(2014) 12 BOM CK 0064

In the Bombay High Court

Case No : Criminal Writ Petition No. 1802 of 2014

Manish Dosal Barot APPELLANT

Vs

The State of Maharashtra RESPONDENT

Date of Decision : 05-12-2014

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 239
Income Tax Act, 1961 — Section 44AA
Penal Code, 1860 (IPC) — Section 120B, 420, 465, 467, 468

Citation : (2015) ALLMR(Cri) 1787 : (2015) 2 BomCR(Cri) 160

Hon'ble Judges : A.M. Thipsay, J

Bench : Single Bench

Advocate : Prabhanjay Dave, Advocate for the Appellant; S.S. Kaushik, APP, Advocate for the Respondent

Judgement

A.M. Thipsay, J.—Heard.

2. As an affidavit in reply had already been filed, by an order dated 14th November 2014, it was decided that the petition shall be disposed of finally at the admission stage itself.

3. Rule. By consent, Rule made returnable forthwith.

4. By consent, heard finally.

5. The petitioner is one of the accused in C.R.No.38 of 2003 which is in respect of offences punishable under sections 465 IPC, 467 IPC, 468 IPC, 471 IPC, 474 IPC, 420 IPC read with section 120B of the IPC. Though all the accused allegedly involved in the matter have not yet been arrested, investigation has been completed, and a charge-sheet has been filed against the applicant and one Tahir Ahmed Khan who are the only two accused in the said case, that have been arrested so far. The petitioner had made an application for discharge, as contemplated under section 239 of the Code of Criminal Procedure (for short

''the Code''), but the learned Addl. Chief Metropolitan Magistrate before whom the case is pending, rejected the same by an order dated 17th May 2012. Aggrieved thereby, the petitioner moved the Court of Sessions by filing an application for revision, but the learned Addl. Sessions Judge dismissed the revision. It is under these circumstances that the petitioner has approached this Court, invoking its jurisdiction under Article 227 of the Constitution and its inherent powers.

6. I have heard Mr.Prabhanjay Dave, learned counsel for the petitioner. I have heard Ms.S.S. Kaushik, learned APP for the State. With their assistance, I have gone through the application and the annexures thereto, which include a copy of the charge-sheet. I have also gone through the counter affidavit filed by the Investigating Officer.

7. The contention of the learned counsel for the petitioner is that there is absolutely no case for proceeding against him. It is submitted that the accusation levelled against him, is groundless.

8. I have carefully gone through the facts. They can be best taken from the counter affidavit filed by the Investigating Officer. In brief, they may be stated as under.

9. In the month of August 2002, one Tahir Ahmed Khan (Accused no.1) claiming to be the proprietor of M/s.Makhdoom Polymers, approached the Bank of India, Saki Naka Branch for grant of a term loan of Rs.22.50 lakhs for purchasing extruder machinery, and working capital limit of Rs.20 lakhs. It was represented that the machinery was to be installed in the premises of the said accused situate at Gala No.4, Shriguppi Industrial Estate, Saki Vihar Road, Saki Naka, Mumbai 400072. One Al-Abid Ahmed Khan brother of the said Tahir Khan, and one Imam Hussain Pathan offered themselves as the guarantors in respect of the loan obtained by the said Tahir Ahmed Khan. After completing the formalities, such as submission of project report, acceptance of the guarantee given by the guarantors etc, loan of Rs.42.50 lakhs was sanctioned in favour of the said Tahir Ahmed Khan. Later on, the Bank realized that Tahir Ahmed Khan had played a fraud upon the bank, and had obtained the loan fraudulently by giving false information, and by providing false documents. Among other things, it was realized that a pay order issued by the Bank of India in favour of M/s.M.R.Engineering Works, whose quotation had been submitted by Tahir Ahmed Khan, was actually got encashed by the said Tahir Khan himself, and that, a bogus account had been opened by him in the said name.

10. It is not necessary to go deeper into the matter, so far as the case against the said Tahir Khan is concerned, inasmuch as there clearly exists a prima facie case of the alleged offences against him.

11. What is the case against the applicant may now be examined. The applicant is a professional Chartered Accountant. The allegation against him is that he had filed the Income Tax Returns of the said Al-Abid Ahmed Khan brother of Tahir

Ahmed Khan in which false particulars and false information, was given. It may be recalled that the said Al-Abid Ahmed Khan had stood as one of the guarantors for the loan that was given to Tahir Khan by the bank, and while standing as a guarantor, the said Al-Abid Ahmed Khan had furnished the copies of his Income tax returns for three consecutive years, and some other documents, to the bank. That, in the course of investigation, it transpired that Al-Abid Ahmed Khan did not have any source of income, and that he was falsely shown as owner of certain land and machinery worth Rs.Three lakhs. That, the applicant being the Chartered Account of the said Al-Abid Khan, had prepared the Income tax returns of the said Al-Abid Khan without the same being supported by any documents.

12. Thus, in short, the case is thus :-

Loan was obtained by Tahir Ahmed Khan from the bank on giving false information, and by submitting forged documents. One of the guarantors offered by him in respect of the repayment of the loan, was his own brother Al-Abid Ahmed Khan. Al-Abid Ahmed Khan had submitted certain documents to the bank including his Income tax returns for three years. These returns had been prepared by the applicant without any supporting documents. Except this, there is no other allegation against the applicant.

13. According to the Investigating Agency, this shows that the applicant shared the common intention with Al-Abid Khan and Tahir Khan of cheating the bank.

14. Mr.Dave, the learned counsel for the petitioner submitted that it was not obligatory at all for the petitioner to have verified the Income tax returns of the said Al-Abid Khan by asking him to produce documents in support thereof. He submitted that such a necessity would arise only in the event of the income of the assessee being above Rs.1,20,000/-, and in support of this contention, he sought to draw my attention to section 44AA of the Income tax Act. In my opinion, even this is not necessary. It is because as per the Income tax returns certified by the applicant, the income of Al-Abid Ahmed Khan in a particular financial year, is about Rs.71,000/-. Al-Abid Khan has paid a meagre income tax of Rs.4,000/-. He was offering himself as a guarantor for Tahir Ahmed Khan who was seeking, totally, a loan of Rs.42,50,000/-from the bank. Thus, it is not that a very high and inflated income of the said Al-Abid Ahmed Khan was shown by the applicant. As a matter of fact, that a person whose annual income was about Rs.75,000/- per month, should be accepted as a guarantor for the repayment of the loan of more than Rs.40,00,000/- by the bank, is itself suspicious, and the Investigating Agency has not investigated into this aspect of the matter.

15. It appears that Ahmed Khan projected himself as the owner of land and machinery worth about Rs.3,00,000/-(Three lakhs) though actually he did not own any such land or machinery. The learned APP has drawn my attention to the observations made by the learned Addl. Sessions Judge, dismissing the revision application filed by the applicant. In paragraph no.12 of the impugned order, the

learned Addl. Sessions Judge has observed as follows :-

"As per the prosecution, the applicant had certified a genuine document showing Al-Abid as owner of land and machinery worth Rs.3,00,000/-, while in fact, he did not own a single pie".

16. Mr.Dave contended that, that is not the prosecution case at all. I have therefore examined the charge-sheet in that context. It is not the case of the Investigating Agency that the applicant had issued, or given any certificate showing that the said Al-Abid Ahmed Khan was the owner of a certain land and machinery worth Rs.3,00,000/-. A copy of this certificate is found in the charge-sheet, and it does not show any certification by the applicant at all. In the affidavit in reply also, such a stand is not taken and what is said is that the applicant had helped the said Al-Abid Ahmed Khan ''in preparing bogus and fabricated Income Tax Returns''. Thus, the learned Addl. Sessions Judge has read something which is actually not there in the charge-sheet.

17. There is no allegation that the applicant has received any part of the money which was obtained by the said Tahir Ahmed Khan.

18. A feeble attempt is made by the learned APP to contend that the applicant was rendering professional services to the main accused Tahir Ahmed Khan also. She has also placed reliance on the material in the charge-sheet which says that certain documents pertaining to Tahir Ahmed Khan were also recovered from the office of the applicant. In my opinion, simply because the applicant might have rendered his professional services to Tahir Ahmed Khan, the applicant cannot be said to be involved in the offences committed by Tahir Ahmed Khan. Moreover, the case against the applicant is not based on his alleged association with the said Tahir Ahmed Khan. The case against him is that he helped Al-Abid Ahmed Khan in preparing bogus and fabricated income tax returns. The income tax returns were used by Al-Abid Ahmed Khan, to have himself accepted as a guarantor for his brother Tahir Ahmed Khan who wanted to, dishonestly, obtain a loan and cheat the bank.

19. There is no material to show the connection of the applicant with the alleged offences particularly when there is no allegation that the applicant had received any part of the money which was obtained by the said Tahir Ahmed Khan by committing the offences in question. This was a case where the charge against the applicant is ought to have been held as groundless.

20. The order passed by the Magistrate as also that passed by the Addl. Sessions Judge in revision are patently illegal and contrary to law. They are, therefore, required to be interfered with, in the constitutional jurisdiction of this Court.

21. The impugned orders are set aside.

22. The petitioner shall stand discharged.

23. The learned Magistrate shall proceed further with the case in accordance with

law.

