
(2014) 02 BOM CK 0104
In the Bombay High Court
Case No : Criminal Writ Petition No. 8 of 2013

H.K. Trehon

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 154, 190, 2(d), 202, 203
Factories Act, 1948 — Section 37(1), 37(4), 87, 92

Citation : (2014) ALLMR(Cri) 1623 : (2014) 2 BomCR(Cri) 553 : (2014) 142 FLR 706

Hon'ble Judges : Mridula Bhatkar, J

Bench : Single Bench

Advocate : Shivan Desai, Advocate for the Appellant; D. Lawande, Addl. P.P. for Respondent, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Mridula R. Bhatkar, J.—This criminal writ petition is preferred by the petitioners/accused by invoking the power of this Court under Article 227 of the Constitution of India read with section 482 of the Cr. P.C. thereby praying that the two judgment and order dated 23/11/2012 passed by the Sessions Court, South Goa, Margao and also the judgment and order dated 9/1/2012 passed by the Judicial Magistrate First (JMFC), Vasco be quashed and set aside. The respondent/State through a Factory Inspector has presented a Criminal Case No. 7/OA/FA/2012/B against the petitioners accused under the Factories Act of 1948 that the accused have committed an offence punishable u/s 92 of the Factories Act of 1948. On perusal of the said complaint, the learned Magistrate on 9/1/2012 took cognizance and issued summons to the accused and gave notice to the complainant and the matter was fixed on the next date. The said order of the Magistrate was challenged, especially on the ground that the order does not disclose application of mind and therefore, is not legal and proper. The learned Sessions Judge after hearing both the parties rejected the revision and confirmed

the order passed by the JMFC. Hence, this petition.

2. Learned Counsel for the petitioners/accused has taken me to the complaint filed by the complainant, the Inspector of Factories. He submitted that the complaint does not disclose factual matrix, but the complaint is in the nature of the conclusions that there is a violation of certain rules, and certain sections and, hence, the offence u/s 92 of the Factories Act is committed. Learned Counsel argued that in the absence of the factual details, it is not possible for the learned Magistrate to arrive at a conclusion and to take cognizance that the offence mentioned in the complaint has really taken place or not. He has submitted that for the purpose of taking cognizance u/s 190 of Cr. P.C. and, for issuance of process u/s 204, the Magistrate should restrict himself to the complaint and cannot look into the other documents annexed therewith. If this is so, in the present complaint, no details are mentioned about the time, date, place and as to when the offence is committed so. also in what manner the offence has been committed. He submitted that the order passed by the learned JMFC is very cryptic and it does not reflect that he has applied his mind. It is necessary to mention the reasons to disclose that the Magistrate has applied his mind.

3. In support of his submissions the learned Counsel relied on:

(i) Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, .

(ii) Devendra and Others Vs. State of U.P. and Another, .

(iii) Unreported judgment of the Bombay High Court at Goa in the case of Shri S.F.J. Vaz and Shri Suresh Krishna Vs. The State of Goa, .

4. Per contra, the learned Additional Public Prosecutor has submitted that the complaint is filed by the Factories Inspector. All the necessary details in respect of the commission of the offence are mentioned. The details and the nature of violation of a particular rule is specified initially against the accused Nos. 1 and 2 and thereafter accusations are made separately against the accused No. 3 that there is a violation of section 37(1) and 37(4) of the Factories Act. He further submitted that in the complaint at Clause No. 6 the complainant has mentioned that the list of the documents are enclosed as per the Annexure "A". Thus, these documents at Annexure "A" also form a part of the complaint. The Magistrate can look into those documents to satisfy himself. He further submitted that in view of a defining clause section 2(d) in Cr. P.C. there is no specific nature of the complaint prescribed. In support of his submissions, he relied on the judgment of the Supreme Court in the case of S.M. Datta Vs. State of Gujarat and Another, . He submitted that Chapter XV of the Cr. P.C. pertains to complaints to the Magistrate. A Magistrate u/s 203 of the Code can consider the documents as at the time of dismissal of the complaint. A Magistrate can take into account the statements of witnesses and may direct the investigation u/s 202. He argued that the complaint is filed by the factories inspector, who is a public servant, so it was not necessary for the complainant to step into the box and the verification of

the complaint on oath was not required. The order passed by the learned Magistrate is legal. He relied on the judgment of the Supreme Court in the case of Dy. Chief Controller of Imports and Exports Vs. Roshanlal Agarwal and Others, . He further submitted that the revision filed before the learned Sessions Judge was dismissed and while dismissing the said revision, the Sessions Judge has given reasoned order and so the order of the learned JMFC is merged with the order of the Sessions Judge.

5. A cognizance of the offence on written complaint is taken by the Magistrate u/s 190 of the Cr. P.C. which is a condition precedent for initiating proceedings.

6. Before dealing with the submissions of the Counsel for the parties it is useful to reproduce the relevant definition of the word complaint.

Section 2(d) of Cr. P.C. defines complaint as follows:

2(d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation.- A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;

7. The section refers to allegations either made orally or in writing to the Magistrate. The section does not restrict that the documents should not be a part and parcel of the complaint. It does not specify what should be the form of the complaint. Thus, in fact a complaint presented before the Magistrate can be of any form or in any nature. The main "factor" essentially required is that there should be allegations. As referred in the case of "S.M. Datta, a complaint lodged under the Factories Act before the JMFC of Gandhidhan was in an identical cyclostyled form by filling the blanks. The learned Judges of the Supreme Court while dealing with the similar issue of the quashing of the criminal proceeding, laid down a ratio that in the normal course of events, the criminal proceedings are not to be scuttled at the initial stage, unless the same amounts to abuse of process of law. The complaint need not require the mathematical accuracy or nicety but it should be able to communicate and disclose the offence broadly and if said test is satisfied, then the question relating to quashing of the complaint would not arise.

8. Keeping this on the background, the complaint in the case in hand is examined. The complaint under the Factories Act is in two parts. In the first part, which is first para, the accusation is made against petitioners Nos. 1 and 2 that proper measures and precautions were not taken to prevent and re-. move the accumulation of Liquefied petroleum gas and inflammable paint in certain part in that factory which are required u/s 37(1) and 37(4) of the Factories Act. Further,

it is mentioned that the petitioner Nos. 1 and 2 did not have approved factory plan. They do not hold valid licence and did not submit forms for registration and thus, there is a violation of the Rules Nos. 3, 4 & 6 under the Act. The second part i.e. para No. 2 of the complaint pertains to the breach of the rules made u/s 37(1) and 37(4) of the Act committed by accused No. 3, the manager of the said factory. The complaint discloses that the violation of these rules amounts to the offence punishable u/s 92 of the Factories Act, 1948. Thus the submissions of the learned Counsel for the petitioner that no details in respect of as to when the offence has taken place in what manner the offence has taken place, to enable the Magistrate to satisfy himself and to take cognizance of the offence are not mentioned, are not acceptable. The Magistrate while taking cognizance of the offence has to satisfy on the basis of the allegations made in the complaint whether there is an occurrence of any offence or not. The complaint in the matter in hand though does not specify the time or date of a particular incident or does not specify any particular incident, it appears that there are overall and also specific accusations made in respect of not taking requisite precaution as per the rules. Thus, I am of the view that it cannot be said that the complaint does not disclose the allegations to make out the case u/s 92 of the Factories Act.

9. The another leg of submissions advanced was on the point that the manner in which order was passed. The challenge was raised that the body of the order does not reflect that the learned Magistrate was really satisfied while taking cognizance of the offence.

10. The impugned order dated 9/1/2012 is reproduced as follows:

Perused cognizance taken, issue summons to accused and notice to complainant. Matter fixed for appearance.

11. The word "cognizance" is not defined anywhere in the Cr. P.C., though the Magistrate is empowered to take cognizance u/s 190 of the Code. It is a mental process of the Magistrate and when he arrives at a particular conclusion, it is said that the Magistrate has taken or has not taken cognizance of an offence. It is a pre-charge or pre-trial stage. It is a point of prima facie acceptance that offence might have been committed. It is a stage prior to bail, or plea or discharge. Hence, he is not expected to discuss the reasons of cognizance which are indeed more or less abstract, difficult to express but it takes place on the background of Judge's legal knowledge, experience and conscience.

12. Hence, when the cognizance is taken by the Magistrate, it is not necessary for the Magistrate to give reasoning. A short order u/s 190 of Cr. P.C. disclosing that he has perused the complaint and has taken the cognizance and issued the summons is sufficient u/s 204. It may appear cryptic but it is not illegal. The law does not contemplate a Judge to give reasoned order in some proceedings. In such proceedings, a word or two words order is sufficient and it cannot be said a cryptic order. The two words order also manifests a satisfaction of a judicial mind. For example, when an appeal is admitted the word "Admit" and for petition

word "Rule" are sufficient, when Leave to Appeal is granted the words "leave granted" are sufficient. Such orders manifest that the Judge has applied his/her mind. Generally, when the positive orders are passed in such stages of the proceedings it is not required to state the reasons but when particular relief is refused or an application is rejected then it is obligatory to state the reasons. In order to fortify this proposition, section 203 and 204 of the Code may be visited.

203. Dismissal of complaint. If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) u/s 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.

204. Issue of process.

(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be-

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 87.

13. In the case of Dy. Chief Controller of Imports and Exports Vs. Roshanlal Agarwal and Others, , the Hon"ble Judges of the Supreme Court have observed as follows:

8. The second reason given by the High Court for allowing the petition filed by the respondents (accused) is that the order passed by the Special Court taking cognizance of the offence does not show that the learned Magistrate had even perused the complaint or that he applied his judicial mind before taking cognizance. The order passed by the learned Magistrate reads as under:

Cognizance taken. Register the case.

Issue summons to the accused.

14. In the said judgment, the learned Judges of the Supreme Court have made reference to the finding by the Supreme Court given in the case of Kanti Bhadra Shah and Another Vs. The State of West Bengal, .

The legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. The process issued to accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order.

15. Thus, at the time of taking cognizance, a judicial approach and the application of the mind of the learned Judge is necessary. So when such order is passed, there is a presumption of trust that a Judge has considered the accusation in the complaint and thereafter, the cognizance is taken. The words "cognizance taken" thus, in fact manifest the satisfaction of the judge and therefore speaking order is not required and the said order cannot be labelled as a blanket order. It is made clear that if reasons are stated it also can not be bad in law. In the case of "Shri S.F.J. Vaz", the learned Single Judge of this Court has taken a view that any document which is relied upon or even annexed to the such a complaint would only be evidenced to support the allegations made in the complaint. It was observed that the complaint should disclose all the details. It is further held that the complaint must state the necessary factual allegations to make out the offence alleged. This finding cannot be disputed. It is to be noted that the complaint u/s 190 is different than the F.I.R. recorded u/s 154 of Cr. P.C. The F.I.R. is not expected to be in the form of a detailed evidence. Similarly, the complaint given also may not include all the details which can be adduced as an evidence. It is necessary for the complainant to disclose the accusation and make it clear about the area of the accusations to enable the accused to understand the charges and allegations against him. If the documents form a part of the complaint or there is a mention that the documents which are annexed to the complaint are relied by the complainant, then those documents can be looked into. While dismissing a complaint u/s 203 the Court is required to consider the statements on oath not only of the complainant but also of the witnesses and the result of inquiry or investigation, if any, carried out u/s 202 and thereafter the Magistrate has to form opinion whether there is sufficient ground to proceed or not to proceed. Thus, while dismissing the complaint he is expected to ascertain and form opinion not only on the basis of the complaint but also the statements of witnesses and the result of the inquiry or investigation. Therefore, while taking cognizance, the Court has to first verify whether the offence is made out in the complaint or not and in support of it, if at all the documents forming integral part of the complaint, then, those documents can also be referred. Mere mentioning of a document as an annexure may not be correct if document is not referred in the complaint in support of the allegations. Thus, it appears on the nature of the allegations so also the facts involved in

each of the case and the manner in which the complaint is presented.

16. In the case of "Pepsi Foods Ltd. and anr." a challenge was under sections 482 r/w 226 and 227. In the said case, the Supreme Court has gone into the merit of the case to find out whether the offence was really made out or not in respect of food adulteration and also has considered the preliminary evidence recorded by the Magistrate and then after considering the complaint and entire preliminary evidence, it allowed the appeal. Thus, the facts of this present case are distinguishable. However, in the said case, the Supreme Court in para 28 (reported in (1998)5 S.C.C. page 760) has observed that at the time of summoning the accused, the Magistrate may apply his mind to the facts of the case and he may examine the nature of the allegations made in the complaint and the evidence both oral and documentary. In the case of "Devandra and others", the accused were prosecuted for the offence of cheating and forgery. The dispute was between the family members pertaining to joint family property. A charge-sheet was filed against the accused and after considering the evidence in the charge-sheet, application for quashing u/s 482 was placed before the High Court. The Supreme Court has allowed the appeal and has quashed the proceeding. However, in the said case also, it was made clear that the Magistrate to apply his mind to the contents of the charge-sheet at the time of taking cognizance of the offence. Thus, in sum and substance whether the offence is made out in the complaint is a material fact. While invoking the power under Article 226 of the Constitution and 482 of the Code, the High Court has to consider whether there is any abuse of the process by the learned JMFC when the process is issued. If the complaint discloses the offence then it is not proper to scuttle the proceeding at the threshold and render the complainant without forum. In the present case, I am of the view that the order passed by the learned JMFC and the order passed by the learned Sessions Judge are legal and confirmed.