
(1987) 08 BOM CK 0005

In the Bombay High Court

Case No : Criminal Applns. No"s. 881 and 1077 of 1986

A.V. Joglekar and others

APPELLANT

Vs

Wamandeo Mahadeo Deosthale and another

RESPONDENT

Date of Decision : 05-08-1987

Acts Referred:

Constitution of India, 1950 — Article 227

Criminal Procedure Code, 1973 (CrPC) — Section 202, 482, 91

Penal Code, 1860 (IPC) — Section 120B, 157, 34, 409

Citation : (1987) 3 BomCR 88 : (1990) 69 CompCas 347 : (1988) MhLj 42

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

Bench : Single Bench

Advocate : J.A. Barday, P.P, K.M. Desai instructed by M/s. Mulla and Mulla and Craige Blunt and Caroe, for the Appellant; F.H. Ponda for respondent No. 1 and J.A. Barday, P.P For State, for the Respondent

Final Decision : Allowed

Judgement

S.W. 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, Nasik and instituted by Respondent No. 1 Wamandev against them. Complainant Respondent No. 1 alleges that the petitioners accused have committed offences under Sections 409, 157, 120-B or u/s 34 of Indian Penal Code.

2. 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 Ferro castings and the said firm was given various facilities by the Central Bank of India, Satpur Branch. Petitioner No. 1, accused No. 1 was Regional Manager of Nasik region. Petitioner No. 2, accused No. 2 was the Branch Manager of the Satpur Branch. Petitioner No. 3 was the Divisional Manager of the Nasik 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 sometime 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 further the case of the complainant that the complainant and his firm repaid the loan by 10-10-1984. This has been duly acknowledged by the Central Bank as per the entry dated 10-10-1984 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 utilised 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. An application was filed on behalf of the Central Bank of India in the said suit, which was affirmed by accused No. 2, petitioner No. 2, by which the accused had sought an order of attachment before judgment in respect of the said two receipts. 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 25-4-1986 and the Central Bank of India returned the two certificates to the complainant on 29-4-1986. 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 the offences under Sections 120-B, 409, 157 read with section 34 Indian Penal Code.

7. This complaint case was filed before the learned Judicial Magistrate, Nasik on 6th June, 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. At the same time the complainant also filed an application u/s 91 of the Criminal Procedure Code for search and seizure of various documents and correspondence

between the complainant firm and the Central Bank at Satpur Branch, Nasik. The learned Magistrate on the same day i.e. on 6-6-1986 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, Nasik, who granted interim stay on 17th June 1986. However, on 25th June 1986 the learned Sessions Judge vacated the stay on the ground that a revision application was not maintainable against an interlocutory order. 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 Nasik, the search had been completed and over 600 documents were seized.

9. The petitioner again approached this Court and the 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 prosecution. This order was passed on 26-6-1986 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. Present Writ Petition No. 1077 of 1986 is a substantive petition for seeking quashing of the criminal complaint case and the proceedings thereunder.

12. Shri K. M. Desai, Advocate appeared for the Petitioner. Respondent No. 1 complainant is represented by Smt. F. H. Ponda. Shri J. A. Barday appeared for the Respondent State. It is contended by the petitioner that a perusal of the complaint and the verification statement would show that the complainant has suppressed the material fact and has secured an order of search and inspection of the documents in possession of the petitioner and its branch offices. 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 8-6-1986 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 search warrant and inspection. It is further contended that the complaint and the verification statement do not disclose any ingredients of the offences alleged and that the dispute, if any, between the parties, is of civil nature and that the Civil Court is already seized of the dispute. 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 certificates through proper process of law in spite of liability of 56 lacs standing in the bank account against the complainant. No sooner that relief was not granted, than the petitioner Bank returned the fixed deposit receipts.

13. The petitioner also criticised 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 detained the same on one pretext or other even though the loan was repaid on 10-10-1984 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 50 lacs 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 the learned Counsel of both the parties I have gone through the complaint, the verification statement of the complainant, the application filed for seizure and search 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 recovery of Rs. 56 lacs and the proceedings for attachment before judgment therein. The 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 receipts of Rs. 50,000/- standing in his name as a security for the said loan. The said loan was repaid on 10-10-1984 by the sale of the goods from the complainant's factory and that after its repayment the complainant became entitled to the return of the two fixed deposit receipts which were entrusted to the Bank as a security. 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. Moreover, 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 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 of 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 not liable to return the said two certificates on repayment of the advance of Rs. 2,50,000/- .

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.

. 18. 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 to hold these two receipts for the purpose of some other loan. On these allegations, it is submitted, that the Bank had filed Special Civil Suit No. 314 of 1985 against the complainant and his Firm for recovery of Rs. 56 lacs, and in the said suit the Bank had applied for attachment before judgment of the two certificates in question. In the verification statement the complainant nowhere says that the Bank had refused to return the two receipts in spite of the demand, whereas his only averment in the verification statement is that an attempt by the Bank to attach before judgment the said two certificates through a civil court in another civil suit amounts to a criminal offence. To my mind such an allegation does not bear out even prima facie a case of criminal breach of trust or an attempt to cause wrongful loss to the complainant. On the other hand from these facts it is clear that the two fixed deposit certificates 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 lacs against the complainant and his firm the suit came to be filed in the Court of the Civil Judge, Junior Division in November 1985, wherein also the Bank nowhere alleges that these two receipts were kept as a security for the other transaction. 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 lacs that may be passed against the complainant and his firm. 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 offence of criminal breach of Trust.

19. It must further be noted that the fixed deposit receipts were to be mature in April 1986 and no sooner the learned Judge of the Civil Court rejected the application of the Bank for attachment before judgment, the Bank promptly

returned the said receipts to the complainant which is admitted. There was thus neither any misappropriation much less criminal misappropriation or even an attempt of criminal misappropriation. As already stated above the mere retention of property without anything further would not amount to a 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. The civil suit for a claim of Rs. 56 lacs filed by the Bank has no connection with the earlier loan transaction of Rs. 2.5 lacs for which these two receipts were tendered to the Bank as a security. But while prosecuting the suit for recovery of the other loan 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 F. D. Rs. 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 even attempted to wrongfully retain any property from the complainant.

20. 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 6-6-1986 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. Before that enquiry could be completed a report was obtained. The trial Court on the same day entertained an application for seizure of all the Bank documents. This is highly unjustified and 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 of attaching all correspondence, account books and documents from the custody of the Bank without even hearing them- The accused herein moved an application for revision before the Sessions Judge, which however came to be rejected as it was against an interlocutory order. The accused thereafter moved Criminal Application No. 881 of 1986 before this Court wherein the stay of search and seizure was ordered on 27-6-1986 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 thereafter that this criminal application No. 1077 of 1986 came to be filed on merits challenging the very institution of the complaint case and the action for search and seizure of the Bank documents.

21. As already stated the complaint was filed on 6-6-1986 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 6-6-1986. 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 Satpur branch and the regional office at Nasik 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 without even giving any reasons whatsoever directed the Police Station Officers of Bhadrakali and Satpur Police Stations to seize 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.

22. 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. That application was contested in the Civil Court by the Bank and by the order dated 25-4-1986 the learned Civil Judge had rejected the said application. 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 would have been brought forth to him.

23. 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 accordingly 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 a 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 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*, .

24. In *R.P. Kapur Vs. The State of Punjab*, Gajendragadkar, J. (as he then was) speaking on behalf of three Judges Bench has clearly categorised the power u/s

561-A 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.

25. In this petition before me the averments 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 25-4-1986 shortly before filing of the complaint and of securing the order for search and seizure. In fact, this fact was suppressed from the trial Court.

26. Even in the matter of State of Karnataka Vs. L. Muniswamy and Others, Chandrachud, J- (as he then was) speaking for the Bench observed,

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 saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a Court proceeding ought not. to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than a 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 with a proper realisation 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.

27. 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 to as stated 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 certificates amounting to wrongful retention of property. There is no material whatsoever to show prima facie any act on the part of the accused which amounted to a conspiracy to cause wrongful loss to the complainant. In fact no act whatsoever is alleged on the part of the accused except the attempt to attach the said two security certificates 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.

27. It is under these circumstances that I hereby allow both these applications

and quash the criminal complaint case and the proceedings thereunder. The order of search and seizure of the documents passed by the trial Court on 6-6-1986 is also hereby quashed and set aside. The documents seized during the pendency of these proceedings be returned in the same condition to the petitioners-accused forthwith.

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