2021 SCC OnLine SC 1222

In the Supreme Court of India

(BEFORE M.R. SHAH AND B.V. NAGARATHNA, JJ.)

State of Odisha ... Appellant;

Versus

Pratima Mohanty Etc. ... Respondents.

Criminal Appeal Nos. 1455-1456 of 2021

Decided on December 11, 2021

The Judgment of the Court was delivered by

M.R. SHAH, J.:— Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Orissa dated 04.09.2019 passed in Criminal Miscellaneous Application No. 3177 of 2017 and Criminal Miscellaneous Application No. 4804 of 2015 by which the High Court has allowed the said applications under Section 482 of Cr.P.C. and has quashed the criminal proceedings against the private respondents herein - original accused Nos. 4, 5 and 3 - Smt. Pratima Mohanty, Shri Prakash Chandra Patra and Shri Rajendra Kumar Samal, the State of Odisha has preferred the present appeals.

2. That an FIR was lodged by the Deputy Superintendent of Police, Vigilance, Vigilance Cell Unit Office, Bhubaneswar before the Superintendent of Police, Vigilance, Bhubaneswar Division, Bhubaneswar alleging inter alia that on preliminary enquiry it was found that certain public servants occupying crucial positions in Bhubaneswar Development Authority (hereinafter referred to as 'B.D.A.') and in the Housing and Urban Development Department, Government of Odisha (hereinafter referred to as, 'H.&U.D. Deptt.') surreptitiously distributed prime plots in Commercial Complex District Centre, Chandrasekharpur, Bhubaneswar. It was alleged that in pursuance of the criminal conspiracy and by abusing their official positions, the officials of the B.D.A. and of the H.&U.D. Deptt., Government of Odisha, surreptitiously distributed prime plots. That at the relevant time the original accused No. 4 -Smt. Pratima Mohanty was serving as Steno to Vice-Chairman, B.D.A. Original accused No. 5 - Shri Prakash Chandra Patra was serving as Jr. Assistant Allotment Section, B.D.A and original accused No. 3 - Shri Rajender Kumar Samal was the Dealing Assistant, Allotment Section - II, B.D.A. and Personal Assistant to Minister, Housing and Urban Development (original accused No. 6). Apart from the criminal conspiracy raised by all the accused persons it was further alleged that there was no advertisement in providing opportunity to general public regarding availability of B.D.A. plots for sale and their sale prices. It was alleged that keeping the general public in dark, the public servants in B.D.A. (accused) who had access to such information as insiders, distributed the prime plots among themselves or their relatives and that too at minimal rates as compared to the prevalent rates in the area and thereby causing undue pecuniary advantage to the allottees and corresponding loss to the B.D.A. and the public exchequer without any public interest.

3. It was further alleged that the wrongful loss caused to the B.D.A. was to the tune of Rs. 30,27,849.80 and Rs. 71,57,055.00. Therefore, it was alleged that all the accused persons have committed the offences under Section 120B IPC and Section 13 (2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act'). The FIR was numbered as PS Case No. 31 of 2005. Since all the accused persons were Government servants working in B.D.A., Bhubaneswar, sanction orders for prosecution were obtained. After conclusion of the investigation,

the investigating agency filed the charge-sheet against all the accused persons along with the then Minister, H.&U.D. Deptt. on the accusation that they had entered into criminal conspiracy and committed criminal misconduct by abusing their official position showing undue official favour to their relatives and allowed illegal pecuniary advantage to the allottees in allotting 10 plots. As a result, B.D.A. sustained huge loss and thereby making the accused liable for the offences under Section 13(2) read with Section 13(1)(d) of the Act and Section 420 read with Section 120B IPC. Five accused namely Shri Bibhuti Bhushan Ray, Shri Parsuram Biswal, Smt. Pratima Mohanty, Shri Rajendra Kumar Samal and Shri Prakash Chandra Patra approached the High Court by way of Criminal Miscellaneous Applications Nos. 3177 of 2017 and 4804 of 2015 and prayed to quash the criminal proceedings against them in exercise of powers under Section 482 Cr.P.C.

4. By impugned common judgment and order the High Court has partly allowed the aforesaid applications and has quashed the criminal proceedings against Smt. Pratima Mohanty (original accused No. 4), Shri Prakash Chandra Patra (original accused No. 5) and Shri Rajendra Kumar Samal (original accused No. 3) mainly on the ground that the said accused have not dealt with the allotment file in any manner and there is no material that any of these accused had influenced any co-accused or any officer of B.D.A. or H.&U.D. Deptt. for getting the plots illegally in favour of their family members. It was also further observed that there is no material on record that these accused acted with a pre-concert mind and they were in criminal conspiracy with the other co-accused to get the vacant plots.

5. Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the High Court quashing the criminal proceedings against the private respondents herein - original accused Nos. 4, 5 and 3 for the offences under Section 13(2) read with Section 13(1)(d) of the Act and Section 420 read with Section 120B IPC, the State has preferred the present appeals.

6. Learned Counsel appearing on behalf of the appellant - State has vehemently submitted that in the present case the High Court has erred in quashing the criminal proceedings for the offences under Section 13(2) read with Section 13(1)(d) of the Act and Section 420 read with Section 120B IPC in exercise of powers under Section 482 Cr.P.C.

7. It is submitted that while quashing the criminal proceedings against the respondents - accused the High Court has exceeded its jurisdiction vested under Section 482 Cr.P.C.

8. It is submitted that the High Court has not at all appreciated and considered the fact that at the stage of considering the application under Section 482 Cr.P.C., the minute details of the case are not required to be gone into at all. It is submitted that in the present case it was found that the allotment of the 10 plots were made by the accused in connivance with each other arbitrarily and the plots were allotted to the relatives of the accused - public servants. It is submitted that no advertisement was issued by the B.D.A. inviting the applications from intending purchasers. The accused - officers deliberately concealed the matter from the general public and thus avoided competition. It is submitted that it was found that on the undated applications the plots were allotted to the relatives of the accused herein and public servants. It is submitted that therefore, the First Information Report was filed by the Vigilance Cell against the accused for the aforesaid offences. It is submitted that after a thorough investigation a charge-sheet has been filed before the learned Special Judge (Vigilance), Bhubaneswar. It is submitted that having found prima facie case and being satisfied that a case for the offences under Section 13(2) read with Section 13 (1)(d) of the Act and Section 420 read with Section 120B IPC was made out, the learned Special Judge (Vigilance), Bhubaneswar has taken cognizance. It is submitted

therefore the High Court ought not to have exercised the powers under Section 482 Cr.P.C. and not ought to have quashed the criminal proceedings.

9. It is submitted that as such the High Court quashed the criminal proceedings by scrutinising the FIR/material on record in detail as if the High Court was conducting a mini trial which is not permissible at the stage of exercising the powers under Section 482 Cr.P.C. It is submitted that the aforesaid approach is wholly impermissible as per the law laid down by this Court in a catena of decisions.

10. It is further submitted that even otherwise while quashing the criminal proceedings the High Court has not at all appreciated and considered the fact that the allegation was of hatching a criminal conspiracy by the public servants who all were connected one way or the other with allotment of the plots in the discretionary quota and that the allegations were for the offences under Section 120B IPC. It is submitted that the High Court by the impugned judgment and order has quashed the criminal proceedings mainly by observing that the respondents - accused have not dealt with the allotment file in any manner and that there is no material that any of the respondents - accused herein influenced any co-accused or any officer of B.D.A. or H.&U.D. Deptt. for getting the plots illegally in favour of their family members. It is submitted that the aforesaid aspects are required to be considered, established and proved at the time of trial. It is submitted that only a prima facie case is required to be considered at this stage and it is to be considered whether any prima facie case is made out for the offences alleged or not. It is submitted that in the present case there are specific allegations of favouritism and misusing the powers in allotting the plots to the family members and that a huge loss has been caused to the B.D.A. and the public exchequer. It is specifically alleged that relatives of the respondents - accused and other co-accused public servants, pursuant to a conspiracy, submitted applications on plain papers (not in the form prescribed in the brochure) and even some of the applications were undated. It is submitted that it has been found that the allotment of the 10 plots were made arbitrarily and the respondents - accused got the plots allotted to the family members at throw away prices. It is urged that the High Court has erred in quashing the criminal proceedings against the respondents - accused for the serious allegations of corruption while allotting 10 plots arbitrarily to their family members by hatching the criminal conspiracy.

11. Learned counsel appearing on behalf of the respondents - original accused Nos. 4, 5 and 3 has vehemently submitted that in the facts and circumstances of the case and having found that (i) the respondents - accused have no role in the fixation of price of 10 vacant plots; (ii) the respondents - accused have not dealt with the allotment file in any manner; (iii) there is no material that any of the three accused influenced any co-accused or any officer of B.D.A. or H.&U.D. Deptt. for getting the plots illegally in favour of their family members, the High Court has rightly quashed the criminal proceedings against them. It is submitted that having observed so the High Court has rightly quashed the criminal proceedings against the respondents - accused in exercise of its powers under Section 482 Cr.P.C.

12. It is submitted that the High Court on appreciation of the material on record which was part of the charge-sheet has quashed the criminal proceedings and therefore the same may not be interfered with by this Court.

13. We have heard learned counsel for the respective parties at length.

14. At the outset, it is required to be noted that by the impugned judgment and order the High Court in exercise of its powers under Section 482 Cr.P.C. has quashed the criminal proceedings for the offences under Section 13(2) read with Section 13(1)(d) of the Act and Section 420 read with Section 120B IPC. From the impugned judgment and order passed by the High Court, it appears that the High Court has entered into the merits of the allegations and has conducted the mini-trial by weighing

instance of abuse of the powers with a mala fide intention and allotment of the plots to the family members by hatching a criminal conspiracy and to allot the plots to the family members at throw away price causing loss to the B.D.A. and the public exchequer.

16. It is trite that the power of quashing should be exercised sparingly and with circumspection and in rare cases. As per settled proposition of law while examining an FIR/complaint quashing of which is sought, the court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint. Quashing of a complaint/FIR should be an exception rather than any ordinary rule. Normally the criminal proceedings should not be quashed in exercise of powers under Section 482 Cr.P.C. when after a thorough investigation the charge-sheet has been filed. At the stage of discharge and/or considering the application under Section 482 Cr.P.C. the courts are not required to go into the merits of the allegations and/or evidence in detail as if conducing the mini-trial. As held by this Court the powers under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the Court.

17. In the present case the allegations were with respect to allotment of 10 plots which were required to be allotted under the discretionary quota. It is not in dispute that at the relevant time the respondents - accused were connected with the Department concerned with regard to allotment of the plots directly or indirectly. Accused No. 4 - Smt. Pratima Mohanty was serving as Steno to Vice-Chairman, B.D.A. As per the case of the prosecution an undated application for allotment of plots on plain paper was received from Shri Pradyumna Kumar Mohanty, brother of the accused - Smt. Pratima Mohanty. It is also the case on behalf of the prosecution that though the plot was applied in the name of her brother, after the allotment of the plot she is in possession of the same. So far as accused No. 5 - Shri Prakash Chandra Patra is concerned, as per the case on behalf of the prosecution, an application on plain paper for allotment of plot of Ms. Rajalaxmi Samal, sister-in-law of the respondent - Shri Prakash Chandra Patra (accused No. 5) was forwarded by the Minister of Housing Urban Development - Mr. Samer Dey (accused No. 6) to Shri P.K. Pattanaik, Secretary, B.D.A. It is noted that at the relevant time the said accused was working as Jr. Assistant, Allotment Section, B.D.A. Pursuant to the aforesaid application the sister-in-law of the said accused has been allotted a plot. So far as accused No. 3 - Rajendra Kumar Samal is concerned, as per the case of the prosecution and as alleged, an application was made for allotment of plot in favour of his wife who was Dealing Assistant, Allotment Section II, B.D.A. and Personal Assistant to Minister, Housing and Urban Development. It is noted that even the then Minister is the original accused No. 6. As per the allegation the application was without any date and on the basis of such undated application, the plot has been allotted in favour of his wife.

18. Therefore, considering the aforesaid it cannot be said that the criminal proceedings against the respondents - accused were in any way an abuse of process of law and/or the Court. The allegations against the respondents - accused are very serious including hatching a criminal conspiracy in allotment of 10 plots in the discretionary quota arbitrarily and to their own family members/relatives. There are specific allegations with respect to huge loss caused to the B.D.A. and the public exchequer, as according to the prosecution the plots were allotted at throw away prices. All these aspects are required to be considered at the stage of trial and not while considering the application under Section 482 Cr.P.C.

19. At this stage, the decision of the Karnataka High Court in the case of *K. Raju* v. *Bangalore Development Authority* in **Writ Petition No. 11102 of 2008** decided on 15.12.2010 dealing with a somewhat similar situation with respect to the allotment of plots in discretionary quota is required to be referred to. In that case also it was a case of allotment of the plots illegally and arbitrarily in the discretionary quota. Speaking

from the Bench Justice S. Abdul Nazeer, J. as he then was has observed and held as under:

> "It is well established that a public body invested with statutory powers has to take care not to exceed or abuse its powers. It must act within the limits of authority committed to it."
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> "31. BDA is the custodian of public properties. It is not as free as an individual in selecting the recipients for its largess. For allotment of the properties, a transparent, and objective criteria/procedure has to be evolved based on reason, fair play and non-arbitrariness. In such action, public interest has to be the prime guiding consideration. In *Ramana Dayaram Shetty* v. *The International Airport Authority of India*, (1979) 3 SCC 489 : AIR 1979 SC 1628, the Apex Court has held that it must therefore be taken to be the law that even in the matter of grant of largesses including award of jobs, contracts, quotas, licences, the Government must act in fair and just manner and any arbitrary distribution of wealth would violate the law of land. In *Common Cause, A Registered Society* v. *Union of India*, (1996) 6 SCC 530, the Apex Court has held as under
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> The Government today - in a welfare State - provides large number of benefits to the citizens. It distributes wealth in the form of allotment of plots, houses, petrol pumps, gas agencies, mineral leases in contracts, quotas and licences etc., Government distributes largesses in various forms. A Minister who is the executive head of the department concerned distributes these benefits and largesses. He is elected by the people and is elevated to a position where he holds a trust on behalf of the people. He has to deal with the people's property in a fair and just manner. He cannot commit breach of the trust reposed in him by the people In *Onkar Lal Bajaj* v. *Union of India*, (2003) 2 SCC 673, the Apex Court has summarised the cardinal principles of governance, which is as follows:
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> 35. The expression "public interest" or "probity in governance" cannot be put in a straitjacket. "Public interest" takes into its fold several factors. There cannot be any hard-and-fast rule to determine what is public interest. The circumstances in each case would determine whether government action was taken in public interest or 02-12-2021 (Page 14 of 23) www.manupatra.com Hon'ble Mr. Justice M.R. Shah was taken to uphold probity in governance.
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> 36. The role model for governance and decision taken thereof should manifest equity, fair play and justice. The cardinal principle of governance in a civilized society based on rule of law not only has to base a transparency but must create an impression that the decision making was motivated on the consideration of probity. The Government has to rise above the nexus of vested interests and nepotism and eschew window-dressing. The act of governance has to be withstand the test of judiciousness and impartiality and avoid arbitrary or capricious actions. Therefore, the principles of governance has to be tested on the touchstone of justice, equity and fair play and if the decision is not based on justice, equity and fair play and has taken into consideration other matters, though on the face of it, the decision may look legitimate but as a matter of fact, the reasons are not based on values but to achieve popular accolade, that decision cannot be allowed to operate."

20. It is further observed after referring to the decision of this Court in the case of *Common Cause, A Registered Society* (supra) that if a public servant abuses his office whether by his act of omission or commission, and the consequence of that is injury to an individual or loss of public property, an action may be maintained against such public servant. It is further observed that no public servant can arrogate to himself powers in a manner which is arbitrary. In this regard we wish to recall the observations of this Court as under:

"The concept of public accountability and performance of functions takes in its ambit, proper and timely action in accordance with law. Public duty and public obligation both are essentials of good administration whether by the State or its instrumentalities." [See *Delhi Airtech Services (P) Ltd.* v. *State of U.P.*, (2011) 9 SCC 354]

"The higher the public office held by a person the greater is the demand for rectitude on his part." [See *Charanjit Lamba* v. *Army Southern Command*, (2010) 11 SCC 314]

"The holder of every public office holds a trust for public good and therefore his actions should all be above board." [See *Padma* v. *Hiralal Motilal Desarda*, (2002) 7 SCC 564]

"Every holder of a public office by virtue of which he acts on behalf of the State or public body is ultimately accountable to the people in whom the sovereignty vests. As such, all powers so vested in him are meant to be exercised for public good and promoting the public interest. This is equally true of all actions even in the field of contract. Thus, every holder of a public office is a trustee whose highest duty is to the people of the country and, therefore, every act of the holder of a public office, irrespective of the label classifying that act, is in discharge of public duty meant ultimately for public good." [See *Shrilekha Vidyarthi (Kumari)* v. *State of U.P.*, (1991) 1 SCC 212]

"Public authorities should realise that in an era of transparency, previous practices of unwarranted secrecy have no longer a place. Accountability and prevention of corruption is possible only through transparency." [See *ICAI* v. *Shaunak H. Satya*, (2011) 8 SCC 781]

21. Therefore, action has to be initiated against the officials who are prima facie responsible for the illegality in the allotment of the plots to the relatives and/or family members resulting in huge loss to the B.D.A. and the public exchequer.

22. While quashing the criminal proceedings the High Court has not at all adverted to itself the aforesaid aspects and has embarked upon an enquiry as to the reliability and genuineness of the evidence collected during the investigation as if the High Court was conducting the mini-trial. Therefore, as such the impugned judgment and order passed by the High Court quashing the criminal proceedings against the respondents herein - original accused Nos. 4, 5 and 3 - Smt. Pratima Mohanty, Shri Prakash Chandra Patra and Shri Rajendra Kumar Samal is unsustainable, both, in law and/or facts and the same deserves to be quashed and set aside.

23. In view of the above and for the reasons stated above present appeals succeed. Impugned common judgment and order passed by the High Court dated 04.09.2019 passed in Criminal Miscellaneous Application No. 3177 of 2017 and Criminal Miscellaneous Application No. 4804 of 2015 are hereby quashed and set aside in so far as quashing the criminal proceedings against original Accused Nos. 4, 5 & 3 is concerned.

24. Respondent Nos. 4, 5 & 3 to face trial along with other co-accused.

25. Present Appeals are accordingly allowed.

26. Before parting we may observe that now the day has come to do away with allotment of government largess on the basis of discretionary quota as this inevitably leads to corruption, nepotism and favouritism. Government and/or the public authorities like B.D.A. are the custodian of public properties. Allotment of public properties must be transparent and has to be fair and non-arbitrary. In such matters public interest only has to be the prime guiding consideration. The aforesaid principle is in order to get the best or maximum price so that it may serve the public purpose and public interest so as to avoid loss to the authority and/or the public exchequer. The allotment of plots in the discretionary quota cannot be at the whims of the

persons in power and/or the public servants who are dealing with the allotment of plots in the discretionary quota.

27. When a democratic government in exercise of its discretion selects the recipients for its largess, then discretion should be exercised objectively, rationally, intelligibly, fairly and in a non-arbitrary manner and it should not be subjective and according to the private opinion and/or the whims and fancies of the persons in power and/or the public servants. Even if guidelines are issued to be followed while allotment of the plots under the discretionary quota and it is found that many a time they are hardly followed or are manipulated to suit the particular circumstances. Therefore, the best thing is to do away with such discretionary quota and allotments of the public properties/plots must be through public auction by and large. Even in the case where the policy decision is taken to allot the plots to a particular class - downtrodden class etc. in that case also the guidelines must be strictly followed and as observed hereinabove the allotment must reflect the fair play and non-arbitrariness and should have objective, criteria/procedure.

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