

[2014] 4 S.C.R. 475

HOMI RAJVANSH

v.

STATE OF MAHARASHTRA & ORS.
(Criminal Appeal No. 687 of 2014)

MARCH 27, 2014

[P. SATHASIVAM, CJI, RANJAN GOGOI AND
N.V. RAMANA, JJ.]

Code of Criminal Procedure, 1973 – s.482 – Exercise of power under – Scope – Allegations of misappropriation of funds by officials of NAFED – Charge-sheet against appellant and respondent no.3 alongwith other accused – Respondent no.3 filed writ petition u/s.482 CrPC r/w Art. 226/227 of the Constitution – Appellant not shown or impleaded in the petition as a party – High Court allowed the writ petition and quashed criminal proceedings pending against respondent no.3 before the Magistrate – Held: High Court erred in quashing the complaint against respondent no.3 without hearing the appellant who was co-accused in the case as their alleged roles were interconnected – High Court further erred in coming to a finding against the appellant without the appellant being a party in the writ petition filed by respondent no.3 – High Court simply agreed with the submissions of respondent no.3 against the appellant without giving him opportunity of being heard – The High Court over exercised its jurisdiction which was in complete violation of the principles of natural justice – Though the High Court possesses inherent powers u/s.482 CrPC, these powers are meant to do real and substantial justice, for the administration of which alone it exists or to prevent abuse of the process of the court – Inasmuch as the appellant was not impleaded/shown as one of the parties before the High Court, the specific finding against his alleged role, based on the submissions of respondent no.3 without giving an opportunity of being heard,

A *cannot be sustained – Matter remitted back – Appellant be impleaded as respondent no.4 in the writ Petition – High Court to hear the matter afresh – Penal Code, 1860 – s.120B r/w ss.409, 411,420, 467, 468 and 471.*

B The appellant was an Executive Director in National
C Agricultural Co-operative Marketing Federation of India
Ltd. (NAFED). Respondent No.3, the Managing Director
of NAFED, approved the 1st Non-agricultural tie-up of
NAFED in order to diversify NAFED's business activities
and participated in all the meetings and approved all
D transactions for the said purpose. When Respondent
No.3 was scheduled to go for an international tour, the
appellant was made the officiating Managing Director in
order to attend all urgent matters.

D Subsequently, a public interest litigation was filed
against NAFED before the High Court on the allegations
of misappropriation of funds by its officials in non-
agricultural business. The Government of India, in its
reply, stated that CBI enquiry will be conducted. The CBI
E filed charge-sheet against the appellant and Respondent
No.3 along with other accused for committing offence
under Section 120B read with Sections 409, 411,420, 467,
468 and 471 of IPC. At this stage, Respondent No.3
F preferred Writ Petition for discharge before the High Court
under Section 482 of CrPC read with Article 226/227 of
the Constitution. By impugned order, the High Court
allowed the writ petition and quashed the criminal
proceedings pending against respondent No.3 before the
Metropolitan Magistrate.

G The appellant contended before this Court that: (i) the
High Court erred in quashing the complaint against
Respondent No.3 without hearing the appellant, who was
a co-accused in the case and over exercised its
jurisdiction by holding a summary trial on facts; (ii) the
H High Court committed error in coming to a finding against

the appellant without the appellant being a party in the writ petition filed by respondent No.3 and in agreeing with the submissions of Respondent No.3 without affording an opportunity of being heard to the appellant; and (iii) that the adverse findings against the appellant in the impugned judgment would affect the trial, and hence prayed for quashing of the same.

Allowing the appeal, the Court

HELD:1. In the writ petition filed by Respondent No.3 before the High Court for quashing the criminal proceedings, the appellant was not shown or impleaded as one of the parties. On the other hand, the role of the appellant was specifically contended before the High Court at several places and, in categorical terms, in paragraph 10 of the impugned order. The perusal of the contentions of Respondent No.3 and the categorical findings followed by conclusion not only exonerated Respondent No.3 from the criminal prosecution but also reinforce the allegations levelled against the appellant, who was admittedly not a party before the High Court. [Paras 8, 13] [482-C-D; 484-D]

2. The High Court committed an error in quashing the complaint against Respondent No.3 without hearing the appellant who is a co-accused in the case as their alleged roles are interconnected. The High Court committed an error in coming to a finding against the appellant without the appellant being a party in the writ petition filed by Respondent No.3. In fact, the perusal of the impugned order clearly shows that the High Court simply agreed with the submissions of Respondent No.3 against the appellant without giving him an opportunity of being heard. The High Court, in the impugned order, over exercised its jurisdiction which is complete violation of principles of natural justice since the appellant, who is a co-accused, was not heard on the allegations levelled

A against him by Respondent No.3. [Paras 15, 16] [484-F-H; 485-A-B]

B 3. Though the High Court possesses inherent powers under Section 482 of the Code, these powers are meant to do real and substantial justice, for the administration of which alone it exists or to prevent abuse of the process of the court. This Court, time and again, has observed that extraordinary power should be exercised sparingly and with great care and caution. The High Court would be justified in exercising the said power when it is imperative to exercise the same in order to prevent injustice. [Para 17] [485-B-D]

D 4. Inasmuch as admittedly the appellant was not impleaded/shown as one of the parties before the High Court, the specific finding against his alleged role, based on the submissions of Respondent No.3 without giving an opportunity of being heard, cannot be sustained. The matter is remitted to the High Court for fresh disposal. The appellant be impleaded as Respondent No. 4 in the Writ Petition concerned and the High Court to hear the matter afresh after affording opportunity to all the parties including the newly impleaded party, and dispose of the same as expeditiously as possible. [Paras 18, 19, 20] [485-D-G]

F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 687 of 2014.

From the Judgment & Order dated 29.06.2012 of the High Court of Bombay in CRLWP No. 220 of 2010.

G P.P. Malhotra, ASG, Shekhar Naphade, Kailash Vasdev, Subramonium Prasad, Rajiv Dalal, Varun Tandon, Dinesh Kothari, Padmalakshmi Nigam, B.V. Balaram Das, Yasir Rauf, Aniruddha P. Mayee Pawanshree Agarwal, Charudatta Mahinderkar, Asha Gopalan Nair, Vishwajit Singh, Abhindra H

Maheshwari, Pankaj Singh, Umrao Singh Rawat, Sambharya Shankar for the appearing parties. A

The Judgment of the Court was delivered by

P. SATHASIVAM, CJI. 1. Leave granted. B

2. The above appeal is filed against the final impugned judgment and order dated 29.06.2012 passed by the High Court of Judicature at Bombay in Criminal Writ Petition No. 220 of 2010 wherein the High Court quashed the criminal proceedings against Alok Ranjan-Respondent No.3 herein (writ petitioner in the High Court) in C.C. No. 1036/CPW/2008 pending before the Metropolitan Magistrate, 19th Court, Esplanade, Mumbai. C

3. Brief facts: D

(a) The appellant, an Indian Revenue Service Officer, joined National Agricultural Co-operative Marketing Federation of India Ltd. (NAFED), on deputation on 15.07.2003 as an Executive Director. E

(b) On 01.10.2003, Respondent No.3 herein–Alok Ranjan took over the charge as the new Managing Director of NAFED and he approved the 1st Non-agricultural tie-up of NAFED on 13.10.2003 in order to diversify NAFED’s business activities to cope up from severe financial crunch so that income from other businesses can compensate the losses being made on trading of agricultural items. Respondent No. 3 participated in all the meetings and approved all the transactions entered into with M/s Swarup Group of Industries (SGI) for the above said purpose. F

(c) On 20.04.2004, when the Respondent No. 3 was scheduled to go for an international tour to Beijing, the appellant was made the officiating Managing Director for 21.04.2004 to 27.04.2004 in order to attend all urgent matters. G

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A (d) In January 2006, a public interest litigation was filed against NAFED before the Delhi High Court on the allegations of misappropriation of funds by its officials in non-agricultural business. The Government of India, in its reply, stated that CBI enquiry will be conducted. In the affidavit filed by NAFED, it was B again reiterated that all the transactions were *bona fide*.

(e) Anticipating pressure of CBI, Respondent No. 3 directed Mr. M.V. Haridas, Manager (Vigilance and Personnel) to lodge a complaint against SGI and, accordingly, a complaint was lodged before the CBI Economic Offences Wing (EOW), C Mumbai.

(f) The CBI filed a charge-sheet dated 15.12.2008 against the appellant herein and Respondent No.3 along with other accused for committing offence under Section 120B read with D Sections 409, 411, 420, 467, 468 and 471 of the Indian Penal Code, 1860 (in short 'the IPC').

(g) At this stage, Respondent No.3 preferred a petition being Criminal Writ Petition No. 220 of 2010 for discharge before the High Court under Section 482 of the Code of Criminal Procedure, 1973 (in short "the Code") read with Article E 226/227 of the Constitution of India.

(h) By impugned order dated 29.06.2012, the High Court accepted the case of Respondent No.3 herein and allowed his F petition.

(i) Being aggrieved by the impugned judgment of the High Court, the appellant moved before this Court. Since the appellant herein was not a party before the High Court, this G Court, by order dated 19.03.2013, granted him permission to file special leave petition.

4. Heard Mr. Shekhar Naphade, learned senior counsel for the appellant, Mr. P.P. Malhotra, learned Additional Solicitor General for Respondent No.2-CBI, Mr. Kailash Vasdev, H learned senior counsel for the contesting Respondent No.3 and

Ms. Asha Gopalan Nair, learned counsel for the State of Maharashtra. A

Contentions:

5. Mr. Shekhar Naphade, learned senior counsel for the appellant, after taking us through the charge sheet dated 15.12.2008 filed before the Special Judge, CBI, bye-laws of NAFED and impugned order of the High Court, submitted as under: B

(i) the High Court erred in quashing the complaint against Respondent No.3 without hearing the appellant herein, who is a co-accused in the case; C

(ii) the High Court had over exercised its jurisdiction by holding a summary trial on facts, which is contrary to the law laid down by this Court in catena of judgments; D

(iii) the High Court committed an error in coming to a finding against the appellant without the appellant being a party in the writ petition filed by respondent No.3 herein before it; E

(iv) the High Court committed an error in agreeing with the submissions of Respondent No.3 herein without affording an opportunity of being heard to the appellant; and

(v) the adverse findings against the appellant in the impugned judgment would affect the trial, and hence prayed for quashing of the same. F

6. On the other hand, Mr. Kailash Vasdev, learned senior counsel for Respondent No.3 submitted that in the absence of specific material in the charge-sheet about the role of respondent No.3, the High Court is fully justified in quashing the criminal case and discharging him. He further submitted that there is no categorical finding against the appellant and the High Court has merely reproduced what is stated in the charge sheet and nothing more. G
H

A 7. We have carefully considered the rival submissions and perused the relevant materials.

Discussion:

B 8. In view of our proposed decision and the ultimate direction which we are going to issue at the end, there is no need to traverse all the factual details. We have already noted the role of the appellant, Respondent No.3 and Respondent No.4. A careful consideration of the bye-laws of the NAFED also makes clear the separate role of the accused. It is not in dispute that in the writ petition filed by Respondent No.3 before the High Court for quashing the criminal proceedings, the appellant herein was not shown or impleaded as one of the parties. On the other hand, the role of the appellant herein was specifically contended before the High Court at several places and, in categorical terms, in paragraph 10 of the impugned order, which is as under:

E “.....According to the learned counsel, the loss that has been caused, is attributable to the subsequent MOU dated 24.4.2004, entered into between NAFED and M/s Swarup Group of Industries, which was signed by the accused No.2 – Homi Rajvansh, who was the then Divisional Head of Finance and Accounts and tie up business in NAFED. It is submitted that it is the case of the investigating agency itself, that the said MOU was signed by the accused No.2 – Homi Rajvansh, without the approval of the petitioner or without his knowledge. The said MOU neither has any quantitative nor any value restrictions. It is submitted that the collateral security which had been provided in the earlier MOU, was totally missing in this MOU. Not only that, but various relevant clauses appearing in earlier MOU protecting and securing the interest of NAFED were either deleted or modified without information to the petitioner. It is submitted that though the allegation in the charge sheet is that the accused No.2 – Homi Rajvansh made such huge disbursement of funds worth Rs.235 crores, without

taking approval of the Managing Director, i.e., the petitioner, strangely, the Managing Director, i.e., the petitioner has been held responsible for such disbursement and has been made an accused in the case.” A

9. Apart from the above contentions, the charges levelled by the investigating agency against the accused persons in the police report were also highlighted. B

10. The High Court, after adverting to the above contentions, arrived at the following conclusion: C

“There is great substance in the contention advanced by the learned counsel for the petitioner. The allegation that the accused No.2 – Homi Rajvansh, committed the acts in question without the approval of the Managing Director, i.e., the petitioner and without informing him and the allegation that the Managing Director, i.e., the petitioner is responsible for the said acts, cannot go hand in hand together. Surely, if the case is that Homi Rajvansh committed these illegalities without informing the Managing Director, as was required and without his permission, as was necessary, then the responsibility of such acts (which were done without the permission of and the information to the petitioner), cannot be fastened on the petitioner. This is so obvious, that it does not need any further elaboration.” D E

11. Again in paragraph 17, in categorical terms, the High Court has concluded as under: F

“.....Significantly, so far as the accused No.2—Homi Rajvansh is concerned, the investigation could establish that he had acquired huge properties from the ill-gotten wealth.....” G

12. In paragraph 22, the High Court arrived at a specific conclusion against the appellant herein which reads as under:

“Further, the allegations leveled against the petitioner about H

A he being in collusion with the accused No.2-Homi
 Rajvansh, are in conflict with the allegations that have been
 levelled against the accused No.2. It has already been
 seen that the allegations that the said accused No.2, Homi
 B Rajvansh, did certain wrongs without the permission of the
 petitioner and behind his back, and that the said Homi
 Rajvansh and the petitioner had conspired to commit the
 said wrongs, cannot go hand in hand together. Indeed, the
 allegations against the co-accused Homi Rajvansh are
 supported by material in the charge sheet, but the very
 C absence of such material, so far as the petitioner is
 concerned, renders the theory of the petitioner being a
 party to the alleged conspiracy, unacceptable.”

D 13. The perusal of the contentions of Respondent No.3
 herein-the writ petitioner in the High Court and the categorical
 findings followed by conclusion not only exonerated Respondent
 No.3 herein from the criminal prosecution but also reinforce the
 allegations levelled against the appellant herein, who was
 admittedly not a party before the High Court.

E 14. It is settled law that for considering the petition under
 Section 482 of the Code, it is necessary to consider as to
 whether the allegations in the complaint *prima facie* make out
 a case or not and the Court is not to scrutinize the allegations
 for the purpose of deciding whether such allegations are likely
 to be upheld in trial.

F 15. The High Court committed an error in quashing the
 complaint against Respondent No.3 without hearing the
 appellant herein who is a co-accused in the case as their
 alleged roles are interconnected. The High Court committed an
 G error in coming to a finding against the appellant without the
 appellant being a party in the writ petition filed by Respondent
 No.3. In fact, the perusal of the impugned order clearly shows
 that the High Court simply agreed with the submissions of
 Respondent No.3 against the appellant herein without giving
 H him an opportunity of being heard.

16. We are satisfied that the High Court, in the impugned order, over exercised its jurisdiction which is complete violation of principles of natural justice since the appellant, who is a co-accused, was not heard on the allegations levelled against him by Respondent No.3 herein. A

17. Though the High Court possesses inherent powers under Section 482 of the Code, these powers are meant to do real and substantial justice, for the administration of which alone it exists or to prevent abuse of the process of the court. This Court, time and again, has observed that extraordinary power should be exercised sparingly and with great care and caution. The High Court would be justified in exercising the said power when it is imperative to exercise the same in order to prevent injustice. B C

18. Inasmuch as admittedly the appellant was not impleaded/shown as one of the parties before the High Court, the specific finding against his alleged role, based on the submissions of Respondent No.3 herein without giving an opportunity of being heard, cannot be sustained. D

19. In the light of what is stated above, the impugned judgment dated 29.06.2012 in Criminal Writ Petition No. 220 of 2010 is set aside and the matter is remitted to the High Court for fresh disposal. E

20. In view of our conclusion, the appellant herein – Homi Rajvansh be impleaded as Respondent No. 4 in Criminal Writ Petition No. 220 of 2010 and we request the High Court to hear the matter afresh after affording opportunity to all the parties including the newly impleaded party, and dispose of the same as expeditiously as possible preferably within a period of six months from the date of receipt of copy of this judgment. F G

21. The appeal is allowed on the above terms.

B.B.B.

Appeal allowed.