

STATE OF MAHARASHTRA  
v.  
DR. BUDHIKOTA SUBHARAO

MARCH 16, 1993

[S. RATNAVEL PANDIAN AND R.M. SAHAI, JJ.]

*Criminal Procedure Code, 1973 :*

*Section 397—High Court's jurisdiction—Proceedings when vitiated by 'fraud'.*

*Indian Evidence Act, 1872. Section 44—Legal proceedings—When vitiated by 'fraud'.*

*Indian Contract Act, 1872. Section 17—'Fraud'—What is—Effect on legal proceedings.*

*Words and Phrases. 'Fraud'—Meaning of.*

The respondent, an ex Naval Officer and Computer Science graduate was accused of leaking Atomic Energy Secrets and charged for violating the provisions of the Atomic Energy Act, 1962 and the Official Secrets Act. 1923. Ultimately when he was discharged for failure of the State to obtain the necessary sanction under Section 197 Cr. P.C., and the State challenged the correctness of the order by way of revision, the respondent filed an application for the declaration that the charge sheet be declared *null and void*. In para 3 thereof it was stated that the charges were vitiated by fraud as the Panchnama dated May 30, 1988 was fabricated as it did not contain his signature and it was ante dated. It was further averred that for three months even the copies of the remand application filed by the police were denied to him, and that orders thereon were not supplied to him, and that the complaint was in contradiction with the statement of witnesses. The High Court allowed this application.

In the State's appeal to this Court on the question whether the High Court was justified in allowing the application filed by the respondent for declaring that the charges framed by the Additional Sessions Judge by his order dated 24/27th July, 1990 were *null and void* as they were obtained by fraud, practised by the state.

**A** Allowing the appeal, setting aside the order of the High Court dated 14th October, 1991, and dismissing the application of the accused for declaring the order of the Additional Sessions Judge framing the charges against him as vitiated by fraud, this Court,

**B** **HELD : 1.** The High Court by its order passed on 25/26th March, 1991 in Criminal Writ Petition No. 966 of 1990 had specifically held that the question of framing charge had become final. It could not be, therefore, re-opened. The Division Bench had clearly held that it was not open to go behind the order passed by the Single Judge on 3.4.1990 directing that the charges being framed against the accused not only under Section 3 but under Section 5 as well. Nor can any exception be taken to the finding of the Bench that the said order could not be said to have been passed without jurisdiction in as much as the Single Judge had jurisdiction to decide the revision application preferred under the provisions of the Code. [332B-C]

**D** **2.** The question of fraud raised by the accused was negatived by the Division Bench and it was held that it was not capable of being gone into as it did not form part of the substratum of the case of the prosecution and was not germane to the question of deciding as to whether he was entitled to be discharged or not. [332D]

**E** **3.** 'Fraud' is false representation by one who is aware that it was untrue with an intention to mislead the other who may act upon it to his prejudice and to the advantage of the representor. It has been defined statutorily in Section 17 of the Contract Act as including certain acts committed with connivance or with intent to deceive another. In Administrative Law it has been extended to failure to disclose all relevant and material facts which one has a positive duty to disclose. [332G-H]

**F** **4.** Even the most solemn proceedings stand vitiated if they are actuated by fraud. Such being the nature and consequence of it the law requires not only strict pleading of it but strict proof as well. [333B]

**G** **5.** Facts which could be fished out from paragraphs averring fraudulent submissions could not be said to be relevant for alleging fraud. [334E]

**H** **6.** Legal submissions cannot be equated to misrepresentation. The pleadings in the instant case fall short of the legal requirements to estab-

lish fraud. Various sentences extracted from different judgments between the accused and State in various proceedings could not give rise to an inference either in law or fact that the State was guilty of fraud.

[335H, 336A]

In the instant case the averments in paragraphs 3 and 4 to 8 of the application do not establish fraud. No foundation giving rise to fraud was laid. It was complete misapprehension under which the accused was labouring and it was indeed unfortunate that the Single Judge of the High Court not only entertained the respondent's application but adopted a course which amounted to reviewing and setting aside orders of his predecessor without sufficient material and accepting the claim that all earlier judgments were liable to be ignored under Section 44 of the Evidence Act as the proceedings were vitiated by fraud. The Single Judge not only committed an error of procedure but misapplied the law. [336B]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 277 of 1993.

From the Judgment and Order dated 14.10.1991 of the Bombay High Court in Crl. Misc. Application No. 2260/91 in Crl. Revision Application No. 123 of 1991.

Altaf Ahmed, Addl. Solicitor General, B.R. Handa, Mrs. Manjula Rao, S.M. Jadhav, A.S. Bhasme and A.M. Khanwilkar for the Appellant.

Dr. B. Subha Rao Respondent-in-person.

The Judgment of the Court was delivered by

R.M. SAHAI, J. The short question that arises for consideration in this appeal is if the High Court was justified in allowing the application filed by the accused for declaring that the charges framed by the Additional Sessions Judge by order dated 24/27th July, 1990 were *null and void* as they were obtained by fraud, practised by the State.

Merits or otherwise of the application, alleging fraud against the State, apart, what has left us completely surprised is not so much the entertaining of the application filed by the accused, for declaration that the charges framed against him were nullity having been procured by fraud as the procedure adopted by the learned Single Judge of granting the prayer

- A merely for failure of the State to file any reply by way of counter-affidavit than by recording any finding that the State was guilty of procuring the order framing the charges by fraud. One of the objections raised by the State was that since the High Court by its order passed on 25/26th March 1991 in Criminal Writ Petition No. 966 of 1990 had specifically held that
- B the question of framing charge had become final, therefore, it could not be re-opened, cannot be said to be without substance as the Division Bench had clearly held that it was not open to go behind the order passed by the learned Single Judge on 3rd/4th April 1990 directing that the charges be framed against the accused not only under Section 3 but under Section 5
- C as well. Nor can any exception be taken to the finding of the Bench that the said order could not be said to have been passed without jurisdiction in as much as the learned Single Judge had jurisdiction to decide the revision application preferred under the provisions of the Code. Even the question of fraud raised by the accused was negated by the Division Bench and it was held that it was not capable of being gone into as it did
- D not form part of the substratum of the case of the prosecution and was not germane to the question of deciding as to whether he was entitled to be discharged or not.

- However, it is not necessary to rest the decision on this ground as the learned Single Judge having allowed the application as being vitiated
- E by fraud it appears necessary to examine if the pleading on fraud in the application filed by the accused was sufficient in law to empower the High Court to take cognizance of it and even if it was, did the accuse succeed in proving it as even if the State did not file any counter-affidavit the application could not be allowed unless it was found as a fact that the State
- F by its acts or omissions acted-deceitfully or it misled the court. 'Fraud' is false representation by one who is aware that it was untrue with an intention to mislead the other who may act upon it to his prejudice and to the advantage of the representor. It is defined in Oxford Dictionary as, 'using of false representations to obtain an unjust advantage or to injure the rights or interests of another'. In Webster it is defined as, 'deception in order to gain by another's loss; craft; trickery; guile; any artifice or deception practiced to cheat, deceive, or circumvent another to his injury'. It has been defined statutorily in Section 17 of the Contract Act as including certain acts committed with connivance or with intent to deceive
- G another. In Administrative Law it has been extended to failure to disclose
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all relevant and material facts which one has a positive duty to disclose. It is thus understood as deliberate act or omission to mislead other to gain undue advantage. 'It consists of some deceitful practice of wilful device resorted to with intent to deprive another of his right or in some manner to do him an injury' (Black's Law Dictionary). Effect of fraud on any proceeding, or transaction is that it becomes nullity. Even the most solemn proceedings stand vitiated if they are actuated by fraud. Such being the nature and consequence of it the law requires not only strict pleading of it but strict proof as well.

Did the averments in the application made out case of fraud ? Were the statements of fact capable of giving rise to an inference in law that the State was guilty of misleading the court ? From the charge-sheet it is clear that it complied with the requirements of law and mentions not only the offence and the section but the particulars as to time, place and person. Whether prosecution was possessed of sufficient evidence to prove each of the charges is different matter, but they were framed on basis of documents seized from possession of the accused at the airport, search of his residence, on the next day, interrogations of the accused and examination of prosecution witnesses. In the connected appeal No. 276 of 1993 [Arising out of S.L.P. (Crl.) No. 986 of 1992] directed against the discharge of the accused for failure to obtain sanction a very brief summary has been given of various attempts made by the accused to get an order of discharge, on merits, without success. It is not necessary to recount all that here. Ultimately when the accused was discharged for failure of the State to obtain sanction under Section 197 of the Criminal Procedure Code (in brief 'the Code') and the State challenged the correctness of the order by way of revision the accused filed the application for the declaration that the charge-sheet be declared *null and void*. In paragraph 3 of the application it was stated that the charges were vitiated by fraud as the Punchnama dated 30th May 1988 was fabricated as it did not contain his signature and it was ante-dated. It was further averred that three months even the copies of the remand application filed by the police were denied to the applicant and the orders thereon were not supplied to him. It was also claimed that the complaint was in contradiction with the statement of witnesses. May or may not be so but that could be relevant when the merits were gone into. It certainly, could not be taken as a ground for claiming that the framing of charge was fraudulent, especially, when these aspects had been thrashed out once before the learned Single Judge who by his order dated 3rd/4th

- A April 1990 held that the charges against the accused were made out not only under Section 3 but under Section 5 of the Act.

- B In the same paragraph the accused extracted certain observations made by a learned Single Judge, in one of the orders and claimed that they furnished guidelines to distinguish between offences under Sections 3 and 5 of the O.S. Act. According to him if honest and fair answer to the question, if any charge was made out, was given by the State it would have exonerated the applicant but the State committed fraud by keeping the Trial Judge in the dark of real facts and induced him to entertain erroneous opinion and pass order on 24th July framing charges against him.
- C In paragraphs 4 to 8 various sentences from one or the other judgment rendered for or against the accused by different courts at one or the other stage were extracted and it was claimed that the State either knowingly did not place correct facts to substantiate those observations or deliberately concealed the truth and made fraudulent submissions inducing the Trial Judge thereby to frame the charges. Emphasis was laid on the submissions advanced by the State and it was stated that it was result of fraudulent submissions that the Trial court was induced to frame charges against the accused. No foundation giving rise to fraud was laid. Facts which could be fished out from paragraphs averring fraudulent submissions could not in our opinion be said to be relevant for alleging fraud. For instance in
- E paragraph 4 it was stated,

- F "the Ld. Addl. Session Judge was deceived by the aforesaid fraudulent and false submission of the Respondent in February 1989 during the judicial proceedings and the Ld. Addl. Session Judge was induced to believe that the applicant was also found and caught carrying books on 30-5-1988 at the Sahar Airport Bombay which books, as alleged by the Respondent, could not have come into possession of the Applicant even in the ordinary course, when the applicant was holding the office of the Captain of Navy. The respondent knew very well that in the record of the Sessions Case no. 1084/88 there were no books as alleged by the Respondent and moreover the disputed documents were not deposited in the Sessions Court in February 1989 when the Learned Addl. Session Judge was
- G induced to believe the fraudulent submissions of the
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Respondent in February 1989. The above mentioned fraudulent submissions of the Respondent were clearly meant to deceive the Session Court in February 1989 and to see that the applicant was not discharged under Section 227 Cr. P.C."

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Similarly in paragraph 5 it was stated,

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"It is significant to note that in February 1989 the documents were not deposited in the Session Court though it was mandatory under Section 209(c) Cr. P.C. to deposit the documents in the Session Court after the Case was committed to the Sessions on 22.9.1988 by the Ld Magistrate. Thus in actual position, there were no documents in February 1989 for 'consideration' of the Ld. Addl. Session Judge as prescribed under the provisions of Sec. 227 Cr. P.C. and the Respondent took advantage of that situation and intentionally made the aforesaid fraudulent submissions in Feb. 1989 during the judicial proceedings before the Ld. Addl. Session Judge Shri Patel and caused circumstances to induce the Ld. Session Judge Shri Patel to entertain erroneous opinions and pass orders resulting in miscarriage of justice".

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In paragraph 7 it was stated as under :-

"The Ld. Addl. Session Judge Shri Patel passed two orders dated 11-9-1989 and 11-10-1989 to compel the Respondent to deposit the documents in the Session Court and accordingly the Documents were deposited in the Session Court only on 11-10-1989; which conclusively establishes that in February 1989 when "Charges" were framed the "Documents" were not with the Session Court and the fraudulent and false evidence advanced in February 1989 by the Respondent alone became the basis to frame 'Charges' in February 1989."

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We must confess our inability to appreciate the worth of such averments to establish fraud. Legal submissions cannot be equated to misrepresentation. In our opinion the pleadings fell short of legal requirements

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- A to establish fraud. Various sentences extracted from different judgments between the accused and State in various proceedings could not give rise to an inference either in law or fact that the state was guilty of fraud. Suffice it to say that it was complete misapprehension under which the accused was labouring and it was indeed unfortunate that the High Court not only entertained such application but adopted a course which amounted to reviewing and setting aside orders of his predecessor without sufficient material and accept the claim that all earlier judgments were liable to be ignored under Section 44 of the Evidence Act as the proceedings were vitiated by fraud. We are constrained to say that the learned Judge not only committed an error of procedure but misapplied the law.

- C In the result, this appeal succeeds and is allowed. The order dated 14th October 1991 in Criminal Miscellaneous Application No. 2260 of 1991 is set aside and the application of the accused for declaring the order dated 24/27th February 1990 framing the charges against him as vitiated by fraud, is dismissed.

N.V.K.

Appeal allowed.