CASE NO.:
Appeal (crl.) 556 of 1995

PETITIONER:
N. Natarajan

RESPONDENT:
B.K.Subba Rao

DATE OF JUDGMENT: 03/12/2002

BENCH:
S. RAJENDRA BABU & ARUN KUMAR.

JUDGMENT:
J U D G M E N T

RAJENDRA BABU, J. :

An application under Section 340 of the Criminal Procedure Code was laid by the respondent in the Designated Court at Bombay. The appellant had been conducting the cases as the Chief Public Prosecutor before the Designated Judge in what is popularly known as "Bombay Blast Cases". The respondent urged in his petition that the appellant before us being a public prosecutor had an onerous duty and had to act in a fair manner and at one stage of the proceedings both orally and in writing had submitted to the court that the material on record was sufficient to frame charges against various offences arising under Chapter VI of the Indian Penal Code like waging war against the State, etc., after adverting to the decisions of this Court. However, at a later stage of the proceedings in the same case, the appellant urged the Designated Court to drop the charges under Sections 121 and 121A IPC against all the 157 accused as there was no material. Thus he made statements which were contradictory to the earlier stand taken by him and left the matter to the discretion of the court to accept one or the other version to be true in order to secure the ends of justice. Apart from misconduct on the part of the appellant arising under the Advocates Act, it is contended that the same would amount to criminal contempt of court. The contention advanced on behalf of the respondent was that the charge of waging war against the State without reasonable or sufficient material on record results in grave injustice and injury to some of the accused and if he had carried out his functions with due care and caution, such injustice would not have occasioned. He contended in the course of the application as follows :

" Having opened the case under Section 226 CrPC and having proceeded quite far under Section 227 CrPC in respect of framing charges, for the prosecutor to come up with a plea not to frame the charges for lack of material on record amounts to making a mockery of the administration of justice. The conduct of the CBI prosecutor Mr. Natarajan has polluted the course of administration of justice, notwithstanding the fact that there is material or not to frame the charge. This kind of conduct on the part of the public prosecutor if not dealt with according to law would leave wide scope in our judicial system to injure and cause injustice to ill place citizens. Therefore a judicial examination of the conduct of the CBI prosecutor Mr. Natarajan will be in public interest, as it would act as a deterrent against public prosecutors indulging in unfair practices."

The respondent also submitted that he was not concerned with the outcome of the case but more in the conduct of the public prosecutor in making contradictory submissions. He submitted that this conduct on the part of the appellant would attract the provisions of Section 192 to 196 and 227 CrPC.

On receipt of the application, the learned Designated Judge directed the

Registry to post the matter for hearing on the question of locus standi of the respondent to file an application under Section 340 CrPC and whether that court had jurisdiction to entertain the application. The Designated Judge held that he was satisfied that the court could entertain an complaint even at the instance of a stranger in order to address his grievances as offences affecting the administration of justice. Though the appellant was not notified of the said application, the learned Designated Judge heard Mr. R.K.H.Sharma, Special Public Prosecutor, in the matter and noted that he had not challenged the locus standi of the respondent in presenting the application but had emphasised that if the court entertains such petition without ascertaining its merit, it would open flood gates and any person would walk in the court with such petitions. Before the learned Designated Judge, it was contended by Mr. Sharma that there can be only two parties before the court, that is, the public prosecutor or the complainant, as the case may be, and on the other side the accused represented by his advocate and in those circumstances the respondent could not be heard in the matter. However, the court by an order made on 21.2.1995, recorded its satisfaction as to the locus standi of the respondent and directed to register the application and to issue notice to the public prosecutor returnable on 10.3.1995. The public prosecutor noted to have taken notice of the matter. Against this order of the Designated Judge, the present appeal has been filed by the appellant.

This Court, on 8.3.1995, directed to issue notice to the respondent and also granted an ad-interim stay of the order made by the Designated Judge on 21.2.1995 and it was also made clear that the pendency of these proceedings will not debar the petitioner from functioning as a prosecutor in the case known as the Bombay Blast Case. Thereafter leave was granted and the interim order granted was affirmed.

When the matter was set down for final hearing, the respondent appeared in person and contended that this Court should not entertain a petition on appeal under Article 136 of the Constitution inasmuch as the order passed by the Designated Judge being under TADA and is an interim order and no appeal lies against such order in view of Section 19 thereof. He further contended that inasmuch as an appeal lies under Section 341 CrPC against an order made under Section 340 CrPC in the event of a complaint having been made against the appellant. In this context, he also drew our attention to the provisions of sub-section (2) of Section 340 CrPC to point out that the power conferred on the court under Section 340(1) CrPC in respect of an offence could be exercised by an appellate court in case the subordinate has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint. He, therefore, submitted that the powers of this Court under Article 136 should not be exercised as exercise of such power would affect a statutory right of appeal.

Article 136 of the Constitution enables this Court to exercise in its discretion appellate powers by granting special leave from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in India. This power is conferred on this Court notwithstanding the provisions for regular appeal from proceedings in different enactments being available and there may remain some cases where justice might require interference by this Court with the decisions of the High Courts or the tribunals of the land. The power of this Court to grant leave to appeal from any decision of any court or tribunal is not subject to any limitation and is left entirely to the discretion of this Court. Though this Court is circumspect in its exercise of its jurisdiction under Article 136 it has a duty to interfere in cases of grave miscarriage of justice. It is trite to say that the extraordinary power conferred under Article 136 of the Constitution cannot be taken away by any legislation, short of constitutional amendment. The nature of the statute or limitations imposed within a statute cannot deter this Court from exercising its jurisdiction. It is not even restricted by the appellate provisions enumerated in Criminal Procedure Code or any other statute. Therefore, contentions urged, which are preliminary in nature, cannot detain us in entertaining this matter or examining the correctness of the proceedings before the Designated Judge. However, the respondent urged that in A.R.Antulay vs. R.S.Nayak, 1988 (2) SCC 602, this

Court had held that one of the considerations in exercise of its power by this Court is not to deprive any party of a statutory appeal and if such deprivation occasions then the matter will have to be reopened as was done in that case. This argument proceeds on a misconception of the position in law. An appeal lies when a matter is finally and conclusively decided by a court or a tribunal. If the High Court or the Supreme Court, in exercise of the extraordinary jurisdiction under Article 226 or Article 136 of the Constitution or Section 482 Cr.P.C., as the case may be, quashes certain proceedings, a party cannot complain that his right to statutory appeal had been deprived. Therefore, this contention deserves to be rejected.

Mr. K.K.Venugopal, learned Senior Advocate appearing for the appellant, submitted that the respondent has a habit of making such complaints and he is not a person who is interested in the matter in any way and no public interest would be served by entertaining an application made by him and he is a total stranger to the proceedings. In fact, he described the respondent as 'busy body or interloper' in the proceedings. In answer to this contention, the respondent relied upon the decisions in Bhagwandas Narandas vs. D.D.Patel & Co., AIR 1940 Bombay 131 and Harekrishna Parida & Ors. vs. Emporer, AIR 1929 Patna 242, to contend that even a stranger to a cause can lodge a complaint under Section 340 CrPC.

In our view it is not necessary to pursue the approach of either of the party. It is well settled that in criminal law that a complaint can be lodged by anyone who has become aware of a crime having been committed and thereby set the law into motion. In respect of offences adverted to in Section 195 CrPC, there is a restriction that the same cannot be entertained unless a complaint is made by a court because the offence is stated to have been committed in relation to the proceedings in that court. Section 340 CrPC is invoked to get over the bar imposed under Section 195 CrPC. In ordinary crimes not adverted to under Section 195 CrPC, if in respect of any offence, law can be set into motion by any citizen of this country, we fail to see how any citizen of this country cannot approach even under Section 340 CrPC. For that matter, the wordings of Section 340 CrPC are significant. The Court will have to act in the interest of justice on a complaint or otherwise. Assuming that the complaint may have to be made at the instance of a party having an interest in the matter, still the court can take action in the matter otherwise than on a complaint, that is, when it has received information as to a crime having been committed covered by the said provision. Therefore, it is wholly unnecessary to examine this aspect of the matter. We proceed on the basis that the respondent has locus standi to present the complaint before the Designated Judge.

What we have to see is whether the different statements at different stages of the case made by the public prosecutor would amount to any offence attracting the provision of Section 340 CrPC. We repeatedly asked the respondent as to how two different stands taken by a counsel would be covered by the offences referred to in provisions of Section 195 CrPC. He tried to explain that there is distinction between submissions made on law and on facts. Submissions based on facts, which would affect the life and liberty of innocent persons are not legal submissions but would amount to causing circumstances to exist so as to amount to fabricating evidence within the meaning of Section 192 IPC.

Supposing a counsel presents a preposterous argument or blatantly wrong argument which, he later on corrects himself on realizing the incorrectness of his submission or in a converse situation, having made a correct argument realising that the same would defeat the claim of his client, takes a diametrically opposite stand, could it be said that the said stand would lead to fabricating evidence before the court in any manner which attracts the offences adverted to under Section 195 CrPC. By no stretch of imagination, can we say that the stand of a counsel, howsoever inconsistent it may be at different stages of the proceedings, can amount to offences adverted to under Section 195 CrPC. If the courts begin to issue notice for prosecution or as to why the inquiry should not be made in the matter or to launch a prosecution, no Advocate can function with safety nor can he assist the court with the necessary fearlessness which is

required of him. It is not unknown that even in criminal cases even after committal proceedings are over at the stage of sessions trial before charges are framed by the court or at the stage of final arguments, many public prosecutors have entered NOLLE PROSEQUI in cases where they thought that a charge could not be framed or the concerned accused should be acquitted. However, that does not mean that such a stand could not have been taken or attracts wrath of Section 340 CrPC.

In the present case, the hearing as to framing of charges has gone on for nearly eight months. Considering the nature of the charges to be framed in the case, the voluminous record of the case presented before the court, the seriousness and magnitude of the matter when several hundred of persons have been killed and property worth crores of rupees has been destroyed, in what manner the case should be conducted is a very serious affair. If the public prosecutor had been supporting at one stage of the proceedings the charge sheet that had been laid in respect of the offences arising under Sections 121 and 121A Indian Penal Code, later on he realises that evidence is not available at that stage of the case, seeks that for the time being these charges need not be proceeded with, and if further investigation discloses such offences as having been committed, supplementary charge sheet would be filed before the court later, we fail to understand as to how such shift in the stand would attract offences enumerated under Section 195 CrPC.

The stand of the respondent that we should not interfere in this matter as relevant facts are before the Designated Court and not before this Court does not hold water. What we are examining is whether the complaint made by the respondent, taking it as a whole, deserves to be proceeded with.

Though the respondent has grievance as to the manner of disposal of the case in Dr. Budhi Kota Subbarao vs. Mr. K. Parasaran & Ors., 1996 Supp. (4) SCR 574, the fact remains that he attacked the Attorney General personally in that case when he furnished his satisfaction in a matter and now the appellant herein. Though this Court castigated the respondent in that case, did not proceed further to impose any cost upon him or to debar him from presenting such petitions thereafter. This is one of those rare cases where we think that we ought to exercise our powers in the interests of administration of justice to restrict the hands of the respondent to engage in this kind of vexatious litigation. On half-baked knowledge of law, he proceeds to present argument before the court with an analysis of facts which is tendentious and waste the time of the court by trying to cite decisions which have no relevance to the case. In the present case too, he did not the same. He drew our attention to one case where a Sub-Judge, who had tampered with the proceedings before the court to facilitating substitution of the written statement, pursuant to a complaint being filed, was prosecuted under Section 340 CrPC; to another case where a pleader had instigated the witnesses to tender false evidence before the court; to cases where the witnesses have changed their stand from time to time. All those cases, in our opinion, have no bearing at all on the present case.

We are amazed at the manner in which the learned Designated Judge dealt with this matter. While holding that the respondent had locus standi to present the petition, he ought to have applied his mind further as to whether he should proceed further in the matter at all. If he had thoroughly perused the petition, it would have appeared that the submissions made by the learned public prosecutor - however contradictory they may be - in a case cannot amount to fabrication of evidence by any stretch of imagination. The substance of the complaint should have been looked into and should have been decided. If such caution had been exercised, we are sure, he would not have proceeded further in the matter.

We are conscious of the fact that the learned Designated Judge has not exercised his power under Section 340 CrPC as yet to lodge a complaint nor has he proceeded to hold an inquiry but at the same time we must notice that issue of notice on an application of this nature would have serious impact upon the public prosecutor in conduct of the case particularly when at every stage he has got to be conscious whether any of his statement would attract Section 340 CrPC. This

is not the kind of atmosphere where a public prosecutor can function effectively, independently and fearlessly. In the conduct of the case a public prosecutor must have full freedom and he can even give up certain cases and request the court to discharge or acquit any accused. If that kind of autonomy is to be enjoyed by the public prosecutor, he cannot be fettered in conducting the proceedings. By initiating the proceedings against him, the learned Designated Judge has crippled the freedom of the public prosecutor in functioning effectively and such a matter certainly results in serious miscarriage in administration of justice and no Advocate would be safe if such proceedings are initiated on the basis of the allegations of the nature made in the complaint. Either the learned Designated Judge has not applied his mind or he has not understood the scope of the application and if he had done either, he would have dismissed the application. That we do now.

In the result, we allow this appeal, set aside the order made by the learned Designated Judge and dismiss the application filed by the respondent under Section 340 CrPC. At the same time, we make it clear that the respondent shall not engage in this kind of litigation hereafter and he is restrained from making any applications of this nature and if any such application is made before any court, the same shall be dismissed in limine and appropriate proceedings be initiated against him.

The appeal is allowed accordingly.

JUDIS