REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1576-1577 OF 2008
[@ Special Leave Petition (Criminal) Nos.7387-88 of 2007]

Rukmini Narvekar .. Appellant (s)

-versus-

Vijaya Satardekar & Ors. .. Respondent (s)

J U D G M E N T

Markandey Katju, J.

1. Leave granted.

2. These appeals have been filed against the common judgment of the learned Single Judge of the Bombay High Court (at Goa) dated 3.8.2007 in Criminal Writ Petition Nos.7/2007 and 8/2007.

3. Heard learned counsel for the parties and perused the record.

4. Respondent Nos. 1 & 2 in both these appeals are husband and wife, being Ranjit Satardekar and his wife Vijaya Satardekar. An FIR dated 25.2.2002 was filed against these respondents by one Rukmini Narvekar (the appellant herein) under various provisions of the IPC including Sections 409, 420, 423, etc. A true copy of this FIR is annexed as P6 in this appeal. The gist of this FIR is that the complainant is an illiterate person and so was her husband Raghunath Narvekar. It is alleged that the respondent Ranjit Satardekar, who is an advocate, fraudulently and dishonestly induced the complainant and her deceased husband to place their signatures and thumb impression on some papers in the office of the Executive Magistrate at Sawantwadi without explaining the contents thereof, and falsely misrepresenting that the same was necessary to give him necessary authority to represent them in the court in Goa in Inventory Proceedings on the death of Andre Andrade which were going on pertaining to the estate left by him. It may be mentioned that Andre Andrade had several children including one daughter who was married to Raghunath Narvekar but their marriage was dissolved on 16.2.1973 and thereafter Raghunath Narvekar married the complainant. Under the Goa law, Raghunath Narvekar and the complainant inherited 10% share in the estate left by the deceased Andre Andrade and the remaining 10% went to Vijaya

Andrade who had been married to Raghunath Narvekar and was being represented by Ranjit Satardekar, advocate, in the Inventory Proceedings.

5. The allegation in the FIR was that Ranjit Satardekar had falsely misrepresented to the complainant and her husband that the document which was being executed by them was for enabling Ranjit to represent them in the Inventory Proceedings in progress on the death of Andre Andrade, although what was actually executed by them was a Power of Attorney. This Power of Attorney was used by the accused for executing a sale deed in favour of his wife Vijaya Satardekar and Sadiq Sheikh in the year 1991, but the said sale deed was presented for registration only in the year 2001. It is alleged that the complainant came to know only in August 2001 for the first time about the execution of the sale deed in 1991. Thus it is alleged that the property of the complainant was purported to have been sold away by Ranjit Satardekar, advocate by deceit and misrepresentation for which he deserved to be punished under Sections 409, 420 and other provisions of the IPC.

6. On the basis of the aforesaid FIR, the police investigated the case and filed a chargesheet against both Ranjit Satardekar and Smt.Vijaya Satardekar as well as two others. Thereafter, cognizance was taken of the offence alleged in the chargesheet and process was issued by the Judicial

Magistrate, First Class, Panaji under Sections 468/471/420/120-B read with Section 34 of the Indian Penal Code.

7. Against the order taking cognizance and issuing process against the accused, they filed a Criminal Revision before the Sessions Judge, Panaji, which was dismissed by his judgment dated 19.6.2007. Against that order a writ petition was filed which was allowed by the impugned judgment of the learned Single Judge of the High Court dated 3.8.2007. Hence this appeal.

8. We have heard detailed arguments on both sides and we are of the opinion that judgment of the High Court cannot be sustained so far as it has quashed the complaint and proceedings against Ranjit Satardekar, but it has to be sustained so far as it relates to Vijaya Satardekar.

9. Shri Mukul Rohatgi, learned senior counsel for the appellant has submitted that in the impugned judgment the learned Single Judge of the High Court largely relied on the evidence proceedings in Civil Suit (No.97 of 2004, New No.101 of 2004). The complainant was the plaintiff No.1 in the said Civil Suit which has been decreed on 30.12.2006. Shri Rohatgi has submitted that the High Court should not have relied on the evidence in the aforesaid Civil Suit for the purpose of quashing the criminal case. On the other hand Shri U.U.Lalit, learned senior counsel for the respondent has

submitted that the said evidence could have been relied upon on the facts of this case for quashing the criminal proceedings.

10. Before dealing with these submissions we may point out that while there were certain rulings of two-Judge Benches of this Court, which had held that the findings in a Civil Suit are binding in a criminal case on the same facts but not vice versa, this view appears to have been watered down somewhat in the subsequent decisions of the larger Benches of this Court e.g. the decision of the Constitution Bench of this Court in **Iqbal Singh Marwah and Anr. vs. Meenakshi Marwah and Anr.** 2005(4) SCC 370 (vide para 32) [JT 2005(3)SC 195] as well as the decision of the three-Judge Bench in **K.G. Premshanker vs. Inspector of Police and Anr.** 2002(8) SCC 87 (vide para 30 to 33).

11. The law as to when criminal proceedings can be quashed by the High Court in exercise of powers under Section 482 Cr.P.C or Article 226 of the Constitution has been laid down by this Court in **State of Haryana and Ors. vs. Bhajan Lal and Ors.** 1992 Supp.(1) SCC 335 (vide para 102 and 103) [JT 1990(4) SC 650]. This decision has been followed subsequently by a series of decisions e.g. **Pepsi Foods Ltd. and Anr. vs. Special Judicial Magistrate and Ors.** 1998(5) SCC 749 [JT 1997 (8) SC 705],

Minu Kumari and Anr. vs. State of Bihar and Ors. 2006(4) SCC 359 [JT 2006(4) SC 569], etc.

12. Shri Rohatgi submitted that on a perusal of the FIR in this case it cannot be said that treating the allegations therein to be correct no prima facie offence is made out against Ranjit Satardekar. We have carefully perused the FIR and we agree with the submission of Shri Rohatgi. The allegations in the FIR if treated to be correct prima facie make out an offence against the respondent, Ranjit Sataredkar. Shri Lalit, learned counsel for Ranjit Satardekar, however, submitted that in **Bhajan Lal's** case (supra) itself the seventh ground given therein in para 102 of the said decision applies to the facts of this case. The seventh ground which entitles the High Court to quash the criminal proceedings is stated in **Bhanjan Lal's** case (supra) as follows :

> "Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

13. Shri Lalit submitted that the proceedings against Ranjit Satardekar were mala fide as is evident from the evidence of Dhananjay Narvekar in the Civil Suit where he has stated that he has received some money from

Ranjit Satardekar. According to Shri Lalit this proves that the sale deed of 1991 was in the knowledge of the complainant throughout.

14. We have perused the evidence of Dhananjay Narvekar in the Civil Suit and we have also perused the judgment in the Civil Suit, against which we are informed an appeal is pending. The evidence of Dhananjay Narvekar is a very detailed one and some contradictory statements appear to have been be given by him e.g. that the amount was paid by Ranjit Satardekar as a loan, and this contradicts the version that the money was paid as a sale consideration. In the judgment of the Civil Court it has been held that undue influence cannot be ruled out. In these circumstances it cannot be said that at this stage the proceedings in the criminal case were totally mala fide and with ulterior motive.

15. It may be mentioned that the pleas which the respondent Ranjit Satardekar took before the High Court could be taken by him at the time of the trial, and it would not be proper to pre-empt the criminal proceeding at this stage. Serious allegations have been made against him in the FIR. The relation of a lawyer and his client is like a fiduciary relationship, and the lawyer has to act in the interest of his client. However, it is alleged in the FIR that Ranjit Satardekar deceived the complainant and her husband in the manner aforesaid. These are matters which the trial court in the criminal

case should look into, and we are not expressing any opinion either way on this question. However, we are of the opinion that this was not a fit case for quashing of the criminal proceedings Ranjit Satardekar in exercise of the powers under Section 482 Cr.P.C or Article 226 of the Constitution.

16. Shri Mukul Rohatgi submitted that at the time of the framing of the charges only the material produced by the prosecution side can be looked into by the Court but the material produced by the defence cannot be looked into. He has placed reliance on several decisions of this Court in this connection e.g. **State of Orissa vs. Debendra Nath Padhi** 2005(1) SCC 568.

17. We have carefully perused the decision of this Court in the **State of Orissa vs. Debendra Nath Padhi** (supra). Though the observations in paragraph 16 of the said decision seems to support the view canvassed by by Shri Rohatgi, it may be also pointed out that in paragraph 29 of the same decision it has been observed that the width of the powers of the High Court under Section 482 of Cr.P.C and Article 226 of the Constitution is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of the court or otherwise to secure the ends of justice within the parameters laid down in **Bhajan Lal's** case (supra). Thus we have to reconcile paragraphs 16 and 23

of the decision in **State of Orissa vs. Debendra Nath Padhi** (supra). We should also keep in mind that it is well settled that a judgment of the Court has not to be treated as a Euclid formula vide **Dr. Rajbir Singh Dalal vs. Chaudhari Devi Lal University, Sirsa & Anr.** JT 2008(8) SC 621. As observed by this Court in **Bharat Petroleum Corporation Ltd. & Anr. vs. N.R. Vairamani & Anr** AIR 2004 SC 4778, observations of Courts are neither to be read as Euclid's formula nor as provisions of the statute. Thus in our opinion while it is true that ordinarily defence material cannot be looked into by the Court while framing of the charge in view of D.N. Padhi's case (supra), there may be some very rare and exceptional cases where some defence material when shown to the trial court would convincingly demonstrate that the prosecution version is totally absurd or preposterous, and in such very rare cases the defence material can be looked into by the Court at the time of framing of the charges or taking cognizance.

18. In our opinion, therefore, it cannot be said as an absolute proposition that under no circumstances can the Court look into the material produced by the defence at the time of framing of the charges, though this should be done in very rare cases, i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted. We agree with Shri Lalit that in some very rare cases the Court is justified in looking into the material produced by the

defence at the time of framing of the charges, if such material convincingly establishes that the whole prosecution version is totally absurd, preposterous or concocted.

19. However, in this case it cannot be said that the evidence in the Civil Suit which was produced by the defence before the trial court established convincingly that the prosecution case is totally absurd or preposterous. In our opinion this is a matter which has to be looked into by the trial Court.

20. In **Dr. Monica Kumar & Anr. vs. State of U.P. & Ors.** 2008(9) Scale 166 this Court referred to various decisions on the point of quashing the criminal proceedings against the accused. In this decision this Court quashed the criminal proceedings against the accused, though on the allegations in the F.I.R. prima facie an offence was made out. Thus quashing of the criminal case was done considering all the facts and circumstances of the case. No doubt, in this decision the Court has relied on Article 142 of the Constitution, but in our opinion the result would have been the same irrespective of Article 142.

21. Thus we allow the criminal appeal in which Ranjit Satardekar is the respondent and we set aside the judgment of the High Court in respect of Ranjit Sataredkar and direct that the criminal proceedings against him will

go on in the trial Court. However, the trial Court will not be influenced by any observations made in this judgment.

22. As regards the other criminal appeal in which Smt. Vijaya Satardekar, wife of Ranjit Satardekar, is the respondent, we are of the opinion that there is no material whatsoever either mentioned in the FIR or produced by the prosecution to show that Vijaya Satardekar was in any way involved in the alleged criminal offence committed by her husband Ranjit Satardekar. The only allegation against her is that the sale deed was in her favour. In our opinion this does not prima facie make out any offence. In our opinion, therefore, the criminal proceeding against Vijaya Satardekar was rightly quashed by the High Court and the criminal appeal in which Vijaya Satardekar is respondent is dismissed.

23. There shall be no order as to costs.

…….J.
(Markandey Katju)

New Delhi;
October 03, 2008

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1576-1577 OF 2008
(@ Special Leave Petition (Crl)Nos.7387-7388 of 2007)

Rukmini Narvekar … **Appellant**

Vs.

Vijay Satardekar and ors. ***…Respondents***

J U D G M E N T

ALTAMAS KABIR,J.

1. I have carefully gone through the draft judgment prepared by my learned Brother and though I agree with his interpretation of the provisions of Section 227 of the Code of Criminal Procedure, hereinafter referred to as "Cr.P.C." and wish to express my own views in the matter. Section 227 Cr.P.C., which is in Chapter XVIII of the Code, which deals with trials before a Court of Sessions, relates to the opening stages of a trial at the time of framing of charge against the accused which is done under Section 228. Section 227 which is relevant for our purpose provides as follows:

> "227. Discharge- If, upon consideration of the record of the case and the documents submitted therewith, and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

2. The aforesaid provision has fallen for consideration of this Court in several cases on the question as to whether at the stage of framing of charge, the Court in seisin session of the matter is required to consider any material, other than that indicated in the Section.

3. In the three-Judge Bench decision of this Court in State of Orissa vs Debendra Nath Padhi [(2005) 1 SCC 568], to which my learned Brother has also referred, it has been mentioned as to how the matter came to be referred to the larger Bench. Till 1996, the consistent view which had been taken by this Court is that at the time of framing of charge the trial court can consider only such material as are placed by the investigating agency having regard to the very language of Section 227. At that stage, the defence could only be heard but could not be given an opportunity to produce evidence for the consideration of the Court. However, a different view was expressed by a two-Judge Bench of this Court in Satish Mehra vs. Delhi Administration [(1996) 9 SCC 766. The learned Judges observed that if the accused were able to produce any reliable material at the stage of taking cognizance or framing of charge which might fatally affect the very sustainability of the case, it is unjust to suggest that no such material should be looked into by the Court at that stage. It was, therefore, held that the trial court would be within its power to consider even material which the accused may produce at the stage contemplated in Section 227 of the Code. It was because of a discordant note being struck to an otherwise established principle in the Satish Mehra case (supra) that in Debendra Nath Padhi's case (supra) an order was passed referring the said question to a larger Bench and the same was taken up for consideration in the said case itself by a three-Judge Bench.

4. While referring to Sections 227 and 228 Cr.P.C. relating to Sessions triable cases, the three-Judge Bench also considered the provisions of Sections 239 and 240 Cr.P.C. relating to trial of warrant cases by Magistrates, which are almost identical to Sections 227 and 228 Cr.P.C. The decision rendered in Debendra Nath Padhi's case (supra) makes it very clear that the dominant issue being dealt with in the case was with regard to the right enjoyed by an accused to produce evidence for the consideration of the Court at the stage of framing of charge.

5. Interpreting the expression "the record of the case" and the word "case" used in Section 227 of the Code, the learned Judges held that the said expressions clearly meant the records and the documents or articles produced with it, as indicated in Section 227 Cr.P.C. It was observed that no provision in the Code gives the accused the right to file any material or document at the stage of framing of charge. The right is only granted at the stage of the trial.

6. The learned Judge then went on to examine the earlier cases where the common view taken was that at the stage of Sections 227 and 228 of the Code all that the

Court is required to see is whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. The learned Judge while considering the other decision also referred to the decision of this Court in State Anti-Corruption Bureau vs. P. Suryaprakasan [(1999) SCC(Cri)373], wherein it was explained that at the time of framing of charge, the trial court is required to and can only consider the Police report referred to in Section 173 of the Code and the documents sent with it. It was emphasised that the only right available to the accused at that stage was that of being heard and nothing beyond that.

7. In order to identify the parameters of the questions referred to it, the larger Bench observed that in the case before it the question involved was not about the jurisdiction under Section 482 of the Code where along with the petition the accused may file unimpeachable evidence of sterling quality and on that basis seek quashing, but it is about the right claimed by the accused to produce material at the stage of framing charge. The larger Bench was, therefore, fully conscious of the limits within which it was required to confine its views and the judgment was rendered in that context. The same will be evident from the opening paragraph of the judgment. While deciding the questions referred to it, the larger Bench made a conscious distinction between a proceeding under Section 227 Cr.P.C. before the trial court and a proceeding under Section 482 Cr.P.C. and made a reference to the Court's power to consider material other than those produced by the prosecution in a proceeding under Section 482 Cr.P.C. It is in that context that while holding that the decision rendered in Satish Mehra's case (supra) was erroneous, the larger Bench held that if the submission that the accused would be entitled to produce materials and documents in proof of his innocence at the stage of framing of charge, was to be accepted, it would be unsettling a law well settled over a hundred years. It is in that light that the provisions of Section 227 Cr.P.C. would have to be understood and that it only means hearing the submissions of the accused on the records of the case filed by the prosecution and documents submitted therewith and nothing more. The larger Bench arrived ata definite conclusion that the expression "hearing the submissions of the accused" cannot mean an opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police.

8. The larger Bench did not leave any scope for a different interpretation of the provisions of Section 227 as is now being made. Incidentally, the very same arguments which have been advanced by Mr. Lalit before us on behalf of the accused, were also advanced by learned counsel before the larger Bench and the same were negated as far as Section 227 Cr.P.C. is concerned. However, in paragraphs 21 and 29 of the judgment the larger Bench did indicate that the width of the powers of the High Court under Section 482 Cr.P.C. and Article 226 of the Constitution is unlimited whereunder in the interest of justice the High Court

could make such order as may be required to secure the ends of justice and to prevent abuse of the process of any court.

9. In my view, therefore, there is no scope for the accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge and only such material as are indicated in Section 227 Cr.P.C. can be taken into consideration by the learned magistrate at that stage. However, in a proceeding taken therefrom under Section 482 Cr.P.C. the Court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained. This, in my view, appears to be the intention of the legislature in wording Sections 227 and 228 the way in which they have been worded and as explained in Debendra Nath Padhi's case (supra) by the larger Bench to which the very same question had been referred.

10. However, as indicated by my learned Brother, the complaint made does make out a prima facie case against accused Ranjit Satardekar and the cognizance taken by the learned magistrate cannot be faulted and the appeal as far as he is concerned, must be allowed. However, even prima facie, none of the offences referred to in the charge-sheet can be made out against accused Vijaya Satardekar and she has been roped in only with the aid of Section 120B which is also not substantiated. The appeal as far as she is concerned, must be dismissed.

11. The appeal is disposed of accordingly.

_____J.

(ALTAMAS KABIR)

New Delhi

Dated:03.10.2008