(1986) 08 BOM CK 0012

In the Bombay High Court

Case No : Criminal Writ Petition No. 219 of 1986

Bhalchandra Keshav Gadre — APPELLANT

Vs

Gurushant Gangadhar Kamble — RESPONDENT

Date of Decision : 18-08-1986

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1986) 3 BomCR 657 : (1989) 25 ECR 81

Hon'ble Judges : Puranik, J

Bench : Single Bench

Judgement

1. By this petition under Article 227 of the Constitution read with Section 482 of the Criminal Procedure Code, the Petitioner who is Accused No. 36 in Criminal Case No. 9 of 1986 filed by the 1st Respondent against M/s. Kirloskar Brothers Ltd. and Others, prays for a Writ of Certiorari or any other appropriate writ order or direction for quashing the process issued against the petitioner by the Chief Judicial Magistrate, 1st Class, Pune on 31st January 1986. My learned predecessor Mehta, J. issued Rule and made it returnable on 16-6-1986.

2. In another Criminal Writ Petition No. 335 of 1986 filed by Shri Marathe, accused No. 17 in Criminal Case No. 9 of 1986 I have delivered my order on 21-7-1986. The said Shri Marathe is accused No. 17 in the complaint case filed by the 1st respondent. Even though the present petition also arises out of the same complaint cases, I am delivering this separate order as the facts relating to this petitioner, accused No. 36 are slightly different.

3. The facts relevant for the purpose of this present petition and the circumstances under which the petitioner is seeking the relief of quashing of process may be stated briefly as follows :

4. The 1st Respondent, who is the complainant, on information received and on reasonable belief that Accused No. 1 Company was evading payment of Central Excise duty searched the offices of the Company, its factories and its branch

offices as well as the residences of some of the Directors on 9-12-1985.

5. Accused Nos. 2 to 18 are Directors of Accused No. 1 Company Accused Nos. 19 to 30 are Senior Executive Officers in Accused No. 1 Company, while accused No. 31 is a separate Company and accused Nos. 32 to 36 were the Directors of the said Company, accused No. 37 being was the Secretary of the said Company. According to the allegations in the complaint all these Directors were in charge of and were responsible for conduct of the business of respective Companies, accused No. 1 and 31. According to the prosecution after investigation and inspection of several documents seized it transpired that accused No. 1 Company and its Directors and Senior Executive Officers accused Nos. 2 to 30 had conspired together and had evaded excise duty on the compressors manufactured by accused No. 1 Company. We are not at present concerned with other allegations insofar as accused Nos. 1 to 30 are concerned. The other part of the prosecution case is that accused Nos. 1 to 30 having successfully evaded the Central Excise duty, but not being satisfied with the said modus operandi hit upon yet another plan. In para 22 of the complaint the 1st respondent alleges that on 17-10-1983 accused No. 1 filed an application with a revised price list in Part I and II for hermetically sealed compressors. In substance Accused No. 1 informed the Assistant Collector of Central Excise that the price list in Part I was applicable to stray customers such as small scale industrial units and dealers. Accused No. 1 further informed that till that time the price of compressor was inclusive of warranty charges but that under the new price list they had decided to supply compressors to this class of buyers without warranty charges as the price list was submitted after reducing warranty charges. Accused No. 1 further informed that in effect they would not receive any money on account of warranty charges nor would they get any money from anybody but instead warranty would be given by Accused No. 31 - Company which is a separate entity. This price list was approved by the Assistant Collector of Central Excise on the footing and on the basis that the representation made by Accused No. 1 which was to the effect that Kirloskar Brothers Ltd. was not going to get any amount towards warranty charges which were to be collected by Accused No. 31 and that it was Accused No. 31 who was to be responsible for monitoring quality control, was correct.

6. In para 23 the complaint further alleges that the said price list with such arrangement was finally approved and the said arrangement was to come into effect on 1-11-1983. He further alleges that the entire collusive arrangement which was reflected in the said agreement which was executed by accused No. 1 on the one hand and Accused No. 31 on the other was a document which was circulated to the Board of Directors of Accused No. 1 and after such circulation the matter was taken up before the Board which passed a resolution on 15-11-1983 approving the agreement which was sought to be entered into between the parties i.e. Accused No. 1 and Accused No. 31.

7. In para 24 it is alleged by the complainant that Accused Nos. 31 to 37 was an organisation which came in handy which was completely under the control of

Accused Nos. 1 to 30 as could be found from the fact that one of the Kirloskars is a member of the Board and accused No. 23 was a trusted and confidential man of Accused No. 1. It is further alleged in the complaint that in fact the amount of warranty collected by Accused No. 31 Company and its Directors was siphoned back to the principal Company Accused No. 1. Thus the main gravamen as is shown at the end of para 36 of the complaint on behalf of the prosecution is as follows :

"All officers and executives i.e. Accused Nos. 19 to 30, both inclusive, were parties to the said continuing criminal conspiracy which was hatched at the registered office of Accused No. 1 at Pune and Karad to commit the offence of tax evasion and Accused No. 31 and Accused Nos. 32 to 37, both inclusive, all Directors of Accused No. 31 joined the said continuing conspiracy and aided and abetted accused."

"Accused Nos. 1 to 30 in the commission of the said offence and pursuant to the conspiracy and in consequence of aiding and abetting by Accused Nos. 31 to 37, the offence of evasion of Central Excise duty ..."

Thus, in short the prosecution case is that initially a conspiracy was hatched by Accused Nos. 1 to 30 and subsequently the other company and its Directors viz. Accused Nos. 31 to 37 joined the said conspiracy and continued the same.

8. The contention of the petitioner is that no doubt he was one of the Directors of Accused No. 31 Company, but he was its Director for the period 27-5-76 to 29-7-83. He resigned the post of the Director and his resignation was duly accepted by the Registrar of Companies and the change report has been duly notified that the petitioner Accused No. 36 ceased to be the Director of Accused No. 31 with effect from 28-7-83. A certified copy of the order of the Registrar is placed on record. According to the petitioner the prosecution alleges that Accused No. 31 Company joined the conspiracy on 17-10-1983 and as such the petitioner who had ceased to be the Director had no concern with the decision to join the said conspiracy allegedly taken by Accused No. 31 Company and its Directors. Shri K. M. Desai, learned Counsel for the Petitioner has further drawn my attention to the fact that the petitioner Accused No. 36 has been styled as ex-director even in the title head of the complaint filed by the first respondent. He urged that the complainant was aware that the petitioner is the ex-director and yet without recording his statement and without verifying from the record of the Registrar of Companies as to when he resigned from the Directorship the complainant has hastened to file the prosecution. Shri Desai also contended that the process issued against the petitioner is liable to be quashed on the ground that there was no nexus between any of the acts of Accused No. 36 as alleged in joining of the conspiracy by Accused No. 31 Company.

9. Shri S. G. Samant appearing for the 1st respondent opposed the petition mainly on the ground that one of the Directors of Accused No. 1 Company Shri Gune was also the Chairman of accused No. 31 Company and he was therefore in

the know of the earlier conspiracy hatched between Accused No. 1 to 30. He further submitted that no specific case of joining of conspiracy has been stated in the complaint and the prosecution would be able to show during the evidence that Accused No. 31 Company had joined the conspiracy much prior to 29-7-1983 i.e. before the petitioner resigned from the Directorship and that he would be therefore guilty so far as that period is concerned.

10. It is well settled that this Court can exercise its inherent powers u/s 482 of the Code to quash the process issued in the complaint case, if ex-facie reading of the complaint without adding or subtracting any facts from the same can lead to the conclusion that there are no grounds for substantiating that complaint against all or any of them. It is an admitted position that the petitioner Accused No. 36 is ex-director of the Company as the title of the complaint itself shows. The petitioner has also filed the affidavit reiterating the same supported by the certified copies of the records of the Registrar of Companies, which averment has not been refuted by the first respondent. It is therefore clearly established that the petitioner was no longer concerned with the running of the business of the company Accused No. 31 as from 29-7-1983.

11. Therefore in view of the fact that petitioner Accused No. 36 ceased to be the Director of the Company Accused No. 31 from 29-7-1983, it is to be seen whether there are any allegations in the complaint averring that Company accused No. 31 and its directors joined the conspiracy of Accused No. 1 Company and its Directors any time before the petitioner ceased to be the Director, i.e. any time before 29-7-1983.

12. As stated earlier paragraphs 1 to 21 only refer to the allegations of conspiracy for evasion of excise duty only against Accused No. 1 Company and its Directors and Officers i.e. accused Nos. 1 to 30. For the first time in para 22 of the complaint it is mentioned that the first group of Accused Nos. 1 to 30 hit upon yet another plan. It is then specifically alleged that on 12 the October, 1983 Accused No. 1 Company took steps to file an application for the revised price list of the compressors. In the said price list it was stated that Accused No. 1 Company under the new price list would not be charging warranty charges and that instead warranty will be given by the other Company Accused No. 31 which is a separate entity.

13. According to the further allegations in para 23 it is new arrangement between Accused No. 1 Company and Accused No. 31 Company was brought into effect from 1-11-1983 though the resolution approving this arrangement was passed subsequently on 15-11-1983 by Accused No. 1 Company.

14. Thus, it is clear from the allegations in the complaint itself that Accused No. 31 Company and its Directors joined the conspiracy of the first accused and its Directors on 17-10-1983, 11-11-1983 and 15-11-1983. Even otherwise it transpires from the affidavit of the complainant filed before this Court on 3-4-1986 as follows :

"... although in the complaint it was averred that Accused Nos. 31 to 37 had joined the conspiracy on 15-11-1983, it appears that the draft agreement of the said warranty agreement was typed on 29th or 30th September 1983."

If therefore the draft agreement was made on 30th September 1983 it is obvious that the said draft agreement could not have been made unless the instructions in that behalf had been given earlier. It is also significant to bear in mind that although formally Accused Nos. 31 to 37 joined the said conspiracy on 15-11-1983 the price list was filed by Accused No. 31 before the Jurisdictional Assistant Collector on 17-10-1983 which became effective on 1-11-1983, that is at any rate 14 days before the formal agreement dated 15-11-1983 was executed.

15. Accepting the complainant''s version as it is, it cannot be said that Accused Nos. 31 to 37 joined in any conspiracy before 30th September 1983. It is not understood as to what the complainant means by saying that Accused Nos. 31 to 37 formally joined the conspiracy on 15-11-1983. In fact such an averment is totally baseless. Joining of conspiracy which is a criminal act is a question of fact and there cannot be informal joining of conspiracy and formal joining of conspiracy. Thus from the averments made in the complaint this alleged joining of conspiracy by Accused Nos. 31 to 37 cannot be at any rate before 30-9-1983.

16. In view of the undisputed fact that petitioner Accused No. 36 ceased to be a Director of Accused No. 31 company as on 29-7-1983 and further fact that the petitioner Accused No. 36 was described as ex-director of Accused No. 31 Company, which is ex-facie proved, establishes that the petitioner had nothing to do with the alleged joining of conspiracy or participation in such conspiracy from 30-9-1983. Thus, when the allegations in the complaint even if taken at their face value and accepted in their entirety do not constitute an offence alleged, then in such cases no question of appreciating evidence arises. It would be legitimate for this Court to hold that it would be manifestly unjust to allow process of the Criminal Court to be issued against the accused who cannot by any stretch of imagination be implicated in the trial.

17. Since the complainant knew that the petitioner had ceased to be the Director of the Company and the date of his resignation from the board of Directors can easily be located from the public records of the Registrar of companies and in this case since this fact is undisputed, it would be manifestly unjust to allow the process of law to take its own course against such background. In a given case if the fact can be ascertained from the public records and is either intentionally or inadvertently omitted from the allegations in the complaint, but subsequently established before this Court without any dispute, then such a fact can be taken into consideration in a petition u/s 482 of the Criminal Procedure Code read with Article 227 of the Constitution. To allow the proceedings to continue against the petitioner would be to continue needless harassment of the petitioner costing him time, money and mental agony. It is therefore a fit case where this Court can exercise its inherent power to meet the ends of justice at this stage itself.

18. In the result, therefore, the petition succeeds. The process issued against the petitioner and the proceedings initiated against him are hereby quashed. Rule absolute as per prayers (a) and (b) of the petition. Interim stay of the proceedings as against the other accused stands vacated.