

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.3693 OF 2018

Keshav Balu Shirole

Age: 33 years, Occu.: Service,
R/o. Sangamner, Tq. Sangamner,
Dist. Ahmednagar.

..Applicant

Versus

The State of Maharashtra

..Respondent
(Org. Complainant)

...

Mr.V.D.Sapkal, Senior Advocate i/b. Mr.S.K.Shinde, Advocate for
Applicant

Ms.V.S.Choudhari, APP for Respondent

...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 6th February, 2023

PRONOUNCED ON : 31st March, 2023

JUDGMENT :-

1. Present applicant, who is original accused in Miscellaneous Enquiry Application No.5 of 2019 is seeking exercise of powers under Section 482 of the Code of Criminal Procedure for following prayers :

“A) To allow this Criminal Application.

B) To quash and set aside the directions No. 5 and 6 of the Operative Part of the Judgment and order dated 17-10-2018 passed in R.C.C. No.74/2016 by the learned Judicial Magistrate First Class, Shevgaon, Dist.Ahmednagar.

- B-1) To quash and set aside the Criminal Inquiry Application No.05/2019 pending before the Judicial Magistrate First Class, Shevgaon, Tq. Shevgaon, Dist.Ahmednagar.
- C) Pending hearing and final disposal of the present Criminal Application, the directions No.5 and 6 of the Operative Part of judgment and order dated 17-10-2018 passed in R.C.C. No.74/2016 by the learned Judicial Magistrate First Class, Shevgaon, Dist.Ahmednagar be stayed.
- C-1) Pending hearing and final disposal of Criminal Application No.3693/2018, the further proceeding in Criminal Inquiry Application No.05/2019 pending before the Judicial Magistrate First Class, Shevgaon, Tq. Shevgaon, District Ahmednagar be stayed.”

BRIEF FACTS OF THE CASE

2. On the instance of Tahasildar, complaint was lodged by Talathi of village Mungi, Tq.Shevgaon, Dist.Ahmednagar, alleging commission of offence under Sections 379 of the Indian Penal Code and under Sections 3 and 15 of The Mines and Minerals (Regulation and Development) Act, 1957. Sum and substance of the complaint is that accused therein had indulged in illegal excavation of sand i.e. without permit. In such proceeding, present applicant had acted as witness and accordingly, his statement was recorded and he further deposed before the learned Magistrate, however, the accused in that case was acquitted by the learned Magistrate by its Judgment and

order dated 17-10-2018. The learned Magistrate reached to an opinion that present applicant and another witness have deliberately deposed in a manner which benefited in acquittal of the accused and therefore, the learned Magistrate in its same Judgment and order directed action against present applicant and other witness by making communication to the Collector, Ahmednagar and also sought report. On the strength of such directions, crime was registered against present applicant and others at the hands of Naib Tahasildar. The learned Magistrate was also of the opinion that present applicant had deliberately given false evidence before the Court and therefore, the learned Magistrate thought it fit to take action for giving false evidence. Such opinion of the learned Magistrate was reflected by him in the Judgment and order. Precisely the said observations and directions made in the operative part of the order in Clauses 5 and 6 of the Judgment dated 17-10-2018, are now sought to be quashed and set aside by invoking Section 482 of the Code of Criminal Procedure.

3. Heard both the sides.

4. Hear the applicant has invoked provisions under Section 482 of

the Code of Criminal Procedure. As to when such inherent powers can be exercised by the High Court has been squarely and fairly settled by various judgments. A few could be named as under :

In the landmark case of ***Inder Mohan Goswami and Anr. Vs. State of Uttaranchal and Ors.***, reported in ***(2007) 12 SCC 1***, it was observed as under:

“23. This Court in a number of cases has laid down the scope and ambit of courts’ powers under section 482 of Cr.P.C. Every High Court has inherent powers to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the Court.”

- (i) to give effect to an order under the Code;*
- (ii) to prevent abuse of the process of the court, and*
- (iii) to otherwise secure the ends of justice.*

24. *Inherent powers under section 482 of Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the Court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.”*

In the case of ***Mahendra K.C. Vs. State of Karnataka and Another***; reported in ***(2022) 2 Supreme Court Cases 129***, the Hon’ble Apex Court in para No.19 observed as under:

“19. The High Court has the power under Section 482 to issue such orders as are necessary to prevent the abuse of legal process or otherwise, to secure the ends of justice. The law on the exercise of power under Section 482 to quash an FIR is well-settled. In **State of Orissa v. Saroj Kumar Sahoo; (2005) 13 SCC 540**, a two-Judge Bench of this Court, observed that : (SCC pp. 547-48, para 8)

“8. ... While exercising the powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.”

SUBMISSIONS ON BEHALF OF APPLICANT

5. The learned Senior Advocate for the applicant would submit that there is no dispute that the applicant was party to the raid and seizure of the Truck and therefore, he gave statement and also appeared as a witness in the Court, however, he deposed on oath whatever was the fact situation. There was no falsehood or any attempt to save original accused. The learned Magistrate misconstrued and misread the evidence and reached to a finding that applicant had committed offence of giving false evidence and is therefore, required to face legal action. Much thrust was laid by the learned Advocate for the applicant on the point that there was denial of principles of natural justice as no independent enquiry was made with applicant prior to direction for registration of crime. Secondly, there was no notice or even hearing given to the applicant before initiation of complaint under Sections 191 and 193 of the Indian Penal Code. Thus, there is procedural defect at the instance of the trial Court which needs to be quashed and set aside.

SUBMISSIONS ON BEHALF OF STATE

6. On behalf of the State, learned APP would submit that

applicant had deliberately, to save the original accused, resiled and retracted from his earlier version which benefited the accused and therefore, on such count only there was acquittal. Therefore, learned trial Court made observation to that extent in the body of Judgment as well as in the operative part. Thereafter, the learned trial Court also conducted preliminary enquiry and therefore, there is no illegality or perversity in the Judgment and order passed by the learned trial Court and hence, he prays for rejection of the application.

ANALYSIS

7. We have heard learned Senior Advocate for the applicant and learned APP for the respondent-State extensively. It seems that in the capacity of Talathi, present applicant was a party to the raid and seizure of illegal excavation of sand and transport vehicle. He is also a party to the panchanama and therefore, his statement seems to have been recorded by the Investigating Officer. However, after stepping into the witness box, it seems that present applicant had denied that the main accused, who was the owner of the vehicle, which was seized, was present there. He has also denied in the cross-examination that when he reached at the spot, driver and owner of

the vehicle were present there. He has further denied that he has seen the driver of the vehicle. He has denied that he knows the owner of the vehicle. He has stated that he cannot tell whether the accused is owner of the vehicle or not.

8. While appreciating such evidence, learned trial Judge seems to have formed an opinion that only because of retraction by present applicant and another witness, prosecution has failed in bringing home the charges and accused derived benefit of the same by getting acquittal. It seems from the Judgment of the learned trial Court that in paragraph Nos.17, 18 and 22, the effect and consequences of the testimony of present applicant has been dealt with and learned trial Court seems to have finally held that because present applicant and another witness have not supported prosecution, the proceedings ended in favour of the accused. It seems that after giving benefit of acquittal, learned trial Court has observed that present applicant and other witness are therefore, liable to face action for giving false evidence and accordingly, issued certain directions to the Collector, Ahmednagar.

9. Such observations in the Judgment are now taken exception to

in the present proceeding and further case is advanced that the learned trial Court has not only transgressed its powers or went overboard but even there is no notice and opportunity of being heard before initiating action or lodging complaint.

10. It is fairly settled that the Courts are empowered to initiate action for giving false evidence. Sections 195 and 340 of the Code of Criminal Procedure provide for mechanism for dealing with such cases. There are series of Judgments as to how and when Section 340 of the Code of Criminal Procedure is invokable. The ratio laid down is that, Section 340 of the Code of Criminal Procedure can be invoked by the Court, only when it is established that offence has been held to be committed. It is further held that prosecution for giving false evidence should be sanctioned by the Courts only in such cases where giving of false evidence appears to be deliberate and conscious and further conviction is reasonable, probable or likely. There is a further requirement that prosecution should be ordered only when it is considered expedient in the interest of justice. Apart from availability of *prima facie* case of deliberate falsehood, the Court is also expected to get itself satisfied that there is reasonable foundation for the charge. Law to such extent is time and again

reiterated in the cases viz.

- a) ***Chajoo Ram vs. Radhey Shyam*** reported in ***(1971) 1 SCC 774***.
- b) ***K.T.M.S. Mohd. vs. Union of India*** reported in ***(1992) 3 SCC 178***.
- c) Law on this aspect is also recently dealt by the Hon'ble Apex Court in the case of ***Chintamani Malviya vs. High Court of Madhya Pradesh*** reported in ***(2018) 6 SCC 151***.

CONCLUSION

11. Bearing the settled legal provisions and requirements in mind, if we examine the submissions and record, it is emerging that in the Judgment and order passed by the learned trial Court dated 17-10-2018, there are observations as regards testimony of present applicant in paragraph Nos.17, 18 and 22. In paragraph No.17 doubts seems to have been entertained by the learned trial Court about the veracity of the complaint and presence of the accused therein at the time of seizure of the vehicle. The learned trial Court in its Judgment has also reflected upon the quality of investigation carried out by the Investigating Officer, however, in the concluding paragraph No.22 the learned trial Court has observed that, to save the accused, present applicant and other witness have deliberately not supported the prosecution i.e. when their substantive evidence was recorded. Therefore, here the learned trial Court seems to have taken into account the very merits of the case apart from testimony

of the witness. Therefore, holding the applicant alone responsible for the fate of prosecution case seems to be unjustified.

12. Secondly, as discussed above, provisions under Section 340 of the Code of Criminal Procedure have to be invoked only in exceptional circumstances and after due satisfaction of the Court. There is requirement of conducting preliminary enquiry before initiating legal action and there is also requirement of giving notice and hearing the accused. Precisely such step does not seem to have adopted by the learned trial Court. Learned Advocate for the applicant placed on record ruling in the case of *Sharad Pawar vs. Jagmohan Dalmiya* reported in *2013 (2) SCC (Cri) 197* and in the recent case of *Madhukar Vishwanath Sonawane vs. State of Maharashtra and others* reported in *(2002) 2 Mh.L.J. 414* and *The State of Punjab vs. Jasbir Singh* reported in *(2022) LiveLaw (SC) 776*.

In above rulings, the Hon'ble Apex Court has held that notice and opportunity of hearing has to be given to the accused before initiation of proceedings under Section 340 of the Code of Criminal Procedure. Here it seems that the learned trial Court has not issued

notice or given an opportunity to the applicant to offer an explanation. Therefore, for such reason only, interference at the hands of this Court seems to be necessary. Hence, I proceed to pass following order.

ORDER

(i) Criminal Application is allowed in terms of prayer clauses (B), (B1), (C) and (C1) only to the extent of applicant.

(ABHAY S. WAGHWASE)
JUDGE