CASE NO.:
Appeal (crl.) 1188 of 2001

PETITIONER:
PRITISH

Vs.

RESPONDENT:
STATE OF MAHARASHTRA & ORS.

DATE OF JUDGMENT: 21/11/2001

BENCH:
K.T. Thomas, S.N. Phukan & Y.K. Sabharwal

JUDGMENT:

THOMAS, J.

Leave granted.

Appellant who scored substantially in a land acquisition proceeding is now facing rough weather as he is arraigned in a criminal proceeding on account of certain documents he produced as evidence. The court which granted a quantum leap in awarding compensation to the land owners later found that they had used forged documents for inveigling such a bumper gain as compensation and hence the court ordered some of the claimants to face prosecution proceedings in a criminal court. The only point now convassed by the appellant is that the court should have heard the appellant before ordering such prosecution. The said plea raised by the appellant before the High Court was repelled as per the impugned judgment. Hence this appeal by special leave.

An area of 3.9 acres of land was acquired by the State Government for construction of a canal under Arunwati Project in 1985. The land acquisition officer awarded a total of Rs.24,000/- as compensation for the entire land. As the owners were not satisfied with the said award they moved for a reference under Section 18 of the Land Acquisition Act. The reference court (which is a civil court) on the basis of evidence adduced by the parties made a big leap by enhancing the compensation amount from Rupees twenty four thousand to Rupees ten lakhs thirty thousand, besides the other benefits such as solatium, additional compensation and interest as provided in Section 23 of the Land Acquisition Act. The reference court passed the award granting the said enhancement on 23.4.1993. Appellant was one of the beneficiaries of the said award and the enhancement was made on the basis of the evidence adduced by the parties including the appellant. Though the claimants expressed dissatisfaction even with such enhancement and moved the High Court for further enhancement the High Court dismissed the appeal filed by them in 1993.

In 1995, some persons of the locality brought to the notice of the reference court that the claimants had wangled a whopping enhancement after playing chicanery on the court by producing forged copies of sale deeds for supporting their claim for enhancement. The documents marked by the reference court as Exts.31, 32 and 35 were fabricated copies of sale deeds in which the extent of the lands sold had been shown as far less than the real area transferred as per the instruments of sale, according to those persons.

The reference court conducted an inquiry on being told by the aforesaid applicants that the above mentioned documents are forged. The court got down the relevant records from the Sub-Registry for the purpose of examining the correctness of the aforesaid three documents and found that they were fabricated copies of the original sale deeds. The said court further found that appellant and one Rajkumar Anandrao Gulhane have committed offences affecting the administration of justice by using forged documents. The court then passed the following order:

Therefore, it is expedient in the ends of justice on my part to file the complaint in writing against them before Judicial Magistrate of First Class having jurisdiction to take appropriate and proper criminal action against them, as it appears that they have not only cheated the public at large and government but have misguided or tried to misguide my learned predecessor by preparing and producing false documentary evidence as well as by giving false oral evidence just to have a wrongful gain.

The persons who moved the court for taking action under Section 340 of the Code of Criminal Procedure (for short the Code) by bringing the above facts to the notice of the reference court were not satisfied as they felt that the other persons who also secured the advantage of such enhancement were also to be proceeded against. So they filed an appeal before the District Court. On 12.8.1996 the District Judge concerned ordered that the complaint shall be filed against five more persons besides the appellant and Rajkumar Ananarao Gulhane. We are told that those five persons moved the High Court and got themselves extricated from prosecution proceedings. Appellant then filed an appeal before the High Court purportedly under Section 341 of the Code in challenge of the order of the reference court which directed the filing of a criminal complaint against him. The main contention he raised before the High Court was that the reference court has overlooked the basic principles of natural justice and proceeded to make an inquiry without giving an opportunity to him to be heard in the matter and hence great prejudice had been caused to him as he had been deprived of the opportunity to be heard. Learned single judge of the High Court while repelling the above contention observed thus:

The procedure does not contemplate that before initiating preliminary enquiry the court ought to give notice to the person against whom it may make a complaint on completion of the preliminary enquiry and, obviously so because what is contemplated is

only a preliminary enquiry, and if the court chooses to take action against the said person, it does not mean that he will not have full and adequate opportunity under Section 340(1)(b) of the Criminal Procedure Code. Therefore, the contention of the learned counsel for the appellants, that the court, before initiating any enquiry into the matter, ought to have given notice to the appellants and that the appellants have a right to be heard, cannot be accepted.

Shri V.A. Mohta, learned senior counsel for the appellant contended that the basic principle of natural justice is violated when the reference court ordered prosecution against the appellant without affording him an opportunity of being heard. In elaborating the said point learned senior counsel submitted that the scheme of Sections 340 to 344 of the Code contains an in-built safety for the persons sought to be proceeded against, by obliging the court to afford an opportunity of being heard to them.

Chapter XXVI of the Code contains provisions as to offences affecting the administration of justice. Among the 12 sections subsumed therein we need consider only three. Section 340 consists of four sub-sections of which only the first sub-section is relevant for the purpose of this case. Hence the said sub-section is extracted below:

When upon an application made to it in this behalf or otherwise, any court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

Reading of the sub-section makes it clear that the hub of this provision is formation of an opinion by the court (before which proceedings were to be held) that it is expedient in the interest of justice that an inquiry should

be made into an offence which appears to have been committed. In order to form such opinion the court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the court can form such an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court. It is important to notice that even when the court forms such an opinion it is not mandatory that the court should make a complaint. This sub-section has conferred a power on the court to do so. It does not mean that the court should, as a matter of course, make a complaint. But once the court decides to do so, then the court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion. It should again be remembered that the preliminary inquiry contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.

Inquiry is defined in Section 2(g) of the Code as every inquiry, other than a trial, conducted under this Code by a magistrate or court. It refers to the pre trial inquiry, and in the present context it means the inquiry to be conducted by the magistrate. Once the court which forms an opinion, whether it is after conducting the preliminary inquiry or not, that it is expedient in the interest of justice that an inquiry should be made into any offence the said court has to make a complaint in writing to the magistrate of first class concerned. As the offences involved are all falling within the purview of warrant case [as defined in Sec.2 (x)] of the Code the magistrate concerned has to follow the procedure prescribed in Chapter XIX of the Code. In this context we may point out that Section 343 of the Code specifies that the magistrate to whom the complaint is made under Section 340 shall proceed to deal with the case as if it were instituted on a police report. That being the position, the magistrate on receiving the complaint shall proceed under Section 238 to Section 243 of the Code.

Section 238 of the Code says that the magistrate shall at the outset satisfy himself that copies of all the relevant documents have been supplied to the accused. Section 239 enjoins on the magistrate to consider the complaint and the documents sent with it. He may also make such examination of the accused, as he thinks necessary. Then the magistrate has to hear both the prosecution and the accused to consider whether the allegations against the accused are groundless. If he finds the allegations to be groundless he has to discharge the accused at that stage by recording his reasons thereof. Section 240 of the Code says that if the magistrate is of opinion, in the aforesaid inquiry, that there is ground for presuming that the accused has committed the offence he has to frame a charge in writing against the accused. Such charge shall then be read and explained to the accused and he shall be asked

whether he pleads guilty of the offence charged or not. If he pleads not guilty then the magistrate has to proceed to conduct the trial. Until then the inquiry continues before the magistrate.

Thus, the person against whom the complaint is made has a legal right to be heard whether he should be tried for the offence or not, but such a legal right is envisaged only when the magistrate calls the accused to appear before him. The person concerned has then the right to participate in the pre-trial inquiry envisaged in Section 239 of the Code. It is open to him to satisfy the magistrate that the allegations against him are groundless and that he is entitled to be discharged.

The scheme delineated above would clearly show that there is no statutory requirement to afford an opportunity of hearing to the persons against whom that court might file a complaint before the magistrate for initiating prosecution proceedings. Learned counsel for the appellant contended that even if there is no specific statutory provision for affording such an opportunity during the preliminary inquiry stage, the fact that an appeal is provided in Section 341 of the Code, to any person aggrieved by the order, is indicative of his right to participate in such preliminary inquiry.

Section 341 of the Code confers a power on the party on whose application the court has decided or not decided to make a complaint, as well as the party against whom it is decided to make such complaint, to file an appeal to the court to which the former court is subordinate. But the mere fact that such an appeal is provided, it is not a premise for concluding that the court is under a legal obligation to afford an opportunity (to the persons against whom the complaint would be made) to be heard prior to making the complaint. There are other provisions in the Code for reaching conclusions whether a person should be arrayed as accused in criminal proceedings or not, but in most of those proceedings there is no legal obligation cast on the court or the authorities concerned, to afford an opportunity of hearing to the would be accused. In any event appellant has already availed of the opportunity of the provisions of Section 341 of the Code by filing the appeal before the High Court as stated earlier.

Once the prosecution proceedings commence the person against whom the accusation is made has a legal right to be heard. Such a legal protection is incorporated in the scheme of the Code. Principles of natural justice would not be hampered by not hearing the person concerned at the stage of deciding whether such person should be proceeded against or not.

Be it noted that the court at the stage envisaged in Section 340 of the Code is not deciding the guilt or innocence of the party against whom proceedings are to be taken before the magistrate. At that stage the court only considers whether it is expedient in the interest of justice that an inquiry should be made into any offence affecting administration of justice. In M.S. Sheriff and anr. vs. State of Madras and ors. (AIR 1954 SC 397) a Constitution Bench of this Court cautioned that no expression on the guilt or innocence of the persons should be made by the court while passing an order under Section

340 of the Code. An exercise of the court at that stage is not for finding whether any offence was committed or who committed the same. The scope is confined to see whether the court could then decide on the materials available that the matter requires inquiry by a criminal court and that it is expedient in the interest of justice to have it inquired into.

Learned senior counsel cited the decision of a single Judge of the High Court of Andhra Pradesh in Nimmakayala Audi Narrayanamma vs. State of Andhra Pradesh (AIR 1970 A.P. 119) in which learned judge observed that it is just and proper that the court issues a show cause notice to the would be accused as to why they should not be prosecuted. This was said while interpreting the scope of Section 476 of the old Code of Criminal Procedure (which corresponds with Section 340 of the present Code). The following is the main reasoning of the learned single Judge:

The proceedings under Section 476 Criminal P.C. being judicial and criminal in nature, the interpretation that should be placed in construing the section should be just, fair, proper and equitable and must be in accordance with the principles of natural justice. By adopting such interpretation and procedure, the aggrieved party would be afforded with an adequate opportunity to show and satisfy the court that it was not in the interests of justice, to launch the prosecution and thereby avoid further proceeding. That apart, the appellate court also would be in a position to appreciate the reasons assigned in each case and would have the advantage of coming to its own conclusion without any difficulty about the justification or otherwise of launching the prosecution in a particular case. When once the prosecution had been launched, the accused will not be having an opportunity thereafter to raise the question of expediency in the interests of justice to launch the very prosecution itself. The case thereafter will have to be gone into on the merits.

We are unable to agree with the said view of the learned single Judge as the same was taken under the impression that a decision to order inquiry into the offence itself would prima facie amount to holding him, if not guilty, very near to a finding of his guilt. We have pointed out earlier that the purpose of conducting preliminary inquiry is not for that purpose at all. The would be accused is not necessary for the court to decide the question of expediency in the interest of justice that an inquiry should be held. We have come across decisions of some other High Courts which held the view that the persons against whom proceedings were instituted have no such right to participate in the preliminary inquiry. {vide M. Muthuswamy vs. Special Police Establishment (AIR 1985 Criminal Law Journal 420)}.

We therefore agree with the impugned judgment that appellant cannot complain that he was not heard during the

preliminary inquiry conducted by the reference court under Section 340 of the Code. In the result we dismiss this appeal.

J
[K.T. Thomas]

J
[S.N. Phukan]

J
[Y.K. Sabharwal]

November 21, 2001.