 468 and 471 of IPC. Section 465 of IPC provides the punishment for committing of forgery. Section 468 lays down punishment for committing of forgery intending that the document shall be used for the purpose of cheating. Section 471 provides that whosoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be forged document or electronic record shall be punished in the same manner as if he had forged such document or electronic record. The present case does not relate to making of false electronic record.

Therefore, the question is whether the Petitioners in filing consent pursis as alleged by Respondent No.3 can be said to have made and executed false document in collusion with each other.

11. In order to allege that a person has made false document, it must be shown that it is done dishonestly or fraudulently. The word “dishonestly” is defined in section 24 of IPC to mean whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing dishonestly. In the present case, reading of the entire allegations in the FIR makes it abundantly clear that there is no wrongful gain to any of the Petitioners or wrongful loss to the Complainant-Respondent No.3 herein. Under the consent pursis, the Complainant was to get back three vehicles / cars mentioned therein on his giving indemnity to the MCGM that in the event of any claim / action, civil or criminal being filed against the employees or agent of MCGM in connection with the possession of three vehicles, he [Respondent No. 3] shall indemnify the MCGM. The consent pursis also shows that it was without prejudice to the rights and contentions of either parties.

Reading of the consent pursis, makes it clear that indemnity was to be given in connection with the return of the cars and that too only in the event any claim / action against the employees / agents of MCGM is filed. It is also clear that the pursis was filed without prejudice to the rights and contentions of either parties. Thus, Respondent No. 3 was not prevented under the said consent pursis from taking action for damages against the corporation or its employees for any loss or damages that may have been caused to him by the demolition of his garage and/or taking away of the said vehicles. Respondent No. 3 was merely required to give indemnity regarding the claim / action in connection with the possession of said three cars. It is clear that indemnity was necessitated and clause to that effect was inserted in the consent pursis as the corporation claimed that Respondent No. 3 is not the owner of those three vehicles and in the event real owners come forward to claim the said vehicles, the corporation should be indemnified by Respondent No.3. In these circumstances, we do not find that there is any wrongful gain to any of the Petitioners or wrongful loss to Respondent No. 3 and therefore it cannot be said that the consent pursis was made

dishonestly.

12. The Apex Court in the case of Dr. Vimla v. Delhi Administration [AIR 1963 SC 1572] considered the definitions of “forgery” as mentioned in section 463 of IPC, “making of false document” as defined in section 464 of IPC and “fraudulently” as defined in section 25 of IPC, and observed thus :

“The word “defraud” includes an element of deceit. Deceit is not an ingredient of the definition of the word “dishonestly” while it is an important ingredient of the definition of the word “fraudulently”. The former involves a pecuniary or economic gain or loss while the latter by construction excludes that element. Further, the juxtaposition of the two expressions “dishonestly” and “fraudulently” used in the various sections of the Code indicates their close affinity and therefore the definition of one may give colour to the other. To illustrate, in the definition of “dishonestly”, wrongful gain or wrongful loss is the necessary enough. So too, if the expression “fraudulently” were to be held to involve the element of injury to the person or persons deceived, it would be reasonable to assume that the injury should be something other than pecuniary or economic loss. Though almost always an advantage to one causes loss to another and vice versa, it need not necessarily be so. Should we hold that the concept of “fraud” would include not only deceit but also some injury to the person deceived, it would be appropriate to hold by analogy drawn from the definition of “dishonestly” that to satisfy the

definition of "fraudulently" it would be enough if there was a non-economic advantage to the deceiver or a non-economic loss to the deceived. Both need not co-exist.

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To summarize, the expression "defraud" involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non economic or non- pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied."

13. Recently in Mohammed Ibrahim vs. State of Bihar [(2009) 3 SCC (Cri) 929], the Apex Court has reiterated the above principles.

14. If the observations of the Apex Court are considered in the light of facts of the present case, then, it is clear that the Petitioners are not guilty of any deceit nor they have secured any advantage to themselves nor caused economic loss or injury to Respondent No.3. Therefore, in our considered opinion the

consent pursis dated 1st August 2014 cannot be said to have been made fraudulently also. The consent pursis cannot be said to be covered within the definition of “false document”. If that be so, it is also not covered by the definition of “forgery”. Therefore, the FIR does not disclose any of the offence punishable under sections 465, 468 and 471 of IPC.

15. Before parting with this judgment, it must be mentioned that the offence is alleged to have been committed by the Petitioners on 1st August 2014. Respondent No.3 admittedly thereafter signed the indemnity bond. Apart from the fact that consent pursis contains the information which was within the exclusive knowledge of Respondent No.3, the fact that the Respondent No. 3 was aware about the same at least on 5th August 2014 is clear. Long Cause Suit No.1705 of 2014 thereafter appeared on board on many occasions and was adjourned from time to time for the period of one year. Respondent No.3 also obtained “no objection” from the Petitioner in WP No.4595 of 2015 and engaged another advocate to represent him and the FIR ultimately came to be filed in the month of October 2015.

Though the delay itself is not the ground to quash the FIR, the same coupled with the observations made hereinabove speak volumes. Since we find that the FIR does not disclose any offence, the same deserves to be quashed. The continuation of the proceedings against the Petitioners, in our opinion, will amount to the abuse of the process of law. Hence, writ petitions are allowed. The subject FIR, being FIR No.132 of 2015 registered with Colaba Police Station for the offence punishable under section 420, 465, 467 and 471 read with 34 of the Indian Penal Code, 1860 is hereby quashed.

[S. C. GUPTA, J.]

[RANJIT MORE, J.]