



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1002 OF 2023

1. Eknath Ganpatrao Khadse, Age: 72 years,
Occu: Social Worker, An adult, Indian Inhabitant,
R/o Post Kothali, Dist. Jalgaon, Pin Code 425306.
2. Mandakini Eknath Khadse, Age: 62 years,
Occu: Agriculturist, An adult, Indian Inhabitant,
R/o Post Kothali, Dist. Jalgaon, Pin Code 425306.
3. Girish Dayaram Chaudhary, Age: 50 years,
Occu: Service, An adult, Indian Inhabitant,
residing at Flat No.12A, Pankaj Mahal, 34th Floor,
Churchgate, Mumbai-400 020. At Present, In
Judicial Custody at Arthur Road Jail.

PETITIONERS

- **VERSUS** -

1. The State of Maharashtra, through The Senior
Police Inspector, Bund Garden Police Station,
Pune City, Pune.
2. The Anti-Corruption Bureau, Pune Unit, Having
address at Central Building Compund, "C" Barrack,
Pune : 411 001.
3. Hemant Laxman Gawande, Aged 50 years, Occu: Not
Known, an adult, Indian Inhabitant, residing at: Flat
No.6, Royal Arcade, A.D.C. Plot, Sector No.26, Pune.

RESPONDENTS

Shri Shirish Gupte, Senior Advocate with Ms Sanjana Shivkar, Mohan Tekavade, Ms Swati Tekavade, Ms Mrudula Kadam and Yash Lotalikar, counsel for the petitioners.

Dr. Birendra Saraf, Advocate General with Ms A.S. Pai, Additional Public Prosecutor for the respondent-State.

Shri S.S. Patwardhan i/by Ms Mrinal Shelar, counsel for the respondent no.3.

CORAM : NITIN W. SAMBRE AND N.R. BORKAR, JJ.

DATE : OCTOBER 09, 2023

ORAL JUDGMENT (PER : NITIN W. SAMBRE, J.)

RULE. Rule made returnable forthwith and heard finally with consent of the learned counsel for the parties.

2. The petitioners by invoking the remedy under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 have approached this Court seeking quashing and setting aside of First Information Report No. 121 of 2017 dated April 10, 2017 registered with Police Station Bund Garden, Pune which is being investigated by the Anti Corruption Bureau, Pune for the offences punishable under Sections 13(1)(d), 13(2), 15 of the Prevention of Corruption Act, 1988 (for short, 'the Act of 1988') and under Section 109 of the Indian Penal Code, 1860. The petitioners have also questioned the legality and propriety of the order dated October 21, 2022 passed by the Additional Sessions Judge, Pune in proceedings being A.C.B. M.A. No. 18 of 2018 lodged in pursuance of Crime No. 121 of 2017, whereby the 'C' Summary proceedings were withdrawn and the respondents were permitted to conduct further investigation in the matter. The petitioners have prayed for issuance of directions to accept the 'C' Summary and have further prayed for ordering closure of the aforesaid case against the petitioners.

3. The facts necessary for evaluating the material on record are as under:-

The petitioner nos.1 and 2 are the husband and wife whereas the petitioner no.3 is their son-in-law. The petitioner no.1 is a political leader in the State of Maharashtra since last forty years whereas the petitioner no.3 has claimed to be a highly qualified person (M.Tech. From I.I.T. Mumbai) and presently working with Tata Consultancy Services.

4. Rasulbhai Ukani had purchased the land bearing Survey No. 52/2A/2 admeasuring 1 Hectare 21 Are situated at Bhosari, Taluka Haveli, District Pune (hereinafter referred to as 'the land in question') *vide* registered sale-deed dated June 29, 1966. In relation to the said property on February 19, 1968 a notification under sub-Section 2 of Section 32 of the Maharashtra Industrial Development Corporation Act, 1961 came to be issued thereby disclosing the intention of the State to acquire the land in question and accordingly in the revenue extract (7/12 Extract) an entry to that effect was recorded.

5 It is claimed that after the death of Rasulbhai Ukani, since his legal heirs having not received any compensation for the acquired land, approached this Court by filing a writ petition seeking compensation. Since the land owners were in financial hardship, they allegedly had an intention to dispose of the land and accordingly entered into a transaction with the petitioner nos.2 and 3 for sale of the land in question on 'as is where is' basis. Accordingly, the legal heirs of late Rasulbhai Ukani - erstwhile land owners executed a sale-deed for a consideration of R.3,75,00,000/- (Rupees Three Crores Seventy Five Lakhs) on April 28, 2016 which was lodged for registration on the same day.

6. Based on the above events, the respondent no.3 lodged a complaint against the petitioners on May 30, 2016. Since the offence was not

registered, he claimed to have taken recourse to the remedy of filing the criminal writ petition before this Court bearing Criminal Writ Petition No.2539 of 2016. In the said criminal writ petition, a statement was made that since the complaint discloses a cognizable offence, the crime be registered and as such *vide* order dated March 08, 2017 this Court was pleased to accept the statement with further direction to the Investigating Officer to investigate in the matter. In compliance of the aforesaid order, First Information Report No.121 of 2017 dated April 10, 2017 came to be registered for an offence punishable under Sections 13(1)(d), 13(2), 15 of the Act of 1988 read with Section 109 of the Indian Penal Code, 1860.

7. The respondent no.2-Investigating Agency – Anti Corruption Bureau carried out investigation. Initially it was found that no cognizable offences were disclosed hence it submitted ‘C’ Summary Report on April 27, 2018 before the Sessions Court, Pune allegedly stating that the case is based on the mistake of fact. Said ‘C’ Summary came to be numbered as A.C.B. M.A. No. 18 of 2018.

The aforesaid closure report in the form of ‘C’ Summary was objected to by the respondent no.3-Complainant *vide* protest petition dated January 16, 2021.

8. An application Exhibit 28 came to be moved by the Investigating Agency through its Deputy Superintendent of Police thereby supporting the protest petition. As a sequel of which after hearing the respective parties, the Sessions Court *vide* impugned order dated October 21, 2022 passed in ‘C’

Summary Proceedings was pleased to permit the Anti Corruption Bureau to withdraw the 'C' Summary with liberty to the Investigating Officer to carry out further investigation in Crime No. 121 of 2017. The Investigating Officer accordingly was directed to submit the report by January 31, 2023.

9. As such, the petitioners have preferred this writ petition questioning not only the registration of the First Information Report but also the order passed by the Sessions Court on October 21, 2022 thereby permitting withdrawal of 'C' Summary and further permitting the Investigating Agency to carry out further investigation in the matter.

10. Shri Shirish Gupte, learned Senior Advocate for the petitioners would urge that the perusal of 'C' Summary Report (Closure Report in relation to the investigation against the petitioners) dated April 27, 2018 would reveal that once the Investigating Agency has reached to a conclusion of non-disclosure of cognizable offence without there being change in circumstances, the trial Court ought not to have passed the impugned order against the petitioners. In addition to above his contentions are, the petitioner no.1 is termed to be a public servant, in such an eventuality the previous sanction even for the purpose of carrying out investigation as mandated under the amended provisions of the said Act is necessary. He would further urge that neither the sanction under Section 19 of the Prevention of Corruption Act, 1988 nor under Section 197 of the Indian Penal Code, 1860 is obtained by the Investigating Agency. According to him, Section 17A of the Act of 1988 is

inserted by the Amending Act of 2018 and the same is given effect to from July 26, 2018. In absence of the compliance of the mandate provided under Section 17A of the Act of 1988 viz. previous approval to be obtained not only for conducting enquiry but also for registration of offence, investigation and enquiry. He would urge that once the Authority has formed an opinion that no offence is detected as is based on closure Summary Report dated April 27, 2018, the trial Court committed an error in not only permitting the withdrawal of 'C' Summary but also in permitting further investigation in the matter. He would further urge that the mandate provided under Section 19 is procedural in nature and it is already held to be retrospective. As such, drawing support from the judgment of the learned Single Judge of this Court in **Criminal Revision Application No. 239 of 2023** [*Sabaji Shete Versus State of Goa*] he would try to support his aforesaid contentions.

Shri Shirish Gupte, learned Senior Advocate would urge that the previous sanction both under Section 197(1) of the Indian Penal Code, 1860 and under Section 19 of the Act of 1988 for prosecuting the accused is mandatory. So as to substantiate aforesaid contentions, learned Senior Advocate has drawn support from the judgment of the Apex Court in **Criminal Appeal No. 2742 of 2008** [*Srinivasulu Versus Inspector of Police*]. In addition to above his contentions are, the requirement of sanction at pre-investigation stage is already held to be mandatory in the judgment of *Debashish Chakravarti Versus State of Maharashtra* [**Criminal Writ Petition No. 4765 of 2014 and other connected matters**] decided on October 09,

2015. He would specifically rely on the finding recorded by the Division Bench of this Court in paragraphs 18 and 19 of the said judgment.

11. According to the learned Senior Advocate, the word 'cognizance' is not defined and it has to be interpreted to mean that cognizance includes the investigation against the public servant like the petitioner no.1. So as to substantiate the said claim, he has drawn support from paragraph 13 of the judgment in *Anil Kumar & Others Versus M.K. Aiyappa [(2013) 10 SCC 705]*. As such, the learned Senior Advocate would urge that the petitioner no.1 is made scapegoat of the political differences and his family members are also falsely implicated for the offences of which the ingredients could not be said to have been satisfied. That being so, the learned Senior Advocate states that the petition is liable to be allowed.

12. Dr. Birendra Saraf, learned Advocate General appearing for the respondent-State would support the registration of the offence so also the passing of the order by the Additional Sessions Judge thereby returning the 'C' Summary and directing further investigation in the matter. It is the contention of the learned Advocate General that Section 17A of the Act of 1988 was inserted in the statute book with effect from July 26, 2018. According to him, the First Information Report being Crime No.121 of 2017 dated April 10, 2017 i.e. prior to the amendment being effected.

13. The learned Advocate General as such would urge that the protection under Section 17A of the Act of 1988 cannot be relied on by the petitioners in a *post-facto* manner. The provisions of Section 17A of the Act of 1988 cannot be said to be having retrospective effect. According to him, the Court has not yet taken cognizance of the offences registered against the petitioners and the plea raised by the petitioners can be looked into at the stage of trial and not at this premature stage. He would further claim that after 'C' summary was submitted on April 27, 2018, the respondent no.3-complainant had every right to prefer a protest petition. He would claim that if in case the contentions of the counsel for the petitioners about the applicability of protection under Section 17A of the Act of 1988 are accepted, in that eventuality the provision itself would be rendered redundant. So as to substantiate his contention that the said provision has a prospective effect, he has drawn support from the judgment of the Apex Court in *State of Telangana Versus Managipet Alias Mangipet Sarveshwar Reddy [(2019) 19 SCC 87]* and more particularly paragraphs 35, 36 and 37. In addition, his contentions are, the provisions of sub-Section 8 of Section 173 of the Code of Criminal Procedure, 1973 are required to be taken into account. In such an eventuality, he would claim that the petitioners cannot claim the benefit in view of the law laid down by the Apex Court in *Vinubhai Haribhai Malaviya & Others Versus State of Gujarat & Another [(2019) 17 SCC 1]*.

14. The learned counsel for the respondent no.3-complainant would urge that the provisions of Section 19 of the Act of 1988 are attracted in case of a public servant viz. a Government employee. According to him, sub-Section 1 of Section 19 puts an embargo on the powers of the Court to take cognizance without there being any sanction. He would claim that the case of the petitioner no.1 being a Minister and a public servant is governed by the provisions of Section 19(1)(c) of the Act of 1988. He would further claim that the very intention of the petitioners to purchase the land from the original owner that too at a throwaway price on April 20, 2016 itself speaks about the intention of the petitioners.

15. We have appreciated the rival contentions.

16. The petitioners claim is that a requirement of sanction under Sections 17A and 19(1)(c) of the Act of 1988 and that too at the stage of registration of the offence is necessary. The fact remains that even today, there is no sanction granted to prosecute or investigate the offences registered against the petitioners. The petitioners have claimed that the provisions of Section 19(b) of the Act of 1988 cover the case of the petitioners.

17. From the factual matrix it is apparent that the notification under Section 32(1) of the M.I.D.C. Act was issued on February 16, 1968. The petitioners inspite of above notification had got the sale-deed executed of the land Survey No. 52/2A/2 admeasuring 1 Hectare 21 Are on April 28, 2016.

Section 33(3) of the M.I.D.C. Act provides for settlement of compensation and Section 33(5) of the M.I.D.C. Act provides for the procedure to be adopted in case of compulsory acquisition.

18. On May 30, 2016 the respondent no.3-complainant had lodged a complaint and thereafter filed Writ Petition No. 2539 of 2016 claiming that the investigating agency has neither registered the crime nor conducted any enquiry. On March 07, 2017, a communication was issued by the Police Inspector stating that no cognizable offence is disclosed. The fact remains that 'C' summary was submitted *vide* A.C.B. M.A. 18 of 2018 on April 27, 2018. Pursuant to the objection raised by the respondent no.3-complainant to the said summary, the respondent-Investigating Agency had withdrawn the said 'C' summary and liberty was granted to it to carry out further investigation.

19. It is not the position of law that in case if the 'C' summary is submitted, the trial Court is duty bound to accept the same. Such summary report is subject to scrutiny of the trial Court who may agree with the investigation or may direct further investigation in the matter. The complainant has every right to object the summary of investigation submitted by the Investigating Officer. At this stage, it cannot be said that since there was 'C' summary, respondent-Investigating Agency was estopped from carrying out further investigation pursuant to the orders of the Magistrate. Merely because there was a 'C' summary, that by itself would not lead to a conclusion that the petitioners were not involved in the alleged crime as it was

only after objection raised by the respondent no.3 that the 'C' summary was withdrawn and the prayer of respondent-Investigating Agency came to be granted for carrying out further investigation.

20. The issue as regards whether the prosecution of the petitioners can be said to be frustrated in view of the provisions of Section 17A of the Act of 1988 is required to be looked into. Admittedly, in the case in hand, the offence came to be registered on April 10, 2017. Section 17A of the Act of 1988 was brought in the statute book on July 26, 2018, i.e. subsequent to the registration of the offence. It is not demonstrated by the petitioners as to how the protection under Section 17A could be said to have been available at this stage. Apart from above, the trial Court has yet to take cognizance. If we appreciate the order impugned of return of 'C' summary and permission for further investigation, in our view the said issue is covered by the judgment of the Apex Court in *Vinubhai Haribhai Malaviya & Others Versus State of Gujarat & Another* [(2019) 17 SCC 1]. The Apex Court has held that the trial Court has power to ensure an appropriate investigation in the matter viz. fair and just investigation. Such power includes ordering further investigation even after a report is submitted by the Police Authorities. The Apex Court has further held that even at a post-cognizance stage also, the trial Court has power to order further investigation in the matter.

21. This Court at Nagpur Bench had an occasion to consider the availability of the protection under Section 17A of the Act of 1988 in *State of Maharashtra Versus Gurudas & Others* [**Criminal Application (APL) No.410 of 2019**], decided on March 05, 2021. The learned Single Judge has observed that the protection envisaged under Section 17A of the Act cannot be said to be wider than or having more scope or amplitude than the protection conferred to the public servants under Section 197 of the Code of Criminal Procedure, 1973.

22. This Court has further taken a view based on the judgment of the Apex Court in the matter of *Station House Officer, CBI/ACB/Bangalore Versus B.A. Srinivasan & Another* [(2020) 2 SCC 153] that it is only after the evidence is led, the question whether the alleged act is intricately connected with the discharge of official functions and whether such act would be covered by the expression “while acting or purporting to act in discharge of official duty” could be answered. As such, we are of the view that it is a premature stage to consider the claim of the petitioner no.1 for the protection under Section 17A of the Act of 1988.

23. Even otherwise, it cannot be said at this stage that the blanket protection can be enjoyed by the petitioners by taking shelter to Section 17A of the Act of 1988 particularly having regard to the nature of the allegations against the petitioner no.1. Apart from above, whether Section 17A of the

Act of 1988 will have retrospective or prospective applicability can be looked into at an appropriate stage of the proceedings as the offence is registered against the petitioners before the coming into force of the provisions of Section 17A of the Act of 1988.

24. In the aforesaid background, it cannot be said that the act of the respondent-Investigating Agency of initially submitting the 'C' summary on April 27, 2018 and its subsequent withdrawal on October 21, 2022 can be said to be smacking *mala fides*. The trial Court was sensitive to the objection raised by the respondent no.3-complainant to the 'C' summary which was taken into account and the 'C' summary was permitted to be withdrawn with directions to carry out further investigation in the matter.

25. At this stage, we do not want to go into the details of the matter. However, we are sensitive to the fact that the claim of the petitioners as to the benefit/protection under Section 17A of the Act of 1988 can be looked into at an appropriate stage and this can be said to be a premature stage. As such, we refrain to interfere in the present proceedings at this stage under Article 226 of the Constitution of India. The petitioners are at liberty to raise the issue at an appropriate stage. It is made clear that the observations made hereinabove shall not influence the trial on merits.

26. For the aforesaid reasons, the criminal writ petition is dismissed with no order as to costs.

(N.R. BORKAR, J.)

(NITIN W. SAMBRE, J.)

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