Supreme Court of India
Dr. Buddhi Kota Subbarao vs Mr. K. Parasaran & Ors on 13 August, 1996
Equivalent citations: JT 1996 (7), 265 1996 SCALE (5)797
Author: A Anand
Bench: Anand, A.S. (J)

PETITIONER:
DR. BUDDHI KOTA SUBBARAO

Vs.

RESPONDENT:
MR. K. PARASARAN & ORS.

DATE OF JUDGMENT: 13/08/1996

BENCH:
ANAND, A.S. (J)
BENCH:
ANAND, A.S. (J)
THOMAS K.T. (J)

CITATION:
JT 1996 (7) 265 1996 SCALE (5)797

ACT:

HEADNOTE:

JUDGMENT:

O R D E R DR. ANAND, J.

We have heard the applicant who has appeared in person at length.

The applicant took voluntary retirement from the Indian Navy while holding the rank of a Captain on 27th October, 1987. While on his way to USA on May 30, 1988, he was detained at the Sahar International Airport, Bombay. His suitcase was taken away from him and he was taken to the Sahar police station and locked up. He was alleged to be carrying atomic and defence secrets with him. His successive applications for release on bail were rejected by the Metropolitan Magistrate, the Sessions Court and by the Bombay High Court. An order granting him bail on "medical grounds" was cancelled by this Court. After obtaining consent of the then Attorney General of India, Mr K. Parasaran (respondent No. 1 herein) under Section 26(2) of the Atomic Energy Act, 1962 and authorisation from the Chief Vigilance Officer of the Department of Atomic Energy Mr S.K. Bhandarkar (respondent No 2 herein) for proceeding against the applicant and prosecuting him for

the various offences alleged against him he was committed by the learned committing Magistrate to stand his trial in the court of Sessions. Charges for offences including the offences under section 3/6 Official Secrets Act and Sections 18/19 of the Atomic Energy Act, 1962 were framed against him. Against the order for framing of charges, the applicant unsuccessfully approached the Bombay High Court through revision application No.96/89. The applicant thereafter filed a criminal writ petition in the High Court once again inter alia calling in question the order for framing of charges and during the pendency of the writ petition, he filed a criminal miscellaneous petition in the High court also alleging that the charges against him were vitiated by 'fraud' on the basis of the allegations made in the application, committed by the State and the Public Prosecutor. While matters rested thus, on 26.4 1991 the learned Sessions Judge trying the case, found that the prosecution had not obtained any sanction to prosecute the applicant and concluded that in the absence of sanction under Section 197 Cr. C.P.C. the trial was vitiated and accordingly discharged the applicant The High Court while considering the criminal revision petition filed by the State against the order of discharge declined to interfere hut found that since the case had travelled beyond the stage cf Section 227/228 Cr.P.C. an order of acquittal and not one of discharge was warranted and converting the order of discharge into an order of acquittal, dismissed the petition filed by the State on 12.10.1991. Though, technically the criminal writ petition filed by the applicant had thus been rendered infructuous, a learned Single Judge, after dismissal of the revision petition filed by the State, heard the writ petition and the miscellaneous petition and made an order passing strictures against the State and Public Prosecutor virtually accepting various pleas raised by the applicant alleging commission of 'frauds by the special prosecutor and the State The State of Maharashtra aggrieved by that order of the High Court, filed SLP (Crl.) No. 4178/91 (criminal appeal No. 275 of 1993) in this Court. On March 16,1993, a Bench of this Court allowed the appeal and set aside the order dated 28.10.1991 passed in the criminal miscellaneous petition and the criminal writ petition and directed that in view of the order of discharge made in favour of the applicant by the trial court, criminal writ petition would stand dismissed as infructuous. The remarks made by the learned Single Judge of the High Court against the State and the Public Prosecutor were also directed to be expunged. This Court expressed its disapproval of the manner in which the High Court had proceeded with the case.

The order of discharge made by the learned Sessions Judge and confirmed by the High Court also challenged by the State through SLP (Crl ) 996/92 (criminal appeal appeal No. 276/93). A Division Bench of this Court dismissed the appeal against the order of discharge of the applicants being criminal appeal No. 276 of 1993. This Court, however, opined that the order of discharge made by the trial court was sound and that the High Court fill in error in converting it into an order of acquittal. The order of acquittal was consequently converted into an order of discharge. The applicant was awarded costs of Rs. 25,000/- taking into consideration the mental suffering and financial loss suffered by him. While dismissing the appeal it was observed that since the appeal fails for non-compliance of Section 197 and the order discharging the accused has to be upheld we do not propose to examine the finding if authorisation under O.S Act and A.E Act to prosecute the accused was valid or not." It transpires from the record that a review petition filed by the applicant inter-alia to invite a finding on the validity of consent and authorisation to prosecute him and against the order `findings' as recorded by this Court has also been since dismissed by this Court.

In criminal appeal No. 277 of 1993, arising out of SLP (Crl.) No. 987/92, this Court set aside the order of the High Court dated 14th October, 1991 made in criminal miscellaneous application No. 2260 of 1991. The short question which was considered by this Court in that appeal was whether the High Court was justified in allowing the application filed by the respondent for declaring that the charges framed by the Additional Sessions Judge against him by the order dated 24-27th July, 1990 were null and void" and obtained by 'fraud" practised by the State and the public prosecutor. While elaborately dealing with the submissions made at the bar, this Court observed:

> "Merits or otherwise of the application, alleging fraud against the State, apart, what has left us completely surprised is not so much the entertaining of the application filed by the accused for declaration that the charges framed against him were nullity having been procured by fraud as the procedure adopted by the learned Single Judge of granting the prayer merely for failure of the State to file any reply by way of counter affidavit than by recording any finding that the State was guilty of procuring the order framing the charges by fraud. One of the objections raised by the State was that since the High Court by its order passed on 25/26th March 1991 of 1990 had specifically held that the question of framing charge had become final, therefore, it could not be re-opened, cannot be said to be without substance as the Division Bench had clearly held that it was not open to go behind the order passed by the learned Single Judge on 3rd/4th April 1990 directing that the charges be framed against the accused not only under Section 3 but under Section 5 as well. Nor can any exception be taken to the finding of the Bench that the said order could not be said to have been passed without jurisdiction in as much as the learned Single Judge had jurisdiction to decide the revision application preferred under the provisions of the Code. Even the question of fraud raised by the accused was negatived by the Division Bench and it was held that it was not capable of being gone into as it did not form part of the substratum of the case of the prosecution and was not germane to the question of deciding as to whether he was entitled to be discharged or not."

The Court then opined that the allegation that the framing of charge was procured by "fraud" was made without necessary foundation for the charge of fraud having been laid in the petition. The Bench also noticed that in paragraphs 4 to 8 (of his application) the applicant had culled out sentences from one or the other order rendered for or against him by different courts and on that basis had claimed that State either knowingly did not place correct facts to substantiate the observations made therein or deliberately concealed the truth and made fraudulent submissions thereby inducing the trial court to frame the charges. The Bench quoted in extenso paragraphs 4,5 and 7 of the application in that behalf and observed :

> "We must confess our inability to appreciate the worth of such averments to establish fraud. Legal submissions cannot be equated to misrepresentation. In our opinion the pleadings fell short of legal requirements to establish fraud. Various sentences extracted from different judgments between the accused and State in various proceedings could not give rise to an inference either in law or fact that the State was guilty of fraud.

> Suffice it to say that it was complete misapprehension under which the accused was labouring and it was indeed unfortunate that the High Court not only entertained such application but adopted a course which amounted to reviewing and setting aside orders of his predecessor without sufficient material and accept the claim that all earlier judgments were liable to be ignored under Section 44 of the Evidence Act as the proceedings were vitiated by fraud. We are constrained to say that the learned Judge not only committed an error of procedure but misapplied the law." (Emphasis supplied) The appeal filed by the State (criminal appeal 277/93 arising out of SLP (Crl.) No. 987/92) was allowed on 16.3.1993 and the order made by the High Court on 14.10.1991 in Criminal Miscellaneous Application No. 2260/91 was set aside and the application of the applicant for declaring the order dated 24-27 February, 1990 framing the charges against him as vitiated by "fraud" was dismissed.

We have referred to the history of the case only to show how the applicant has, thanks to the permissiveness of the judicial system, filed one petition after another to question the validity of the charges framed against him even after an order of discharge came to be made in his favour. The present petition under Section 340 Cr. P.C. against the then Attorney General of India and the Chief Vigilance Officer of the Department of Atomic Energy also appears to be an attempt to carry on with the 'litigation' undaunted by the orders made by this Court in Criminal Appeal Nos. 275- 277 of 1993 on 16.3.1993.

The main grounds on which this petition under Section 340 Cr. P.C. is founded are that according to the applicant, the "consent" given by the then Attorney General of India (Respondent No. 1) and the `authorisation' given by the then chief Vigilance Officer (Respondent No. 2) were "false statements" as there was, according to him, no material before either of the two respondents, on the basis of which they could have given their "consent: and 'authorisation' for his prosecution. The applicant, has alleged that respondent No. 1 without "due care and attention" and without `sufficient and proper application of his mind', made `false' statement of the effect that the record concerning technical material placed before him, had `satisfied' him that the provisions of Section 18 of the Atomic Energy Act 1962 were attracted against the applicant and since the document dated 9.8.1988 (order conveying consent) containing the said 'false statement' made by respondent No. 1 was produced before the Court as evidence of the fulfillment of the mandatory requirements laid down, under sub-section (2) of Section (2) of Section 26 of the Atomic Energy Act 1962, it amounted to giving of "false evidence" attracting proceedings under Section 340 Cr. P.C. against respondent No. 1. It is also alleged that by giving his "consent" respondent No.1 had "created falsity" for the department of Atomic Energy to give its "illegal authorisation" on behalf of the Central Government and that these actions of respondent No. 1 also amounted to fabricating " false evidence" and producing "false documents" before the Court. So far as the `authorisation' given by the Chief Vigilance Officer is concerned the applicant alleges that the Chief Vigilance Officer (respondent No. 2) `without due care and attention', and `without any authority' had signed and issued letter No. JS(B)/CVO/16/88 dated 16.8.1988 giving `authorisation` on behalf of the Central Government to prosecute the applicant 'in camera' for the alleged contravention of Sections 18 and 19 of the Atomic Energy Act and since the 'authorisation' issued by respondent No. 2 to prosecute him was `illegal' and made 'without due care and attention' and 'without any authority' respondent No. 2 had

committed "perjury". The applicant then states that the document containing the illegal 'authorisation' issued by respondent No. 2 was produced as evidence of the fulfillment of the mandatory requirement prescribed under clause (b) of sub-section (1) of Section 26 of the Atomic Energy Act, it had caused a "circumstance" for the Magistrate to entertain the erroneous opinion that the bar for taking cognizance placed by clause

(b) of sub-section (1) of Section 26 had been overcome thereby making him to take cognizance and issue process against the applicant, which action had 'deprived the life and liberty' of the applicant.

The appellant also alleges that his 'prosecution' was 'illegal and unjustified' and that respondent No. 1 and No. 2 also committed an offence of criminal conspiracy under Section 120A of the Indian Penal Code.

The applicant has made the following prayers in his application:

> (1) That this Hon'ble Court may be pleased to:
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> (i) record a finding that it is expedient in the interests of justice that an inquiry should be made into the offences punishable under Section 193, 195 and 196 and also Section 120B of the Indian Penal Code and the abetment thereof which appear to have been committed above named;
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> (ii) make a complaint thereof in writing; and
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> (iii) send it. to a Magistrate of the first class having jurisdiction.
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> (2) That this Hon'ble Court may be pleased to direct the Magistrate who is to act upon the complaint of this Court, that it during the inquiry it is found that there are others whose actions or omissions would amount to an of the offences mentioned in Section 195(1)(b) of the Criminal Procedure Code or any other offences, to proceed against them also according to law. (3) That this Hon'ble Court may be pleased to direct the Registrar of the Supreme Court to take necessary action and ensure that the sanction under Section 197 of the Criminal Procedure Code from the Central Government is forwarded to the concerned Magistrate to prosecute the respondents No. 1 and No. 2, as per the complaint made by this Court under Section 340 of the Criminal Procedure Code.

Leaving out. unnecessary and repetitive submissions, what can be culled out from the averments made by the applicant in the memorandum of the present application, is that respondent No. 1 and respondent No 2 had given their "consent" and "authorisation" for his prosecution on behalf of the Central Government, "without due care and attention" and 'without proper application of mind' and had thereby given "false evidence", and "fabricated false evidence" for use in judicial proceedings, which evidence became the basis of his prosecution.

The applicant, it appears to us is labouring under grave misconception both of law and facts and has filed this petition unmindful of the scope of the provisions of Section 340 Cr.P.C. as will as of Sections 191, 192 and 193 IPC. By no stretch of imagination on the basis of the allegations made in this application can it be said that either respondent No. 1 or respondent No. 2 had 'fabricated false evidence or had given false evidence while giving 'consent' and 'authorisation' as required by law for the prosecution of the applicant in discharge of their official duties. A bare look at Sections 191 192 and 193 IPC would show that the said provisions have no application to the case. Neither Respondent No. 1 nor Respondent No. 2 can be said to have given 'false evidence while giving the "consent and "authorisation" unless the expressions 'false' and 'fabricated are used as an "abuse" rather than in the legal sense as defined in Section 191/192 IPC. How the applicant can allege that the recording of 'satisfaction" by the Attorney General was a "false statement" defies logic and sense? The accusation is reckless and bereft of any factual foundation. It deserves notice that neither the trial court nor even the High Court in its various orders made for or against the applicant or this Court while dealing with the orders arising in the case against the, applicant has returned any finding even prima facie, that the 'consent' or the 'authorisation' given by respondents No.1 and 2 amounted to the giving of 'false evidence' or 'fabricating of false evidence'. According to the applicant, the 'consent' was given by the then Attorney General of India 'without due care and attention and even if this submission is, for the sake of arguments, accepted (though there is no basis for accepting the same), we are of the opinion that it cannot lead to, an inference that the document conveying consent was a 'false document' or that giving of 'consent' amounted to giving of 'false evidence' or 'fabricating false evidence' at any stage of judicial proceeding. There is no 'prima facie' material on the record from which any inference may be drawn that either Respondent No.1 or Respondent No. 2 gave 'false evidence' in the Court. Considering the submissions of the applicant, stripped to their bare essentials, the factual matrix on which allegations have been made against respondents Nos. 1 and 2 do not attract the provisions of Sections 191, 192 or 193 IPC. The filling of the present application appears to us to be an effort to get 'reopened' the case even after this Court decided criminal appeal No. 275-277 of 1993 on 16.3.1993 and dismissed the review petition also more than three years ago. Finality must attach to some stage of judicial proceedings. The course adopted by the applicant is impermissible and his application is based on misconception of law and facts. No litigant has a right to unlimited drought on the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived or frivolous petitions. After giving our careful consideration to the submissions made at the bar as well as those contained in the memorandum of the application, we are of the opinion that this application is misconceived, untenable and has no merits whatsoever. It is accordingly dismissed.