

(1998) 09 BOM CK 0018
In the Bombay High Court
Case No : Criminal.W.P. No. 1147 of 1990

Anil Madhok

APPELLANT

Vs

Prem Maini, Syndicate Bank and another

RESPONDENT

Date of Decision : 30-09-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 300, 341, 420, 451

Citation : (1998) 09 BOM CK 0018

Hon'ble Judges : T.K. Chandrashekhara Das, J

Bench : Single Bench

Advocate : S.U. Kamdar, M.S. Mohte, R.C. Dhuru and Mrs. K. Madhusmita instructed by R. Dayal, for the Appellant; Dharmadhikari, V.R. Walawalkar instructed by Crawford Baylay and Co. for Respondent No. 1 and I.S. Thakur, Assistant Public Prosecutor for State, for the Respondent

Final Decision : Allowed

Judgement

T.K. Chandrashekhara Das, J.—This writ petition is filed u/s 482 of Criminal Procedure Code to quash and set aside the complaint filed by Respondent No. 1 against the Petitioner alleging offence under sections 420, 300, 341 and 451 of Indian Penal Code. The Petitioner is Vice President of the Oberoi Group of Hotels having its office at Hotel Oberoi Towers, Bombay 400021 which hotels are owned by the East India Hotels Ltd. which is a public limited company. The first respondent is the Assistant General Manager of the Syndicate Bank, International Division, having its office at Maker Tower, Cuffe Parade, Bombay. It is the case of the first respondent, that first respondent was occupying premises situated on the Mezzanine floor approximately 15000 sq.ft. on leave and licence basis. A fire has taken place on 12th April, 1990 whereby the said premises which was under the use and occupation of the 1st respondent got damaged. As a result, the equipment, furniture's and records of the 1st respondent were partially damaged. Immediately after the fire, the representative of the 1st respondent were permitted by the Fire Brigade Authorities to enter into the said premises to

take away the records of the bank from the premises and also to enable the surveyor to take survey so as to assess the loss and damage sustained by the first respondent bank. At the time of fire, as a temporary measure, the employees of the first respondent were shifted to various offices of the bank. On 14th June, 1990, it is alleged that Mr. Babu Rajan of first respondent bank had a discussion with the petitioners, and petitioners agreed that they would extend all possible co-operation to the bank taking away absolutely essential records from time to time from the said premises and also facilitate to conduct insurance survey. It is further alleged that at that time, representation was made by the petitioner that in order to carry out the work of the repairing of the damaged premises, the bank should hand over the duplicate key of the bank premises. Believing in the said promise or representation, the complainant handed over duplicate key of the bank to the petitioner. Subsequently on 23rd July, 1990 the petitioner informed the bank that they have removed the furniture and records of the bank from the said premises to the basement of the Oberoi Tower and called upon the first respondent to remove the said furniture and record from the basement of the hotel premises on the plea that the fire hazard was also there in the basement of Oberoi Hotel. This act of the removal of the furniture records etc. which was in exclusive possession of the bank was termed as offence committed by the petitioner inasmuch as they were removed dishonestly and without the knowledge and consent of the 1st respondent. It is also alleged in the complaint that the petitioner, by letter dated 25th July, 1990 informed the 1st respondent that the petitioner is not going to give back the possession to the bank. According to 1st respondent, this breach of promise by the petitioner constituted an offence u/s 420 and section 451 of Indian Penal Code. With these allegations the 1st respondent approached the Magistrate. The Magistrate taken cognizance of the same and issued process which has been challenged in this writ petition.

2. I heard counsel for the petitioner Mr. Kamdar with Shirish Gupte and Shri. Dharmadhikari for the 1st respondent. I also heard Mr. Thakur learned A.P.R for State.

3. The learned Counsel for the petitioner submits that the said complaint does not disclose the offence as alleged in the complaint and the complaint suppress certain material facts that the civil dispute is pending between the parties and if these materials were disclosed in the complaint, the Magistrate would not have issued process against the petitioner. In order to substantiate the fact that the material facts have been suppressed in the complaint before the Magistrate, the petitioner produced documents and correspondence sent between the parties from 17th September, 1984 to 14th August, 1990. The petitioner also produced along with writ petition a copy of the plaint filed by 1st respondent, as Civil Suit No. 2735 of 1990 against the petitioner. It is disclosed from these documents that the civil dispute was going on between the parties and just after filing complaint before the Magistrate, the 1st respondent has filed abovementioned suit.

4. I heard the learned counsel for both the parties and examined the complaint filed before the Magistrate. For better appreciation of the matter, it is relevant to refer to paragraphs Nos. 7, 8 and 9 of the complaint.

7. On 14th June, 1990 Mr. Babu Rajan of the Bank and I had lengthy discussions with the accused when the accused represented that the Hotel authorities would extend all possible co-operation to the Bank not only to taking away the absolutely essential records from time to time from the said premises but also to enable the Insurance Surveyors to conduct and complete their survey so that they could assess the extent of the loss and damage sustained by the Bank due to the fire on 12th April, 1990. And he further represented, which representation was subsequently found to be false and dishonest by the Bank, that in order to carry out the work of restoration of the damaged premises to the Bank, I should hand over the duplicate keys to the Bank premises to the accused. Believing in the said representations to be true and not suspecting the design of the accused, the Complainant parted with the duplicate keys of the Bank premises to the Accused only for the said limited purpose and for no other purpose. I crave leave to refer and rely upon the relevant correspondence when produced in this Honourable Court.

8. Thereafter, the Bank was shocked and surprised to receive letter dated 23rd July, 1990 from the accused informing the Bank that he had got the furniture and records of the Bank removed from the said premises to the basement of Oberoi Towers and called upon the Bank to remove the said furniture and the records from the basement of the Hotel premises on the plea that the fire hazard was also there in the basement of Oberoi Hotel. This act of removal of the furniture, records etc. which was in the exclusive possession of the Bank, by the accused was dishonest and was without the knowledge and consent of the Bank. For about 7 days, no representative of the Bank including myself has been allowed entry into the premises of the Bank and further by his letter dated 25th July, 1990 the Accused had stated for the first time that they were not going to give back possession of the said premises to the Bank. I crave leave to refer to and rely upon the letter dated 25th July, 1990 when produced in Court.

9. The accused by making the aforesaid false representations dishonestly induced the Bank and its Officers to part with the keys to the Bank's premises and thus committed an offence punishable u/s 420 of the Indian Penal Code.

5. On examining the complaint I am of the opinion that there was a breach of promise made by the petitioner. That the duplicate key of the Bank premises was given to the petitioner on the premise that the key was required for carrying out the repairing work of the damaged premises and thereafter to hand over the premises to the Bank. This allegation, if at all proved, is nothing but the breach of promise and no criminal element is involved in this case, particularly in the light of the correspondence that was going on between the parties before filing of the complaint. The learned counsel for the 1st respondent submits that the offence of cheating has been disclosed in the complaint. He submits that after

handing over the key, the petitioner took up the stand that the possession of the building will not be given back to the 1st respondent. This allegation has to be examined in the lights of the observations made by the Supreme Court in *Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others*, . The Supreme Court has held in Paragraph 7 as under :

7. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made *prima facie* establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

6. According to me the said principle squarely apply to the facts of this case. In another angle also we have to examine the rival contentions raised by the parties. It is needless to say that what has been complained of by the 1st respondent before the Magistrate was that on the false representation made by the petitioner, the duplicate keys of the bank was handed over to the petitioner and that representation subsequently proved to be false. It is to be noted that admitted case of both the parties is that 1st respondent was occupying the building on leave and licence basis and the licence was already terminated as can be seen from the letter dated 17th September, 1984 written by the petitioner to the bank wherein, it has been expressly stated that the period of licence expired on 31st December, 1986 and the petitioner is not willing to further extend the period of licence. In view of this the 1st respondent being a licensee has no manner of right to continue the occupation of the premises thereafter. Therefore, in view of the legal relation between the parties, the contention raised by the 1st respondent that by handing over the duplicate key, its right to continue in possession of the building is lost, cannot be treated as valid. It is the obligation of the 1st respondent to hand over the key on termination of the licence. Even assuming for the argument, even after 31st December, 1986, the 1st respondent continue in occupation of the said premises, as licensee and by implication, whatever right it had in respect of the premises stands extinguished when the fire damaged the premises on 12th April, 1990. Occupational rights of the licensee stands extinguished when the building in respect of which Licence granted is destroyed, he has no more right to claim possession over the premises. Therefore, the contention of the 1st respondent that on the promise made by the petitioner duplicate keys of the bank has been handed over and subsequently they went back from their promise is a clear act of cheating, cannot be accepted. It was the duty of the Magistrate while issuing the summons, the Magistrate to *prima facie* consider the...relationship that exist between the

parties and weigh the legal consequences flow from such relationships and then examine the allegations of commission of offence. The Supreme Court in *Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others*, laid down four principles to be borne in mind when a Magistrate issues summons on the complaint. The said principles are as follows :

(1) Where the allegations made in or the statement of the witnesses recorded in support of the same taken at their face value made out absolutely no case against the accused or the complaint does not disclose ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as want of sanction, or absence of a complaint by legally competent authority and the like.

7. In the light of the facts of the case as enumerated above guidelines, particularly guideline No. (2) is relevant in this case and the complaint expressly mentions that the complainant was occupying the premises on the leave and licence basis and the complaint also disclosed that the fire was taken in the premises and it has become unfit for occupation. In that view of the matter other allegations contained in the complaint are patently absurd and improper and so no prudent man can ever reach to the conclusion that there is sufficient material for succeeding the case. Moreover, the Magistrate didn't take into account the rights of a licensee and licensor as disclosed in the complaint. Therefore, the Magistrate did not take into account even important legal issues involved in the disputes existing between the parties. In view of this, I have no hesitation to hold that Magistrate is not justified in issuing the process against the petitioner and it has to be held as a clear case of abuse of process of the court.

8. In the result, the writ petition is allowed. Rule is made absolute in terms of Prayer clause (a).

9. I make it clear that I have not expressed any opinion with regard to the rival claims of the parties in this case. Opinion, if any, expressed is only for the purpose of disposal of the writ petition and if any proceeding that is pending before Civil Court, should be decided untroubled by this Judgment.