
(2018) 03 MP CK 0197
In the Madhya Pradesh High Court
Case No : 3188 of 2011

Kailashchandra

APPELLANT

Vs

Vikram & Anr.

RESPONDENT

Date of Decision : 05-03-2018

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Code of Criminal Procedure, 1973, Section
482, Section 200 - Savin

Citation : (2018) 03 MP CK 0197

Hon'ble Judges : Rajendra Mahajan

Bench : Single Bench

Advocate : Pravin Mishra, Meenu Sharma, Kuldeep Singh

Final Decision : Allowed

Judgement

1. The petitioner has filed this petition under Section 482 of the CrPC for quashing the complaint, the order dated 27.9.2010 and subsequent

proceedings in Criminal Complaint Case No.15828 of 2010 cause title Vikram Sharma Vs. Kailashchandra Agrawal and others insofar as he is

concerned, pending before the court of J.M.F.C Gwalior.

2. The brief facts necessary for adjudication of this petition are given below :-

(2.1A) On 24.12.2008, respondent No.1/complainant has filed a complaint under Section 200 CrPC for the prosecution of the petitioner and four

other accused persons for the offences punishable under Sections 409, 420, 467, 468, 471 and 120B of the I.P.C in the then court of Shri Alok

Mishra, the Judicial Magistrate First Class Gwalior. He states in the complaint in the sum and substance that he was appointed first time as a clerk

on 2.12.2000 in the State Bank of Indore (in short ""the S.B.I"") Branch Kampoo Gwalior. At that time, he had been assigned a job to deal with

current accounts of the customers. Some months later, he was transferred to the FDR Section of the Branch. In May 2001, he met with a grievous

vehicular accident. Consequently, he had to remain on leave for a period of two months. In September 2001, he was given the charge of the

advance clerk. In that capacity, he worked for about one year. Later, the charge of the advance clerk was given to another clerk by the name of

Ullhas Kavdikar, and he was assigned a job of reliever clerk. On 1.9.2004, he was transferred to the S.B.I Service Branch Gwalior. As such, he

worked in the Kampoo branch of the S.B.I from the years 2002 to 1.9.2004 on various capacities. In the period between January, 2004 and July

2004 in the Kampoo Branch of the S.B.I, accused No.1 Kailash Chandra Agrawal, the petitioner herein, was posted as Field Officer whereas

accused No.2 Sunil Dutt Gupta, accused No.3 Omprakash Jain and accused No.4 Devendra Kumar Rajoriya were posted as the Manager, the

Special Assistant Incharge Saving Accounts and the Head Cashier respectively. Accused No.5 Tukaram Ninave was then posted as Chief

Manager (Advance Loan) in the Regional Office of S.B.I at Gwalior.

(2.1B) He further states in the complaint that the S.B.I is a nationalized bank and the loans to the borrowers were given as per the policy of the

Reserve Bank of India. The policy-details are given in para 4 of the complaint. The Reserve Bank had emphasized upon the employees of all the

nationalized banks to strictly follow the scheme of KYC, which stands for ""know your customers"". In the period between January 2004 and

1.9.2004, accused No.1 the petitioner herein, and accused No.2 to 5 had entered into the criminal conspiracies, and they gave loans to nine bogus

borrowers taking bogus guarantees/securities from bogus guarantors/sureties. The details thereabout are given in para 7 of the complaint.

(2.1C) He further states in the complaint that when the higher officials of the S.B.I came to know about that fraud, then accused No.2 Sunil Dutt

Gupta in order to save himself and the aforementioned four accused persons lodged a written F.I.R at Police Station Kampoo Gwalior on 11.9.2004

against him (respondent No.1/complainant) and bogus borrowers and their guarantors by name. Upon his written FIR, the police registered a case

at Crime No.324 of 2004 under Section 420, 409 and 201 of the I.P.C.

(2.1D). He further states in the complaint that he was falsely implicated in the case because he is not responsible for giving loans to bogus

borrowers on the bogus guarantees. He made several representations to higher authorities of the SBI for his false implication but they did not take

cognizance on his representations. Thereupon, he gave a written complaint at Police Station Kampoo against aforementioned accused persons, but the

police did not take any action upon his complaint. Under the circumstances, he has no option but to file this complaint to seek justice from the

court.

(2.2). Learned J.M.F.C recorded the statements of respondent No.1/complainant Vikram Sharma and his witness Sarvendra Kumar Singh as

witnesses No. (PW1) and (PW2) on 31.1.2009 and 5.5.2009 respectively. Later, he called for the relevant documents from the SBI . On

27.9.2010, the learned JMFC ordered to register the complaint under Sections 409, 420, 467, 468, 471 and 120B I.P.C against accused No.1,

the petitioner herein, and the abovenoted accused persons. The learned JMFC also ordered to secure the presence of the accused persons

through the execution of arrest warrants. Feeling aggrieved thereby, the petitioner/accused No.1 has filed this petition for quashment of the

complaint, the order dated 27.9.2010 and subsequent proceedings in respect of him in Criminal Complaint Case No.15828 of 2010.

3. Learned Counsel for the petitioner submitted that the SBI had held an internal enquiry in the alleged fraud and in the course of which respondent

No.1/complainant is found solely responsible for verifying the documents of identification of the fake borrowers and their fake guarantors and

causing disappearance of material documents. Thereupon, the SBI had not only terminated his services but directed accused No.2 Sunil Dutt

Gupta to lodge the police report against him, bogus borrowers and their bogus guarantors. Thereupon, he lodged the FIR against respondent

No.1/complainant, bogus borrowers and their guarantors at Police Station Kampoo Gwalior. The police registered the FIR at Crime No.324 of

2004 under Sections 420, 409 and 201 IPC against respondent No.1/complainant and others. He further submitted that in that police case, the

petitioner and the accused Nos. 2 to 4 are the main prosecution witnesses. As a

counter blast, respondent No.1/complainant has filed this complaint with malafides to impeach their credibilities in the police case and to harass and torture them mentally, physically and financially. After referring to the contents of the entire complaint, he further submitted that there is no iota of allegation against the petitioner in the complaint as to why he has been made an accused in complaint case by respondent no.1/complainant. He further submitted that in view of the above facts, the parameter No.7 laid down in the case of State of Haryana Vs. Bhajan Lal, 1992 AIR 604 SC, is applicable for quashing the complaint, the order dated 27.9.2010 and subsequent proceedings in Criminal Complaint Case No.15828 of 2010 insofar as the petitioner is concerned.

4. Learned counsel for the respondent No.1/complainant vehemently defended the registration of the complaint against the petitioner and the order dated 27.9.2010.

5. Learned Public Prosecutor for respondent No.2/State left the matter at the discretion of this court as the present case has arisen out of the filing of the private complaint by respondent No.1/complainant. However, he stated that the Police Kampoo had filed the charge-sheet against respondent No.1/complainant and others in Crime No.324 of 2004 after completion of the investigation before the court of the jurisdictional Magistrate.

6. I have given my full consideration to the submissions raised by learned counsel for the parties at the Bar and perused the entire material on record.

7. In State of Haryana V. Bhajan Lal (supra), the Supreme Court has laid down the parameters in para 102 of the decision for exercising all the extraordinary powers under Article 226 of the Constitution of India or the inherent powers under Section 482 CrPC having considered the principles of law propounded by it in a series of earlier decisions. These parameters are given below :

(1). Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2). Where the allegations in the first information report and other materials, if

any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) CrPC except under an order of a Magistrate within the purview of Section 155(2) CrPC.

(3). Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4). Where the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) CrPC.

(5). Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6). Where there is an express legal bar engrafted in any of the provisions of the CrPC (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the CrPC or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7). Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

8. In *Amit Kapoor V. Ramesh Chander*, (2012) 9 SCC 460, in para 19 of the decision, the Supreme Court has expanded the aforestated parameters by adding a few more. The guidelines given in that case were approved by the Supreme Court in *Taramani Parakh V. State of M.P.*

and *Ors .*, (2015) 11 SCC 260,. It is also pertinent to mention herein that in *Prashant Bharti V. State of NCT of Delh i*, AIR 2013 SC 275, the Supreme Court in para 23 of the judgment delineated the four steps to be followed in quashing an F.I.R or a criminal complaint in exercise of the powers vested in the High Court under Section 482 CrPC.

9. In view of the aforestated legal propositions of law, I will proceed to decide this petition.

10. It is an admitted fact that the respondent No.1/complainant has made not only the petitioner but aforementioned employees/officers of the SBI the accused persons of the complaint filed by him before the court of JMFC Gwalior. It is also an admitted fact that they are the principal witnesses of the police case registered against respondent No.1/complainant and others. It is also an admitted fact that respondent No.1/complainant was terminated from services after he had been found guilty of false verification of the documents of the aforesaid bogus borrowers and their bogus guarantors and causing disappearance of the material documents in an internal enquiry conducted by the S.B.I. As per the material on record, the S.B.I. had suffered a total loss of Rs.8,20,000/- (eight lac twenty thousand), which is unrecoverable.

11. From the perusal of the complaint, I find that the respondent No.1/complainant has not categorically stated in his complaint what the role had been played by the petitioner in the alleged fraud or how the petitioner is involved in the fraud. In that view of the matter, I am of the confirmed opinion that respondent No.1/complainant has made the petitioner an accused in the complaint filed by him with an ulterior motive to smite, torture and harass him mentally and financially and to make a base to impeach his credibility in the police case filed against him. As such, the respondent No.1/complainant has abused the process of law by filing this complaint against the petitioner. He will not be allowed to succeed in his evil designs. Therefore, I allow this petition especially in the light of parameter No.7 and quash the complaint, order dated 27.9.2010 and subsequent criminal proceedings in Criminal Complaint Case No.15828 of 2010 cause title Vikram Sharma Vs. Kailashchandra Agrawal and others insofar as the petitioner is concerned. The petitioner shall stand discharged from the bail bonds furnished by him in the said case.

12. Accordingly, this petition is finally disposed of.