
(1987) 08 BOM CK 0027
In the Bombay High Court

A.V. Joglekar and others

APPELLANT

Vs

Wamandeo Mahadeo Deosthale and another

RESPONDENT

Date of Decision : 05-08-1987

Acts Referred:

Penal Code, 1860 (IPC) — Section 409

Citation : (1987) 3 BomCR 88 : (1990) 69 CompCas 347

Hon'ble Judges : S.W. Puranik, J

Bench : Single Bench

Advocate : J.A. Barday, Public Prosecutor, K.M. Desai, for the Appellant; Smt. Ponda, for the Respondent

Judgement

Puranik, J.—The petitioners are the accused in Criminal Complaint Case No. 49 of 1986 pending on the file of the Judicial Magistrate, First Class, Gneissic, and instituted by respondent No. 1, Wamandev, against them. The complainant, respondent No. 1, alleges that the petitioners accused have committed offenses u/s 409, 157, 120B read with section 34 of the Indian Penal Code.

2. The brief facts on the basis of which the complaint has been initiated by the respondent may be stated as follows :

That the complainant is a partner of the firm, Shree Ganesh Ferrocastings, and the said firm was given various facilities by the Central Bank of India, Satpur branch. Petitioner No 1, accused No.1, was the regional manager of Gneissic region. Petitioner No.2, accused No.2, was the branch manager of the Satpur branch. Petitioner No. 3 was the divisional manager of the Gneissic division. Petitioner NO.4 was the general manager of the Central Bank of India, Bombay. According to the complainant, the firm had negotiated with the general manager of the Central Bank some time in August, 1984, and petitioner No,4 on behalf of the Central Bank of India had agreed to advance a loan of Rs. 2,50,000 on certain conditions. The agreed conditions were that the advance loan sanctioned for Rs. 2,50,000 was to be used for payment of wages due to the workers of the firm. The complainant was to furnish a security by depositing fixed deposit

receipts of Rs. 50,000 each of the Federal Bank Ltd. With the Central Bank of India till the bank loan was duly discharged. The repayment of the loan was also to be done from the sale proceeds of sundry papers, scrap, etc.

3. In pursuance of the said arrangement, the certificates owned by the complainant were entrusted to accused No. 1 and the Central Bank of India was to hold the same till the amount of Rs. 2,50,000 was paid. According to the complainant, on repayment of the said loan, the said certificates were to be returned to the complainant.

4. It is the further case of the complainant that the complainant and his firm repaid the loan by October 10, 1984. This has been duly acknowledged by the Central Bank as per the entry dated October 10, 1984, in their statement of accounts.

5. In spite of the repayment of the loan, however, the accused persons for themselves and on behalf of the Central Bank of India did not return the fixed deposit receipts which were entrusted to them under the arrangement.

6. It is next alleged by the complainant that all the accused persons hatched a conspiracy to prepare a statement of accounts and to show that this list was to be utilized for other dues of the firm due to the bank. Special Civil Suit No 3140 of 1985 was filed by the Central Bank of India against the complainant firm. Learned civil judge before whom the matter was taken up, on hearing both parties, rejected the application for attachment before judgment. This order was passed on April 25, 1986, and the Central Bank of India returned the two certificated to the complainant on April 29, 1986. Thus, according to the complainant, all the accused persons, to make a show of their efficiency to cause wrongful gain to the bank and to cause wrongful loss to the complainant wanted to hold these two certificates for some other loan contrary to the agreed arrangement., He also alleges that they conspired together to put the complainant to wrongful loss and have thus committed offenses under sections 120B, 409, 157 read with section 34, Indian Penal Code.

7. This complaint case was filed before the learned Judicial Magistrate, Gneissic, on June 6, 1986. After recording the verification statement of the complainant, the Magistrate directed an inquiry u/s 202 of the Criminal Procedure Code and referred the matter to Bhadrakali police station for inquiry and report. The learned Magistrate on the same day, i.e., on June 6, 1986, directed the police to seize the documents as prayed for.

8. This order of issue of search warrant was immediately challenged by the petitioner by carrying a revision application to the Sessions Judge, Gneissic, who granted interim stay on June 17, 1986. The petitioner, therefore, moved Criminal Application No. 881 of 1986 before this court for stay of the search warrant on various grounds and an interim stay was directed by this court. However, it appears that before the stay order could be communicated to the police at Gneissic, the search had been completed and over 600 documents were seized.

9. The petitioner again approached this court and a direction was issued that the seized documents should be kept in proper custody and no inspection should be granted to any party until further orders because at this stage the petitioners also wanted a short time to file a criminal application u/s 482 for quashing of the criminal persecution. This order was passed on June 26, 1986, and has been duly communicated.

10. Thereafter, the present Criminal Application No.1077 of 1986 came to be filed wherein rule was issued returnable early and interim stay of further proceedings as well as the interim order passed in Criminal Application No.881 of 1986 were directed to be continued till disposal of this petition. Both these applications are being disposed of by this common order.

11. The present Writ Petition No.1077 of 1986 is a substantive petition for seeding quashing of the criminal complaint case and the proceedings there-under.

12. Shri present K. M. Desai, advocate, appeared for the petitioner. Respondent No.1, complainant, is represented by Smt. Ponda. Shri Jabbered appeared for the respondent State. The complainant has suppressed the fact that in the civil proceedings the complainant who was the defendant had sought an order for production and inspection of these very documents and the learned civil judge had rejected that relief in April, 1986, and it is, thereafter, that is, on June 8, 1986, the complainant filed this petition and on the same day, he sought an order for an inquiry and report by the police and also obtained an order for issue of a search warrant and inspection. In so far as the allegation regarding recovery of property is concerned, there is no dispute that the complainant had ever demanded return of the fixed deposit receipts and that the bank had refused to return the same. In fact, the application for attachment before judgment filed by the bank in the civil suit would show that they legitimately believed that it was their right to attach the said certificated through proper process of law in spite of liability of Rs. 56 lakhs standing in the bank account against the complainant. No sooner was that relief not granted, than the petitioner bank returned the fixed deposit receipts.

13. The petitioner also criticized the order regarding search and seizure without there being anything on record to issue such an order. Even otherwise, the order for search and seizure is a cursory order without giving any reasons whatsoever.

14. Smt. Ponda, appearing for the first respondent, supported the impugned order and urged that inasmuch as the Central Bank officers were bound to return the fixed deposit receipts on repayment of the loan under the agreed arrangement, they have wrongfully detain the same on one pretext or other even though the loan was repaid on October 10, 1984, itself. This might amount to criminal breach of trust and there is a prima facie case against the complainant. She also contended that moreover, the civil suit filed by the bank for the alleged liability of Rs. 56 lakhs is in respect of other transactions and has no connection with the present criminal proceedings. According to her, the order for inquiry and

report by the police as well as for search and seizure of the documents are interim orders and no interference is called for by this court.

15. With the assistance of learned counsel of both the parties, I have gone through the complaint, the verification statement of the complainant, the application filed for search and seizure of all the connected documents seized from the custody of the bank as well as Special Civil Suit No.314 of 1985 filed by the bank against the accused and his firm for attachment before judgment therein Learned counsel for both the parties have argued at length and their submissions have been stated in summary above.

16. The question is whether the trial court was justified in ordering an inquiry through the police and further ordering seizure of all the bank documents, which orders are impugned in these petitions.

17. As already stated above, it is the case of the complainant that for the loan transaction of Rs. 2,50,000 the complainant had deposited two fixed deposit receipts of Rs. 50,000 standing in his name as a security for the said loan. It is apparent that deposit of these two receipts with the bank was as a security in consideration of the loan advanced and was not a mere entrustment with the bank. More-over, the complainant in his verification statement does not say that after repayment of the loan, he had demanded return of the fixed deposit receipts and that the bank had refused. In fact, in para 4 of his complaint, it is an admitted position that the bank had never denied that they were not liable to return the said two certificates on repayment of the loan amount Rs. 2,50,000. The pleadings in the complaint read as follows :

"This was the clear position as would emerge from the telex sent from the head office, Bombay, to the regional office of the bank and the bank has never denied that they were liable to return the said two certificates on repayment of the advance of Rs. 2,50,000

18. Thus, it is apparent that the complainant does not allege that the bank had wrongfully retained the two certificates after repayment of the loan. Mere retention of property without anything further would not amount to misappropriation by the bank.

19. It is further pertinent to note that the allegations in the complaint refer to an alleged conspiracy between the accused officers of the bank to cause wrongful gain to the bank and to cause wrongful loss to the complainant by holding these two receipts for the purpose of some other loan. In the verification statement, the complainant nowhere says that the bank had refused to return the two receipts in spite of demand, whereas his only averment in the verification statement is that an attempt by the bank to attach before judgment the said two receipts through a civil court in another civil suit amounts to a criminal offense. On the other hand, from these facts, it is clear that the two fixed deposit receipts which were kept by the complainant with the bank as a collateral security remained with the bank, that the complainant never demanded their return, that

the accused persons or the bank never refused their liability to return the same and, lastly, for a separate claim of Rs. 56 lakhs against the complainant and his firm, the suit came to be filed in the Court of the Civil Judge, Junior Division, if November, 1985, wherein also the bank nowhere alleges that these two receipts were kept as a security for the other transactions. The only action taken by the bank is that in February, 1986, they filed an application for attachment before judgment of the said two receipts for satisfaction of a decree for Rs. 56 lakhs that may be passed against the complainant and his fir. Such an attempt by a proper course of law through a court to exercise a bona fide right under the CPC cannot, by any stretch of imagination, be called a wrongful attempt or an offense of criminal breach of trust.

20. It must further be noted that the fixed deposit receipts were to mature in April, 1986, and no sooner did the learned judge of the civil court reject the application of the bank for attachment before judgment, than the bank promptly returned the said receipts to the complainant which is admitted. There was thus neither any misappropriation, much less any criminal misappropriation or even an attempt at criminal misappropriation. As already stated above, the mere retention of property without anything further would not amount to misappropriation. No ingredients or circumstances to show that there was a criminal intention on the part of the bank in retaining the fixed deposit receipts have been alleged or brought forth. But, while prosecuting the suit for recovery of other loans, the bank was legitimately entitled for bona fide reasons to attach whatever securities were available for satisfaction of the decree that may ultimately be passed. That attempt having failed, the bank returned the said fixed deposit receipts before the maturity date. This is the first aspect in so far as the impugned complaint is concerned and there is no prima facie case made out even to show that the bank has attempted to wrongfully retain any property from the complainant.

21. The second aspect is the order passed for seizure of all the documents from the custody of the bank through the police. In this connection, it must be observed that the complaint was filed on June 6, 1986, when the trial judge, for want of any material prima facie, had ordered an inquiry u/s 202 of the Criminal Procedure Code for an inquiry and report by the police. This is a highly unjustified and a most improper exercise of judicial discretion. When the trial judge was not satisfied with the prima facie case made out in the complaint and the verification statement, there is absolutely no justification for attaching all correspondence, account books and documents from the custody of the bank without even hearing them. The accused thereafter moved Criminal Application No. 881 of 1986 before this court wherein the stay of search and seizure was ordered on June 27, 1986, but before that stay order could be served upon the trial court, search and seizure had already taken place. Subsequently, this court directed that all the documents seized should be kept in a sealed cover in the court custody until further orders. It is only thereafter that this Criminal Application No. 1077 of 1986 came to be filed on merits challenging the very

institution of the complaint case the the action for search and seizure of the bank documents.

22. As already stated, the complaint was filed on June 6, 1986, and the trial judge, after recording the verification statement of the complainant, directed that the matter be sent to the police for inquiry and report u/s 202, Criminal Procedure Code. On the same day, i.e., on June 6, 1986, the trial judge also entertained an application of the complainant u/s 91 of the Criminal Procedure Code for search of the records from the custody of the bank office at the Satpur branch and the regional office at Gneissic and to seize all the relevant correspondence including contracts, letters, communications, telegrams, telex telephonic communication, personal notes and intra-departmental notes and to produce all seized documents before the court. The learned trial judge, on the same day and without even giving any reasons whatsoever, directed the police station officers of Bhadrakali and Satpur police stations to seize the documents immediately as prayed for u/s 91 of the Criminal Procedure Code. The order not only lacks in giving reasons but also does not specify which of the hundreds of documents are necessary for the purpose of inquiry and report particularly when the learned trial judge had come to the conclusion that no prima facie case is made out against the accused for issue of process. In my opinion, the order is not only unjustified, but totally illegal and liable to be struck down.

23. One more reason that has been brought on record in this petition is that the complainant has suppressed the material facts that during the civil suit proceedings against him initiated by the bank, the complainant himself as the defendant had applied for production of all these documents in the civil court for purpose of inspection. It is almost two months thereafter that the complainant presented the complaint case before the trial magistrate and ultimately sought for ex parte attachment and search, seizure and production of these documents. Had this fact been disclosed to the trial magistrate, then it is very likely that he would have reconsidered the question of granting the said relief. The action of the complainant in seeking such a harsh order even before issue of process speaks of the mala fides on his part and the court would never have granted such an order had the fact of the civil court litigation and in particular regarding rejection of his application for production of the documents been brought forth to it.

24. The legal contention of the respondent-complainant is that the trial judge had jurisdiction to entertain the complaint case and had accordingly issued the order for inquiry and report. Further contention is that the trial judge had jurisdiction to direct search and seizure of the documents pertaining to the complaint case. Therefore, it is urged by the respondent that in petition u/s 482 of the Criminal Procedure Code and article 227 of the Constitution this court should not interfere with the discretion exercised by the trial judge. It is well-settled that proceedings against an accused in the initial stage can be quashed only if, on the face of the complaint or the papers accompanying the same, no

offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting anything if no offence is made out, then the High Court would be justified in quashing the proceedings in exercise of its powers u/s 482 of the Criminal Procedure Code See *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others*,

25. In *R.P. Kapur Vs. The State of Punjab*, , Gajendragadkar J. (as he then was), speaking on behalf of the three-judge Bench, has clearly categorized the powers u/s 561A of the Code of 1898 of the High Court and its exercise, even in cases where interference with the proceedings at an interlocutory stage, is called for.

26. In this petition before me, the averment made by the petitioners accused have not been denied on oath and particularly in respect of the fact that in the civil court, the application of the complainant-defendant for production and inspection of these very documents was rejected after due contest by the civil court on April 25, 1986, shortly before filing of the complaint and of securing an order for search and seizure. In facts, this fact was suppressed from the trial court.

27. Even in the matter of *State of Karnataka Vs. L. Muniswamy and Others*, , Chandrachud J. (as he then was), speaking for the Bench observed at p. 1492 :

"In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the Legislature. The compelling necessity for making these observations is that without proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

28. Having perused the documents and the annexures attached to the two petitions, I am satisfied that this is a fit case where I would be justified in invoking my powers u/s 482 of the Criminal Procedure Code to quash the criminal complaint as well as the order of search and seizure of the documents from the bank. There is absolutely no prima facie case even to accept the complainant's case in toto as started in the verification statement. The only averment made by him in the verification statement is to the effect that there was an attempt to attach before judgment the two security receipts amounting to wrongful retention of property. In fact, no act whatsoever is alleged on the part of the accuses except the attempt to attach the said two security receipts through a court of law which according to me is a bona fide legal act and it would not come within the purview of a criminal offence.

29. It is under these circumstances that I hereby allow both these applications and quash the criminal complaint case and the proceedings there-under. The

order of search and seizure of the documents passed by the trial court on June 6, 1986, is also hereby quashed and set aside. The documents seized during the tendency of these proceedings be returned in the same condition to the petitioners- accused forthwith.

30. Rule in each of the two criminal applications is made absolute.