
(2011) 12 SC CK 0025

In the Supreme Court Of India

Case No : Special Leave Petition (Criminal) No. 4606 of 2011

Helios and Matheson Information Technology Ltd. and Others APPELLANT
Vs
Rajeev Sawhney and Another RESPONDENT

Date of Decision : 16-12-2011

Acts Referred:

Constitution of India, 1950 — Article 136
Criminal Procedure Code, 1973 (CrPC) — Section 173, 202, 227, 239, 240
Penal Code, 1860 (IPC) — Section 120B, 417, 420, 465, 467

Citation : (2012) 1 ACR 1152 : AIR 2012 SC 660 : (2012) BomCR(Cri) 727 :
(2012) CriLJ 1248 : (2012) 1 JCC 513 : (2011) 14 JT 293 : (2012) 1 KLJ 331 :
(2012) MLJ(Cri) 831 : (2012) 1 PLJR 179 : (2012) 1 RCR(Criminal) 354 : (2012)
2 RLW 1669 : (2011) 13 SCALE 536 : (20

Hon'ble Judges : T.S. Thakur, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : K.K. Venugopal, Altaf Ahmed, Siddhartha Dave, Jemtiben AO, Vibha Datta Makhija, Ankur Tomer, Navkesh Betia and Sandeep Narain and S. Narain and Co, for the Appellant;

Final Decision : Dismissed

Judgement

T.S. Thakur, J.—These Special Leave Petitions arise out of an order dated 6th May, 2011, passed by the High Court of Judicature at Bombay in Criminal Revision Application No. 441 of 2008 whereby the High Court has set aside order dated 13th August, 2008 passed by the Additional Sessions Judge, Greater Bombay in Revision Applications No. 449, 460 and 853 of 2007 and restored that made by the Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai taking cognizance of offences allegedly committed by the Petitioners.

2. Respondent No. 1, Rajeev Sawhney filed Criminal Complaint No. 20/SW/2007 before Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai, alleging commission of offences punishable under Sections 417, 420, 465, 467, 468, 471 read with Section 120B of Indian Penal Code by the Petitioners. The complaint set out the relevant facts in great detail and made specific allegations

to the effect that Petitioners had entered into a conspiracy to defraud him and for that purpose Shri Pawan Kumar, arrayed as accused No. 4 in the complaint, had played an active role apart from fabricating a Board resolution when no such resolution had, in fact, been passed. On receipt of the complaint the Additional Chief Metropolitan Magistrate recorded prima facie satisfaction about the commission of offences punishable under Sections 417, 420, 465, 467, 468, 471, read with Section 120B of IPC, took cognizance and directed issuance of process against the accused persons. Aggrieved by the said order, Revision Petitions No. 449, 460, 853 of 2007 were filed by the accused persons before the Additional Sessions Judge, Greater Bombay, challenging the order taking cognizance and the maintainability of the complaint on several grounds. The revision petitions were eventually allowed by the Additional Sessions Judge, Greater Bombay by his order dated 13th August, 2008 and the summoning order set aside. The Additional Sessions Judge came to the conclusion that although the allegations regarding fabrication of a resolution, taken at their face value, made out a prima facie case of fraud against the accused persons yet the minutes of a subsequent meeting allegedly held on 19th July, 2005, a photocopy of which was filed along with Criminal Revision No. 460/2007 ratified the resolution allegedly passed on 28th June, 2005. The Court on that premise concluded that no fraud or cheating was made out against the accused persons. The Court observed:

The question is only in respect of the incident 28/06/2005 if this incident averred in the complaint is taken as it is without any more facts then certainly leads a prima facie case of playing fraud. However, in this case, it is seen from the record that the complainant had meeting on 19/07/2005, the minutes of the meeting are produced at page No. 293 in Criminal Revision No. 460/2007. This meeting and its minutes are not disputed. The relevant portion of the minutes on 19/07/2005 relevant for our purposes are as under:

Mr. Rajeev Sawhney has agreed to approve and sign the circular resolution for opening the Bank Account of VMoksha Mauritius with State Bank of Mauritius and obtaining the loan facility for the purposes of receiving the purchase consideration and remittance of the subscription money for the issue of preference shares in favour of VMoksha Mauritius with effect from the time of execution and exchange of the above Undertaking and the modification letter for the Escrow Arrangement.

This ratifies the act of 28/06/2005, therefore the minutes of the meeting which is signed by the complainant himself and accused No. 4. Mr. Pawan Kumar and other directors etc. if perused the act of 28/06/2005 is ratified and the complainant thus consented to that act. Therefore, there remained nothing of the cheating to the complainant by the accused.

(Emphasis is supplied)

3. The Court also found fault with the complainant suppressing the fact of a complaint having been filed before the Additional Chief Metropolitan Magistrate at

Bangalore and the alleged non-observance of the provisions of Section 202 of the Code of Criminal Procedure.

4. The above order was then challenged by the complainant, Shri Rajeev Sawhney before the High Court of Bombay in Criminal Revision Application No. 441 of 2008. The High Court came to the conclusion that the Additional Sessions Judge had fallen in error on all three counts. The High Court noticed that the complaint filed before the IV Additional Chief Metropolitan Magistrate at Bangalore had been quashed by the Karnataka High Court on account of a more comprehensive complaint having been filed before the Additional Chief Metropolitan Magistrate at Mumbai. Consequently, on the date the Additional Chief Metropolitan Magistrate took cognizance of the offence alleged against the accused persons there was no complaint other than the one pending before the said Court. The complainant could not, therefore, be accused of having suppressed any material information from the trial Court to call for any interference by the Sessions Court on that count.

5. As regards the alleged non-observance of the provisions of Section 202 Code of Criminal Procedure. the High Court came to the conclusion that the provision of Section 202 Code of Criminal Procedure. had been complied with by the Magistrate while taking cognizance and issuing process.

6. On the question of ratification of the resolution allegedly passed on 28th June, 2005, the High Court held that the Sessions Judge was not justified in entertaining a photocopy of the document relied upon by the accused at the revisional stage, placing implicit reliance upon the same and interfering with the on-going proceedings before the Magistrate. The High Court observed:

The third ground on which the learned Addl. Sessions Judge had allowed the revision of the accused persons and quashed the process was that the acts in dispute were ratified in the meeting dated 19.7.2001. It appears that during the arguments before the Addl. Sessions Judge, a photocopy of a document purporting to be minutes of the meeting of the advisers of the complainant and accused No. 4 Pawan Kumar held on 19.7.2005 was produced to show that the parties had approved the act of opening the account in the name of the Company and securing the loan on 28.6.2005. Firstly, this document was produced for the first time before the Addl. Sessions Judge in the revision application. This document could be treated as a defence of the accused persons. That document was not available before the Addl. C.M.M. when he passed the order. Secondly, this document being the defence could not be taken into consideration for the purpose of deciding whether prima facie case is made out for issuing process. The learned Addl. Sessions Judge observed that signature on the document was not disputed. In fact, the stage of proving that document or admitting signature on that document had never arisen. The original document was not before the Court and only a photocopy of the document purporting to be minutes of the meeting was filed and on the basis of such photocopy produced during the revision application by the accused persons, the learned Addl. Sessions Judge

jumped to the conclusion that such a resolution was passed and the acts of 28.6.2005 were ratified. In my opinion, it will not be appropriate for the Addl. Sessions Judge.

7. The present Special Leave Petitions assail the correctness of the view taken by the High Court.

8. Appearing for the Petitioners M/s. K.K. Venugopal and Altaf Ahmed, learned senior Counsels strenuously argued that the High Court was not justified in reversing the view taken by the Sessions Judge and in remitting the matter back to the trial Court. We do not think so. The reasons are not far to seek. We say so because the averments made in the complaint when taken at their face value, make out a case against the accused. We have gone through the averments made in the complaint and are of the view that the complaint does contain assertions with sufficient amount of clarity on facts and events which if taken as proved can culminate in an order of conviction against the accused persons. That is, precisely the test to be applied while determining whether the Court taking cognizance and issuing process was justified in doing so. The legal position in this regard is much too well-settled to require any reiteration.

9. Learned Counsel for the Petitioners made a valiant attempt to argue that the Revisional Court was justified in receiving documents from the accused persons at the hearing of the revision and decide the legality of the order taking cognizance on that basis. Before the High Court a similar contention was raised but has been turned down for reasons that are evident from a reading of the passage extracted by us above. We see no error or perversity in the view taken by the High Court that in a revision petition photocopies of documents produced by the accused for the first time, could not be entertained and made a basis for setting aside an order passed by the trial Court and dismissing a complaint which otherwise made out the commission of an offence. The accused is doubtless entitled to set up his defence before the trial Court at the proper stage, confront the witnesses appearing before the Court with any document relevant to the controversy and have the documents brought on record as evidence to enable the trial Court to take a proper view regarding the effect thereof. But no such document, the genuineness whereof was not admitted by the parties to the proceedings, could be introduced by the accused in the manner it was sought to be done. We may in this regard gainfully refer to the decision of this Court in *Minakshi Bala v. Sudhir Kumar and Ors.* (1994) 4 SCC 142 where one of the questions that fell for consideration was whether in a revision petition challenging an order framing charges against the accused, the latter could rely upon documents other than those referred to in Sections 239 and 240 of the Code of Criminal Procedure. and whether the High Court would be justified in quashing the charges u/s 482 of the Code of Criminal Procedure. on the basis of such documents. Answering the question in the negative this Court held that while an order framing charges could be challenged in revision by the accused persons before the High Court or the Sessions Judge, the revisional Court could in any

such case only examine the correctness of the order framing charges by reference to the documents referred to in Sections 239 and 240 of the Code of Criminal Procedure and that the Court could not quash the charges on the basis of documents which the accused may produce except in exceptional cases where the documents are of unimpeachable character and can be legally translated into evidence. The following passage is, in this regard, apposite:

7. If charges are framed in accordance with Section 240 Code of Criminal Procedure on a finding that a prima facie case has been made out - as has been done in the instant case - the person arraigned may, if he feels aggrieved, invoke the revisional jurisdiction of the High Court or the Sessions Judge to contend that the charge-sheet submitted u/s 173 Code of Criminal Procedure and documents sent with it did not disclose any ground to presume that he had committed any offence for which he is charged and the revisional court if so satisfied can quash the charges framed against him. To put it differently, once charges are framed u/s 240 Code of Criminal Procedure the High Court in its revisional jurisdiction would not be justified in relying upon documents other than those referred to in Sections 239 and 240 Code of Criminal Procedure; nor would it be justified in invoking its inherent jurisdiction u/s 482 Code of Criminal Procedure to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course. We hasten to add even in such exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence.

10. It is interesting to note that even in the present SLPs the Petitioner has filed an unsigned copy of the alleged minutes of the meeting dated 19th July, 2005. We do not think that we can possibly look into that document without proper proof and without verification of its genuineness. There was and is no clear and unequivocal admission on the record, at least none was brought to our notice, regarding the genuineness of the document or its probative value. The complainant-Respondent in this petition was also not willing to concede that the document relied upon could possibly result in the ratification of an act which was non est being a mere forgery. At any rate the document could not be said to be of unimpeachable character nor was there any judicial compulsion much less an exceptional or formidable one to allow its production in revisional proceedings or to accept it as legally admissible evidence for determining the correctness of the order passed by the trial Court. That apart whether or not document dated 19th July, 2005, could possibly have the effect of ratifying the resolution allegedly passed on 28th June, 2005 was also a matter that could not be dealt with summarily, especially when the former did not even make a reference to the latter.

11. The alternative contention urged by Learned Counsel for the Petitioners that there was suppression of information by the complainant as regards filing of a previous complaint before the Magistrate at Bangalore is also without any substance. The fact that the complaint previously filed had been quashed by the

High Court on account of filing of a comprehensive complaint out of which these proceedings arise is, in our opinion, a complete answer to the charge of suppression. As on the date the Additional Chief Metropolitan Magistrate, Mumbai, took cognizance of the offences in the complaint filed before him no other complaint was pending in any other Court, the complaint before the Magistrate at Bangalore having had been quashed without a trial on merits. Mere filing of a previous complaint could not in the above circumstances be a bar to the filing of another complaint or for proceedings based on such complaint being taken to their logical conclusion. So also the High Court was, in our opinion, correct in holding that there was no violation of the provision of Section 202 Code of Criminal Procedure. to warrant interference in exercise of revisional powers by the Sessions Judge.

12. Reliance placed by Learned Counsel for the Petitioners upon the decisions of this Court in *Pepsi Foods Ltd. and Anr. v. Special Judicial Magistrate and Ors.* (1998) 5 SCC 749 and *State of Orissa v. Debendra Nath Padhi ?* (2005) 1 SCC 568 is of no avail. In the former case this Court simply recognized that taking of cognizance is a serious matter and that the magistrate must apply his mind to the nature of the allegations in the complaint, and the material placed before him while issuing process. The complaint in the present case, as noticed earlier, does make specific allegations which would call for a proper inquiry and trial and the magistrate had indeed recorded a prima facie conclusion to that effect. So also the decision in *Debendra Nath Padhi* (supra) does not help the Petitioner. That was a case where the question was whether at the stage of framing of charge, the accused could seek production of documents to prove his innocence. Answering the question in the negative this Court held:

The law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. No provision in the Code of Criminal Procedure, 1973 (for short the "Code") grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial. *Satish Mehra* case, (1996) 9 SCC 766 holding that the trial court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided. It is well settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence.

13. In the result, we see no reason to interfere with the order passed by the High Court in exercise of our jurisdiction under Article 136 of the Constitution of India. The Special Leave Petitions are accordingly dismissed.