(2012) 02 BOM CK 0133

In the Bombay High Court

Case No : Criminal Writ Petition No. 117 and 118 of 2011

D.M. Neterwala, Businessman Dai-Ichi Karkaria Ltd. Libery Building, Sir Vithaldas Thackersey Marg, Mumbai 400 020 — APPELLANT

Vs

The State — RESPONDENT

Date of Decision : 03-02-2012

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 139
Penal Code, 1860 (IPC) — Section 227, 239, 245, 34, 406

Citation : (2012) 02 BOM CK 0133

Hon'ble Judges : F.M. Reis, J

Bench : Single Bench

Advocate : C.A. Coutinho, for the Appellant; C.A. Ferreira, Public Prosecutor for the State, for the Respondent

Final Decision : Dismissed

Judgement

F. M. Reis, J.—Heard Shri C. A. Coutinho, learned Counsel appearing for the Petitioner and Shri Ferreira, learned Public Prosecutor appearing for the Respondent-State. The above Petition challenges the Orders passed by the learned J.M.F.C., Margao, in case no.237/S/1999/II and the Order passed by the learned Addl. Sessions Judge, Margao, in Criminal Revision Application no. 94/2010 framing charges against the Petitioners.

2. It is the case of the prosecution-Respondent herein, that the Accused nos. 1 to 7 including the Petitioner herein who are the Directors of Midwest India Industries Limited with their common intention fraudulently induced the Complainant and others to invest and to part cash as deposits offering high rate of interests as incentives and quoted a sum of Rs.24,47,466/- as deposits through the agents and misappropriated the same and they also issued cheques towards repayment of the deposits with interest which were dishonoured and closed down their principal office at Hyderabad without proper notice to the depositors. All the witnesses to the statements have disclosed the names of the

Directors of the aforesaid Company and the name of the Accused no.3 as Director of the said Company figures in the statement dated 12.11.1998 of one Shri Anthony Furtado. The Brochure which the Company also circulated to invite investments in their said Company also show that the Petitioner-Accused no.3 was one of the Directors of the said Company Mid West Finance Limited. The charge which has been framed against all the Accused including the Petitioner herein is for committing an offence punishable u/s 406, 420 read with 34 of the Indian Penal Code and Section 139 of the Negotiable Instruments Act. The Petitioner filed an application to drop the charges against him before the learned J.M.F.C., which came to be rejected by Order dated 15.10.2010. The revision preferred against the said Order before the learned Addl. Sessions Judge in CRIR no. 44/2010 also came to be rejected.

3. Shri C. A. Coutinho, learned Counsel appearing for the Petitioner, has assailed the impugned Orders essentially on the grounds that there is nothing on record to suggest that the Petitioner was a Director of the Company at the relevant time. Learned Counsel has pointed out that unless and until the material discloses that the Petitioner was in charge of the affairs of the Company at the relevant time, the question of framing charges against the Petitioner does not arise. Learned Counsel has further taken me through the chargesheet and the documents produced therein and pointed out that there is no material to suggest that the involvement of the Petitioner in the alleged offences and that the Courts below have erroneously rejected the plea put forward by the Petitioner to dismiss the complaint against the Petitioner. The learned Counsel in support of his submission has relied upon the Judgment of the Apex Court reported in Ajay Mitra Vs. State of M.P. and Others, and the Judgment reported in Onkar Nath Mishra and Others Vs. State (NCT of Delhi) and Another, Learned Counsel has also relied upon the Judgment in Ramashish Yadav and Others Vs. State of Bihar, . Learned Counsel as such submits that the impugned Order be quashed and set aside.

4. On the other hand, Shri Ferreira, learned Public Prosecutor appearing for the State-Respondent, has supported the impugned Orders. The learned Public Prosecutor pointed out that even a strong suspicion is sufficient to framed charge against the accused. The learned Public Prosecutor further pointed out that there is a brochure which was circulated before the investment and the name of the Petitioner was figuring as a Director. Apart from that, the learned Public Prosecutor pointed out that in the resolution of the Company produced for the purpose of deciding about the repayment of the amounts, the Accused-Petitioner was very much present. Learned Public Prosecutor further pointed out that at the stage of framing of charge, the High Court cannot go into the aspect of the intention of the Accused and, as such, the above Petition deserves to be rejected.

5. Before going into the rival contentions, on perusal of the Judgment passed by the Courts below, I find that the learned Addl. Sessions Judge has found that there was material on record for framing the charge against the Petitioner. The

Courts below have noted the fact that there was atleast strong suspicion against the Petitioner for framing the charge.

6. After hearing the learned Counsel at length and on perusal of records and the impugned Orders passed by the Courts below, I find that there is no case made out for any interference by this Court at this stage in the impugned Orders. The Courts below after appreciating the material produced along with the chargesheet have come to the conclusion that there is suspicion which can be curled out against the Petitioner for committing the offences. It is well settled that strong suspicion is sufficient for the purpose of framing of the charge at this stage of the proceedings.

7. Shri C. A. Ferreira, learned Public Prosecutor, has rightly pointed out that one of the witnesses Shri Anthony Furtado, had clearly stated that the Petitioner was one of the Directors of the Company and in charge of the Company at the relevant time. The brochure produced along with the chargesheet also discloses that the Petitioner was one of the Directors of the Company at the relevant time when investments were made by the Complainants. As such, at this stage, it cannot be disputed that at the time when money was deposited by investments in the Company, the Petitioner was also associated with the said Company. All these circumstances would draw a suspicion as far as the Petitioner is concerned not only for the charges framed u/s 406 and 420 of the Indian Penal Code but particularly u/s 34 of the Indian Penal Code. The case of the prosecution is that there was a conspiracy between all the Accused including the Petitioner herein to induce the investors to part with the money in the Company. To be part of the conspiracy, a person need not be a Director of the Company. As such, the contention of Shri C. A. Coutinho, learned Counsel appearing for the Petitioner that the Petitioner has no direct control over the Company can only be a defence which can be raised during the trial of the case and this aspect would not be relevant consideration at this stage of framing of charge.

8. The Apex Court in the judgment reported in Sanghi Brothers (Indore) Pvt. Ltd. Vs. Sanjay Choudhary and Others, has held at para10, 11, 13 and 14 thus :

10. In State of Maharashtra v. Som Nath Thapa1 this Court observed as follows: (SCC p. 671, paras 31-32)

31. Let us note the meaning of the word ''presume''. In Black-s Law Dictionary it has been defined to mean ''to believe or accept upon probable evidence-. In Shorter Oxford English Dictionary it has been mentioned that in law ''presume'' means ''to take as proved until evidence to the contrary is forthcoming''. Stroud-s Legal Dictionary has quoted in this context a certain judgment according to which ''a presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged-. In Law Lexicon by P. Ramanatha Aiyar the same quotation finds place at p. 1007 of 1987 Edn.

32. The aforesaid shows that if on the basis of materials on record, a court could

come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.

(emphasis in original)

11. Sections 227, 239 and 245 deal with discharge from criminal charge. In State of Karnataka v. L. Muniswamy it was noted that at the stage of framing the charge the court has to apply its mind to the question whether or not there is any ground for presuming the commission of offence by the accused. (underlined* for emphasis) The court has to see while considering the question of framing the charge as to whether the material brought on record could reasonably connect the accused with the trial. Nothing more is required to be inquired into. (See Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia3 and State of W.B. v. Mohd. Khalid).

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13. After analysing the terminology used in the three pairs of sections it was held (in Antulay case5) that despite the differences there is no scope for doubt that at the stage at which the court is required to consider the question of framing of charge, the test of a prima facie case is to be applied.

14. The present case is not one where the High Court ought to have interfered with the order of framing the charge. As rightly submitted by learned counsel for the appellant, even if there is a strong suspicion about the commission of offence and the involvement of the accused, it is sufficient for the court to frame a charge. At that stage, there is no necessity of formulating the opinion about the prospect of conviction. That being so, the impugned order of the High Court cannot be sustained and is set aside. The appeal is allowed.

9. Considering the said Judgment of the Apex Court and taking note of the fact that the learned Judicial Magistrate as well as the learned Addl. Sessions Judge, has drawn a strong suspicion against the Petitioner which justifies the framing of the charge and also considering the prosecution''s case that the Petitioner is a part of the conspiracy, I find that there is no case made out calling for interference in the impugned Orders passed by the Courts below. The Judgments relied upon by the learned Counsel appearing for the Petitioner are not applicable to the facts of the present case. The accusation against the accused including the Petitioner are grave wherein small investors have been defrauded. In the case of Ajay Mitra vs. State of M.P. & Ors. (supra), the persons/Appellants therein were not at all present in the picture when the alleged offences took place. In the present case, the name of the Petitioner was shown as a Director in the Brochure

which induced the investors to invest the money in the said Company. The Judgment in the case of Ramashish Yadav & Ors. vs. State of Bihar (supra) is also not applicable to the facts of this case. The case there was that there was no prearranged plan to invoke Section 34 of the Indian Penal Code which is not the case in the present proceedings. The incidents disclosed by the learned Public Prosecutor found on record reveal that the Petitioner is, prima facie, involved in the said offences. As such, I find no merit in the above Petition, which stands accordingly dismissed.