

Uday Mohanlal Acharya Vs The State of Maharashtra

Court: Bombay High Court

Date of Decision: Aug. 9, 2000

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 367(1)
Penal Code, 1860 (IPC) â€” Section 406, 420

Citation: (2001) ALLMR(Cri) 28 : (2001) BomCR(Cri) 42

Hon'ble Judges: Pratibha Upasani, J

Bench: Single Bench

Advocate: Mr. Shirish Gupte and Mr. A.M. Saraogi, instructed by M/s. Law Global, for the Appellant; Ms. Poornima Kantharia and Mr. D.N. Salvi, A.P.P, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Dr. Pratibha Upasani, J.

The Applicant/original ""accused Uday Mohanlal Acharya has approached this Court once again, being aggrieved

by the Order dated 31st July, 2000 passed by the Special Judge, Greater Bombay, appointed to try offences under Maharashtra Protection of

Interests of Depositors (In Financial Establishments) Act, 1999, in Remand Application No. 10 of 2000 in C. R. No. 36/99.

2. The allegation against the Applicant is that he has cheated about 29,100 depositors under a Scheme, admittedly, promoted by him. It appears

that the amount involved in this case of cheating is to the extent of Rs. 450 crores. Offence of cheating is registered against the Applicant under C-

R. No. 36 of 1999 by the G.B., C.B., C.I.D. (Economic Offences Wing), Crawford Market, Mumbai. The Applicant was arrested in connection

with this case for offence punishable under Sections 406 and 420 of the Indian Penal Code, so also under the Maharashtra Protection of Interests

of Depositors (In Financial Establishments) Act, 1999 on 17th June. 2000. He was then remanded to police custody till 19th June, 2000.

Thereafter, he was again remanded to police custody till 3rd July, 2000. The Special Judge, while considering the application of the prosecution for

further remand for a period of fourteen days, and while considering the bail application of the accused, rejected the bail application and remanded

the accused to police custody for another period of fourteen days.

3. Being aggrieved, the Applicant approached this Court, and after hearing both the sides, and as per the ratio of the Supreme Court Judgment in

C. B. J. v. Anupam J. Kulkarni, this Court set aside only that part of the order with respect to the nature of custody of the Applicant, and

remanded the Applicant to judicial custody. Thus, from 17th July, 2000, the Applicant is in judicial custody and is lodged at Byculla Jail.

4. In the remand application dated 31st July, 2000 made to the Special Judge, the prosecution narrated that more and more properties were

coming to light after interrogation and that, they wanted more time for investigation in this case, considering the enormity of the offence allegedly

committed by the Applicant. After giving chronologically, the progress of the investigation done by them, and their apprehension about the

Applicant siphoning off more and more properties, request was made (erroneously) that the accused be remanded in police custody from jail

custody for further investigation till 14th August, 2000. (Ms. Poornima Kantharia, learned A. P. P., makes a statement that this request was

erroneously made by the Investigating Officer and what Police wanted was custody of the accused for some time, for interrogation, to facilitate

further investigation).

5. The learned Special Judge, by her order dated 31st July, 2000, did not grant police custody of the Applicant, in view of the order passed by

this Court on 17th July, 2000, transferring the Applicant from police custody to jail custody, however, she acceded to the request made by the

prosecution to take the accused to the office of the G. B. C. B., C. I. D. and interrogate him between 11.00 a. m to 5.00 p. m. each day, for

further investigation, for a period of two weeks. The Applicant, being aggrieved by this order, has approached this Court once again.

6. I have heard Mr. Gupte for the Applicant and Ms. Kantharia, A. P. P. for the State. The contention of Mr. Gupte is that the Special Judge

ought not to have passed such an order and that, this is equivalent to granting police custody once again, when this Court has transferred the

accused from police custody to jail custody.

7. Ms. Kantharia, the learned A. P. P., on the other hand, argued that considering the enormity of the offence, the Investigation could not be

completed and that, at every investigation stage, newer and newer facts are disclosed and are coming to light. She stated that the accused in

required to be interrogated at length, and is required to be confronted with the information received about his assets, that he is required to be

confronted with the bank statements of different accounts received by the prosecution, so also he is required to be interrogated in the presence of

his previous employees to find out whether he has siphoned off the money Involved in this to any other foreign country and in the presence of

persons from whom he has allegedly siphoned of money, to whom he has sold his property. She further stated that he is also to be interrogated

with respect to the property which belongs to him and which is situated in foreign country. She stated that all these persons cannot be taken to jail

and this can be conveniently done only at the G. B., C. B., C. I. D. Headquarters. She stated that admittedly, there are voluminous documents,

and it will be in the interest of justice to allow this interrogation at the headquarters only.

8. I have perused the impugned order dated 31st July, 2000. The accused is in Jail custody, and he has to co-operate with the investigating

agency. As per the provisions of Section 267(1) of the Code of Criminal Procedure, 1973, whenever, in the course of an Inquiry, trial or other

proceeding under this Code, it appears to a Criminal Court, that presence of a prisoner is required for the purpose of any proceedings against him,

then such an order can be passed, requiring the attendance of that person. In the present case at hand, the allegations against the Applicant are of a

very serious nature. He is alleged to have committed fraud involving a whopping amount of Rs. 450 crores. There are allegedly 2,900 complaints

of depositors. I agree with the submission of Ms. Kantharia, learned A. P. P. that it is not possible to complete the investigation when the

magnitude of the alleged offence is so enormous. In view of this, there has to strike some balance. Hence, to that extent, the order of the Special

Judge, will have to be modified. Hence, the following order :

The Applicant Uday Mohanlal Acharya, who is in jail custody and is lodged at Byculla Jail, shall be produced before the Special Judge, Greater

Bombay, appointed to try offences under Maharashtra Protection of Interests of Depositors (In Financial Establishments) Act, 1999, every day at

11.00 a.m. on Production Warrant. He will then be taken to the Headquarters of G. B., C. B., C. I. D. with appropriate arrangements of security.

The interrogation will continue there till 4.00 p.m. and he will be again produced before the Special Judge at 4.15 p.m. and from there, he will be

taken to jail under appropriate security. This will continue for two weeks from 31st July, 2000, as per the direction of the Special Judge. If the

Applicant has got any grievance with respect to the manner of interrogation, he is at liberty to put forth his grievance before the Special Judge.

The prosecution to submit a detailed report to the Special Judge as to the progress in the investigation before making any further application for

remand.

Prosecution is at liberty to make application for further remand on 14th August. 2000.

Writ to go forthwith to the Superintendent. Byculla Jail, Mumbai.

Criminal Application No. 2501 of 2000 disposed of accordingly, in the above stated terms.