

CASE NO.:
Special Leave Petition (crl.) 4131 of 2005

PETITIONER:
Sanjay Sitaram Khemka

RESPONDENT:
State of Maharashtra & Ors.

DATE OF JUDGMENT: 05/05/2006

BENCH:
S.B. Sinha & P.K. Balasubramanyan

JUDGMENT:
J U D G M E N T

S.B. SINHA, J.

The Petitioner herein is a businessman. He had been carrying on business in the name and style of "JEWELS-9". His business premises is situate at 504-D, Crystal Plaza, New Link Road, Andheri West, Mumbai-400 053. He claims himself to be a manufacturer of jewellery. He claims himself to be an office bearer of the "Jewellers Association of Greater Andheri". The contention of the petitioner was that respondent Nos. 3 and 4 viz., M.A.K. Sheikh and Avinash Dharamadhikari herein had entered into a criminal conspiracy against him as he had exposed their illegal acts and corrupt practices in the media on behalf of the "JEWELLERS ASSOCIATION OF GREATER ANDHERI" in furtherance whereof they registered five false cases against him during the period 25.9.2003 to 16.10.2003. During the purported investigation of the said cases, the photographs of the petitioner were allegedly published in the media with a news story that he was a hard-core criminal. Details of the publications in various newspapers are contained in sub-paragraphs (a) to (g) of the Special Leave Petition. The said articles were said to have been published in different newspapers owned/published by respondent Nos. 6, 7, 8, 9, 10 and 11.

It is his contention that several articles published in different newspapers were false and baseless, the details whereof have been stated in paragraphs 9, 10 and 11 of the Special Leave Petition.

Legal notices were served for registration of First Information Reports by the petitioner against Respondent Nos. 3 and 4. He had also addressed several letters to high dignitaries including the President of India, the Prime Minister of India, the Chief Justice of India, the Home Minister of India, the Chairman, NHRC and the Chief Justice of the Bombay High Court. He is also said to have sent a fax to the Governor of Maharashtra. Pursuant to and in furtherance of the purported representations made by the petitioner to the Governor of the State of Maharashtra, he was called to the Raj Bhawan and was given a hearing by the ADC of the Governor. However, allegedly, no further action was taken by the said authority. He filed a Criminal Writ Petition questioning the alleged high-handed activities of D.N. Nagar Police and made a request for enquiry into the whole episode by the Central Bureau of Investigation. He filed a Transfer Petition before this Court for transfer of the said writ petition. However, the same was dismissed as withdrawn.

The criminal writ petition filed by the petitioner being Writ Petition No. 2611 of 2004 was dismissed for default on 27.1.2005. The petitioner made his Advocate Mr. Akhilesh Singh responsible for dismissal of the said writ petition, for which he is said to have filed a complaint against him under Section 35 of the Advocates Act. However, on the premise that no action

had been taken by the concerned authorities, he again filed a writ petition before the Bombay High Court praying for various reliefs which had been referred to in details in the impugned judgment. A Division Bench of the High Court of Bombay dismissed the said writ petition stating:-

"The petitioner appears in person and submits that action against the respondents is liable to be taken and the above quoted prayers are liable to be granted. For each of the prayers mentioned above, the petitioner has effective remedy in appropriate courts. If he has grievance of he being maliciously the remedy for him to file a complaint is open. If he is harassed by the police officials, criminal complaint against such police officials can be lodged in appropriate criminal court. If he has been defamed action for defamation can be taken in appropriate criminal court. If he has been defamed action for defamation can be taken in appropriate Court. If he wants damages for lost of prestige he has adequate remedy to claim such damages by way of a suit. Thus, for each prayer an independent efficacious remedy is available to the petitioner. Instead the petitioner has chosen to come under Article 226 with these omnibus prayers that there be investigation into the conduct of police department and appropriate action including award of compensation be given to the petitioner\005"

The Petitioner is, thus, before us.

Before advertting to the contentions raised by the Petitioner who appeared in person, we may notice a disturbing fact. The Petitioner had filed a writ petition being Writ Petition (Crl.) No. 2 of 2006 on the self same grounds before this Court under Article 32 of the Constitution of India which was, however, dismissed on 20.02.2006. In this case, a detailed counter-affidavit had been filed on behalf of the State of Maharashtra affirmed by one Mr. Pradeep, Inspector of Police, attached to the D.N. Nagar Police Station. The said deponent has affirmed that various Complaint Petitions came to be filed against the petitioner. It is stated that during investigation of the said cases several facts in regard to involvement of the petitioner in connection with several offences came to light. He has stated:-

"The past of the petitioner is quite controversial he was involved in different business and duped the many businessman even advertising agencies, newspaper publisher and hotel industries. He pose himself as a jeweler, diamond merchant but he has no knowledge of said business and under the pretext of diamond merchant and jewelers he duped the shopowners."

One leading publishing house of a newspaper also filed a counter-affidavit stating that all the publications made in the newspaper were on the basis of official statements made by police officials and as such no motive can be attributed to it.

The Petitioner has filed rejoinders to the said counter-affidavits.

Having regard to the allegations and counter allegations made by the parties before us, we are of the opinion that no releif can be granted to the Petitioner in this petition. The writ petition has rightly been held by the High

Court to be involving disputed questions of fact. The petitioner has several causes of action wherefor he is required to pursue specific remedies provided therefor in law.

A Writ Petition, as has rightly been pointed out by the High Court, for grant of the said reliefs, was not the remedy. A matter involving a great deal of disputed questions of fact cannot be dealt with by the High Court in exercise of its power of judicial review. As the High Court or this Court cannot, in view of the nature of the controversy as also the disputed questions of fact, go into the merit of the matter; evidently no relief can be granted to the Petitioner at this stage. We are, therefore, of the opinion that the impugned judgment of the High Court does not contain any factual or legal error warranting interference by this Court in exercise of its jurisdiction under Article 136 of the Constitution.

Furthermore, the Petitioner had also filed a writ petition under Article 32 of the Constitution of India. The Petitioner at the time of issuance of notice in this matter did not point out the said fact.

In view of the conduct of the Petitioner also, he is not entitled to any equitable relief in the petition for special leave.

For the reasons aforementioned, we do not find any merit in this petition. It is dismissed accordingly.