
(2013) 10 BOM CK 0006

In the Bombay High Court

Case No : Criminal Writ Petition No. 477 of 2011

Arun B. Bhalsingh

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

Date of Decision : 22-10-2013

Acts Referred:

Citation : (2014) ALLMR(Cri) 236

Hon'ble Judges : Abhay M. Thipsay, J

Bench : Single Bench

Advocate : N.C. Garud, for the Appellant; B.L. Dhas, APP for Respondent No. 1 and Mr. P.S. Pawar, for the Respondent

Final Decision : Allowed

Judgement

Abhay M. Thipsay, J.—Rule. By consent, Rule made returnable forthwith. By consent, heard finally. The petitioner is the accused No. 4 in R.T.C. No. 299/2006 pending before the Chief Judicial Magistrate, Ahmednagar. The case against the petitioner arises on a complaint made by the Respondent No. 2 herein (hereinafter referred to as "the complainant"). The petitioner is aggrieved by the order dated 18.07.2006 passed by the Chief Judicial Magistrate, issuing process against him and the other accused in the said case in respect of the offences punishable u/s 467 of the Indian Penal Code (IPC) and Section 471 of IPC read with Section 34 of IPC.

The petitioner had challenged the said order by filing an application for revision in the Court of Sessions, but the learned Additional Sessions Judge, who heard the revision application, dismissed the same.

Being aggrieved thereby, the petitioner has approached this Court invoking its constitutional jurisdiction.

2. The other three accused in the said case had also challenged the order issuing process against them and the Petition filed by them has just now been disposed of by me. The case of the present petitioner, however, being on a different

footing, this Petition is being disposed of by the present separate order.

3. The complainant's case, as made out in the complaint, is, in brief, that the accused No. 1, which is a Sahakari Nagari Patsanstha and the other two accused, who are the office bearer and the Officer of the said Patsanstha, had fraudulently used two blank cheques that had been secured by the Patsanstha from the complainant some time on 16.08.1994 as a security for the loan advanced by the Patsanstha to the complainant. According to the complainant, though the said loan was repaid, a false figure and false date was put on the said blank signed cheques, which had been obtained by the Patsanstha from the complainant and on the basis of such forged cheques, when they were dishonored, proceedings u/s 138 of the Negotiable Instruments Act were initiated against the complainant.

4. By my order passed in the Petition filed by the co-accused (Writ Petition No. 479/2011 decided today), I have already observed that the complaint did disclose the ingredients of the offences in respect of which process came to be issued by the Magistrate. I have also observed that the order issuing process, so far as the other accused were concerned, was perfectly legal and needed no interference in the constitutional jurisdiction.

5. The case of the present petitioner is, however, different. He is an Advocate by profession. He has been arrayed in the complaint only on the claim that "he is the Legal Advisor of the said Patsanstha."

6. I have gone through the complaint carefully with an object of finding out what are the averments against present petitioner. I have also gone through the order passed by the Chief Judicial Magistrate and the learned Additional Sessions Judge in the context of sufficiency of grounds for proceeding against the present petitioner.

7. In the complaint, the only reference to the petitioner is that "he is the legal advisor of the Patsanstha." Besides this, there is no other averment showing the complicity of the petitioner in the alleged offences.

8. The learned Chief Judicial Magistrate observed that there were grounds for proceeding against the present petitioner also, on the basis that "previously also there was some litigation between the parties, and that, the stand of the complainant viz:--that a blank signed cheque was given some time in the year 1994 was known to the present petitioner." That, the present petitioner had sent a demand notice on behalf of the Patsanstha and the reply to the demand notice as given by the complainant - advising not to launch prosecution on a forged cheque - was clearly within his knowledge. It is on this reasoning, it has been held that there were sufficient grounds for proceeding against the petitioner also. This reasoning was accepted by the Court of Sessions also.

9. It is not possible to sustain the order issuing process against the present petitioner. It is clear from the complaint that the only averment against the petitioner is that he is the legal advisor of the Patsanstha and this fact, by no

stretch of imagination, can be construed as sufficient in itself for prosecuting the petitioner for the offences allegedly committed by the other accused. Simply because the petitioner was aware of the stand taken by the complainant while replying to the demand notice and while defending the case instituted by the Patsanstha against the complainant in respect of offence punishable u/s 138 of the Negotiable Instruments Act, the petitioner cannot be attributed with any criminality. As an Advocate he is supposed to be acting on the instructions of his clients, i.e. the Patsanstha. There is no averment in the complaint to the effect that he also shared the mens rea attributed to the other accused.

10. In my opinion, the averments in the complaint are wholly insufficient for proceeding against the present petitioner. Thus, though the order issuing process so far as it relates to the other accused is proper and legal, the same needs to be interfered with, so far as it relates to the petitioner.

11. The Petition is allowed.

The order issuing process, so far as it relates to the present petitioner, is quashed.

The complaint, so far as it relates to the present petitioner, shall stand dismissed.

The learned Magistrate, shall proceed further with the complaint in accordance with law.

Rule is made absolute in the aforesaid terms.