

(2020) 05 BOM CK 0025

In the Bombay High Court

Case No : Criminal Application No.3049, 3050, 3051, 3052, 3053 Of 2019

Dipak Bhaskar Rane

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 12-05-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 7, 70, 260, 261, 262, 482
Consumer Protection Act, 1986 — Section 25, 27, 27(1), 27(3)
Co-Operative Societies Act, 1912 — Section 88
Arbitration And Conciliation Act, 1996 — Section 8

Citation : (2020) 05 BOM CK 0025

Hon'ble Judges : Vibha Kankanwadi, J

Bench : Single Bench

Advocate : B.A. Chavan, B. V. Virdhe, A.N. Nagargoje, N. R. Thorat

Judgement

1 All these applications have been filed invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 to challenge the order dated 29.08.2019 passed by learned District Consumer Redressal Forum, Jalgaon in Execution Applications filed by the respondent No.2, in each of the applications, who were the original complainants. It appears that in all five applications i.e. Execution Applications were filed against the present applicant bearing No.EA/09/486 in cc/08/682, EA/09/487 in cc/08/681, EA/09/489 in cc/08/678, EA/09/490 and EA/09/499 in cc/08/677 before the learned District Consumer Redressal Forum, Jalgaon under Section 25 of the Consumer Protection Act. It is also stated therein, that it is also under Section 27 of the said Act.

2 The original complainant had come with a case, that the present respondent No.3, which is a registered Co-operative Society, was managed by the present applicant and the elected body. The original complainants had contended, that they had deposited amount with the society in Fixed Deposit and upon the maturity of the said deposit the said amount was to be given along with the interest. Even after the maturity, the society did not give the amount to the

complainants, and therefore, they had filed complaint applications before the District Consumer Redressal Forum. All the complaints came to be allowed. There were in all 7 opponents/respondents to the original complaint application. All of them were directed to pay the amount under Fixed Deposit along with 9% interest, from the date of the maturity of the deposits till actual realization. Further, the compensation and costs were also awarded. The said amount was to be deposited within one month from the date of the respective orders. It is stated, that when there was no compliance of these orders, which were passed in the original complaint proceedings, the Execution Applications have been filed by all the respective complainants. Initially, summons was issued to the petitioner and it is stated, that even after receiving the same he did not appear, and thereafter, bailable warrant and non bailable warrant has been issued. In fact, all the earlier summons and bailable warrants were not received by the applicant. Later on the complainant provided new and correct address, and therefore, non bailable warrant was issued on 29.11.2018, on the new address, provided by the original complainant. In pursuance to the said non bailable warrant the applicant was taken in custody on 11.12.2018 by Bhusawal Bazarpet Police Station. Thereafter, when he was produced before the Court, he filed application for cancellation of non bailable warrant. It was allowed by the Consumer Forum and bail was granted to him. Accordingly, he has furnished the surety and personal bond. His plea was recorded on the same date i.e. on 12.12.2018 and then the matter was adjourned for bail of respondent Nos.4 and 5. Thereafter, on the next day i.e. on 13.12.2018 the respondent Nos.4 and 5 furnished bail. Thereafter when the applicant was present on 18.01.2019 before the Forum and his Advocate was absent, Forum asked the applicant to satisfy the Award on that day itself, otherwise he would be sent in jail. It was orally told by him, that the society would be repaying the amount to the depositors as per the recovery from the borrowers and the procedure of auction of the property of two borrowers has been initiated by the society and it has also stated that the complainant can participate in the auction and can get the sale proceeds. However, the Forum refused the oral request of the applicant. When applicant requested for adjournment, since his Advocate was not present, the Forum rejected his request and gave time till 4.00 p.m. only to satisfy the Award. The District Consumer Forum without following due procedure of law cancelled his bail and taken him in Magisterial Custody on 18.01.2018. The applicant preferred revision challenging the said action by the District Consumer Forum in Revision Petition before State Consumer Dispute Redressal Forum, Mumbai. Ad interim bail was granted. Further, when the applicant was absent on 27.08.2019, so also the Regular Bench was not available, the board was discharged. The Advocate for the applicant left the commission for his other Court work. But then the Advocate for the respondent i.e. original complainant moved the other Bench in the afternoon session and the said Bench without considering the record passed order, confirming the order of cancellation of bail by the District Consumer Forum. It is stated, that the said order passed by the learned State Commission is illegal, and therefore, it has been challenged in these applications.

3 Heard learned Advocate Mr. B.A. Chavan for applicant, learned APP Mr. B.V. Virdhe for respondent No.1-State, learned Advocate Mr. A.N. Nagargoje for respondent No.2 and learned Advocate Mr. N.R. Thorat for respondent No.3, in all matters.

4 It has been vehemently submitted on behalf of the applicant in all the applications, that neither the District Consumer Forum nor the State Commission had considered, that the action under Section 27 of the Consumer Protection Act could not have been simultaneously taken with Section 25 of the Act. Further, procedure contemplated under Summary Criminal Case should be adopted in proceedings under Section 27 of the Act. The satisfaction of the original Award could not have been proceeded only against one of the original respondents, as the Award was passed against original respondent Nos.1 to 7, jointly and severally. Further, the learned State Commission failed to consider that the matter was assigned to another Bench and since the said Bench was not available, the board was discharged. After discharge of the board if the application was filed for issuance of non bailable warrant or cancellation of earlier interim order, then opportunity of being heard ought to have been given. The said order on the merits of the case ought not to have been passed in a cryptic manner. The State Commission also failed to consider that unnecessary burden was put on the accused to prove that he had complied with the Award, that was passed earlier. The District Consumer Forum could not have insisted that he should comply with the said order before 4.00 p.m. on the same day. The order, that was passed by the District Consumer Forum on 18.01.2019, was itself illegal and further illegality has been committed by the State Commission. Both these orders deserves to be set aside.

5 The learned Advocate appearing for the applicant has relied on various orders passed by this Court either by this Bench or at Principal seat. The list of the same is given as follows :

1 Criminal Application No.1265 of 2018 and other companion matters, Abhay Narayan Raje vs. The State of Maharashtra and others dated 26.06.2018.

2 Criminal Application No.3424 of 2019, Dipak Bhaskar Rane vs. The State of Maharashtra and others dated 14.01.2020.

3 Criminal Application No.6630 of 2017 and other companion matters, Chandrakant Hari Badhe vs. State of Maharashtra and others dated 28.02.2018.

4 Criminal Application No.5196 of 2017, Chandrakant Hari Badhe vs. The State of Maharashtra and others dated 03.11.2017.

5 Criminal Application No.1266 of 2018 and other companion matters, Abhay Narayan Raje vs. The State of Maharashtra and another dated 19.06.2018.

6 Criminal Application No.5197 of 2017, Chandrakant Hari Badhe vs. The State of Maharashtra and others dated 03.11.2017

6 In the nutshell, in all these orders, this Court has considered that the application under Section 482 of the Code of Criminal Procedure is maintainable to challenge the order of taking the original respondent in custody under the provisions of 27 of the Consumer Protection Act and further in each of the case it was discussed, as to how the Forum had went wrong in not adopting proper procedure while taking the concerned original respondents/applicants in custody.

7 Per contra, the learned Advocate appearing for the original complainant-respondent No.2 in all the matters has vehemently submitted that the District Consumer Forum as well as State Commission have followed proper procedure. If we consider the amount, that was deposited by all the complainants in the society, then it goes in lacs of rupees. It was the hard earned money of the original complainants and only because it was promise by the society, which was run by the present applicant as a Chairman, that handsome interest would be given; that amount was deposited with the society. In spite of the maturity of the said amount they have not given the amount back with interest, rather though the original proceedings were filed in the year 2008 and the recovery proceedings started in 2009, yet till today not a single paisa has been paid to the complainant. Every step is being taken to avoid payment. Opportunity has been given to the original respondent to comply with the Award that has been passed in each matter. However, since there is no compliance, it is but natural to adopt coercive method.

8 The learned Advocate appearing for the respondent No.2 has relied on following orders :

1 Criminal Application No.1062 of 2018, Rajesh Malkitsingh Gade vs. State of Maharashtra and another dated 12.09.2018.

2 Writ Petition No.4264 of 2014, Ackruti Jay Developers vs. State of Maharashtra and others dated 20.06.2014.

On the basis of facts involved in these cases this Court at Principal seat has upheld the order, that was passed by the Forum and State Commission.

9 At the outset, it is to be noted that in the original proceedings Award was passed on 26.06.2009, wherein directions were given to original respondent Nos.1 to 7 to repay the amount of the Fixed Deposits of the complainant along with the interest. Thereafter, when the complainants saw that there is no compliance of the said order, they have filed complaint applications under Section 25 and 27 of the Act. That means, both the remedies have been tried to be simultaneously adopted. It appears that a non bailable warrant was issued on 12.12.2018 under Section 70 read with Section 7 of Cr.P.C. for arrest of present applicant and in pursuance of the same he came to be arrested and produced on the same day before the Forum. In spite of the fact that the applicant was arrested, yet, it appears that upon the legal advice given to him, he filed an application for cancellation of non bailable warrant and recall of non bailable warrant and release of the applicant on bail. The said application came to be

allowed and he was released on bail. However, on the same day his plea was recorded. The impugned order, that was passed by the learned District Consumer Forum on 18.01.2019, does not say that after recording of plea the procedure contemplated for Summary Criminal Trial was taken up and the complainant was directed to adduce evidence. The order is also silent on the point, that the complainant had given pursis stating that he/she has no intention to lead evidence. The impugned order rather states, that the accused has not produced any evidence for showing compliance of the Award, in view of the Penal provisions contemplated under Section 27 of the Consumer Protection Act. The present applicant was accused in the matter and burden of proof cannot be on the accused. When the District Forum, as it appears, did not even put the matter for evidence, proper procedure cannot be said to have been adhered to. There might still be some defence with the accused for non complying the said order. Another fact, which was not considered either by the District Forum or by the State Commission, that when the original application under Section 25 and 27 was filed against in all seven persons, out of whom name of No.2 was deleted, and then no steps were taken against the other respondents. Unless there could have been a separation of trial, as contemplated under law, after adopting due procedure, only the present applicant could not have been insisted for compliance of the Award, though the Award is stated to be joint and several. It appears that from the impugned order of the District Forum that only the present applicant i.e. original accused No.1 was present and he was insisted. Another surprising fact is, that accused Nos.4 and 5 had produced a document, which was the order dated 11.09.2013 passed under Section 88 of the Co-operative Societies Act by the competent authority, in which it was stated that the present applicant had undertaken and given statements, that all the financial transactions have been made by him in his capacity as Chairman and he admitted that he is personally liable for any transactions, which are beyond the rules. The admission in the said matter has been used, in such a way by the District Forum for proceeding only against applicant, when that admission is not before the Forum itself. Such acceptance of evidence is illegal. When the complainant had not led any evidence and unless each of the accused discharges his right to adduce evidence, it cannot be so used in absence of the evidence of one side against each other. The present petitioner-accused No.1 had sought time, since his Advocate was absent, yet, it appears that the District Forum has unnecessarily put a condition, that he should comply with the order on that day itself till 4.00 p.m.. The District Consumer Forum cannot put such harsh and unrealistic conditions. The bail was cancelled and he was taken in custody immediately by the District Consumer Forum. Important point to be noted is, that if the Consumer Forum was of the view that there is no compliance of the Award passed by it and the offence has been committed/complete action for contempt of the order of the Forum has been committed, then there was no hurdle for the Forum to pronounce the Judgment itself on that day. Instead of pronouncing the Judgment, only bail has been cancelled, without going into the merits of the case by adopting summary procedure. Such procedure is not

contemplated under Section 27(1) or 27(3) of the Consumer Protection Act.

10 All the above aspects were not considered by the State Commission, when the order dated 27.08.2019 was passed. No doubt, at this stage there is nothing on record produced by the applicant that, in fact, his petition was assigned to the another Bench, yet, when the Bench was not available, the board was discharged and it ought not to have been taken by another Bench of the State Commission. Even if we take the order, that was passed by the Bench of the State Commission on 27.08.2019, yet, it appears that only apparent things have been considered and it was not considered that no steps were taken by the original complainant against other accused, there was no separation of trial. It also appears that only the plea of the present petitioner was recorded, though other persons were posed as accused. When Section 27(3) of the Consumer Protection Act gives power of a Magistrate to the District Consumer Forum and the procedure that is required to be adopted by the Forum for the action under Section 27 of the Act is summary trial as contemplated under Section 260 to 262 of Cr.P.C., then unless there would have been a proper separation of trial, steps could not have been taken only against one accused. When both the Judicial Authorities have not considered these points, definitely interference is required by exercising inherent powers of this Court under Section 482 of the Code of Criminal Procedure.

11 In Rajesh Gade's case relied by the learned Advocate for the respondent No.2, the facts were different. It appears that he was the only accused in that matter, who was directed to hand over vacant and peaceful possession of 415 square carpet area on the second floor of newly constructed building or hand over identical size tenement in the same locality within the period of 45 days from 11.12.2015. It also appears that many opportunities were given to the applicant therein to comply with the order. Further, the main point was that, he had challenged the order passed by the Commission in order to approach further Forum and then this Court held that, "Admittedly the applicant intends to challenge the order before the Appellate Authority i.e. the National Commission. In the circumstances, in exercise of powers under Section 482 of Cr.P.C. this Court cannot grant bail to the applicant to enable him to prefer an appeal before the appropriate authority."

Here, when the basic procedure that is adopted was not as per the law, then definitely inherent powers of this Court will have to be invoked. In Ackruti Jay Developers's case, it was a writ petition, wherein order passed by the State Consumer Forum dismissing the revision petitions and confirming the orders passed by the District Consumer Forum, Pune were confirmed, were under challenge. In the matter before District Forum it appears that an application came to be filed by the petitioner under Section 8 of the Arbitration and Conciliation Act, 1996 invoking the Arbitration clause in the agreement and the said application was rejected. That order was challenged in the revision petition. There is no such factual aspect involved in the present matters before us. The decisions relied by the learned Advocate for applicant are applicable here.

12 For the aforesaid reasons, the inherent powers of this Court are required to be invoked, to quash and set aside the order passed by the learned State Commission on 27.08.2019 and also order passed by District Consumer Forum on 18.01.2019, thereby cancelling the bail granted to the applicant and taking him in custody. Accordingly, both these orders are set aside and quashed. It will not be out of place to mention here, that this Court had by order dated 11.09.2019 released the applicant on ad interim bail on furnishing personal recognition of an amount of Rs.15,000/- and on furnishing a solvent surety in the like amount before District Consumer Forum. The said order to continue in the said proceedings before the District Consumer Forum. District Consumer Forum to adopt proper procedure and dispose of all the Execution Proceedings as per the appropriate procedure under Law.