

(2003) 04 BOM CK 0093

In the Bombay High Court

Case No : Criminal Writ Petition No. 1143 of 1996

Michael Jackson, through his Constituted Attorney Miss Indra Sajanani **APPELLANT**

Vs

Michael Jackson Fashion (India) Ltd. and State of Maharashtra **RESPONDENT**

Date of Decision : 09-04-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 482
Penal Code, 1860 (IPC) — Section 120B, 415, 420

Citation : (2003) 2 ALD(Cri) 144 : (2003) 4 MhLj 1056

Hon'ble Judges : J.G. Chitre, J

Bench : Single Bench

Advocate : P.V. Sathe and A.R. Sathe, for the Appellant; K.V. Saste, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

J.G. Chitre, J.—Petitioner Michael Jackson is assailing correctness, propriety and legality of the order passed by the Metropolitan Magistrate, 5th Dadar Court in Criminal Complaint No. 229/S of 1996-223/Misc. of 1996, whereby process has been issued against him on account of complaint filed by Respondent Michael Jackson Fashion (India) Ltd. - a Public Limited Company, a incorporated and registered under Companies Act 1956, having registered office at Chandra Industrial Estate, Chandra Milan, Old Nagardas Road, Mumbai and having its Corporate Office at 26 Laxmi Bhavan, Ram Maruti Road, Dadar, Mumbai through its authorised representative Mr. S.K. Sarpotdar qua offence punishable u/s 420 r/w Section 120B of Indian Penal Code.

2. In the said complaint, of which the learned Magistrate took cognizance, allegations have been made against the petitioner, who happens to be a world famous pop singer, that in spite of entering into an agreement, he did not permit the Respondent (original complainant) to use his name for encashing the logo in

commercial world. He alleged that by entering into said agreement, by giving said false promises, petitioner and his associates who have been (SIC) in as accused in the said complaint, made complainant to part with some money and cheated him and therefore, committed an offence punishable u/s 420 of Indian Penal Code. The complainant does not show any ingredients of Section 415, 420 of I.P.C. He alleged that they conspired for committing the said offence. The learned Magistrate took cognizance of the said complaint and issued process against the petitioner and his associates in respect of an offence punishable u/s 420 r/w Section 120B of I.P.C. and that is the subject matter of challenge in this writ petition.

3. Shri Sathe, Counsel appearing for the petitioner, submitted that there is absolutely no document filed along with the complainant showing that the petitioner was really connected with the alleged transaction. He submitted that the petitioner has no concern whatsoever with complaint or complainant company. On the contrary, the lawful attorney of the petitioner company had issued a notice to Chandrakant C. Sheth, accused No. 15 in the said complaint, to stop misuse of the name of the petitioner. Shri Sathe submitted that there is absolutely no case made out by the complainant that the petitioner has committed the offence punishable u/s 420 r/w Section 120B of Indian Penal Code.

4. The original complainant, respondent No. 1 is absent. None is present for him since some dates of hearing prior today. Shri Saste, A.P.P. is present on behalf of the State of Maharashtra who happens to be protector of the prosecution in the Criminal Courts. This Court heard him in the interest of justice, who submitted that an appropriate order be passed as this Court deems fit.

5. In the matter of Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others, . The Supreme Court has held that:

"the legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage".

6. In view of these observations of the Supreme Court quoted (supra) this Court examined the record minute so as to find out any nexus between the petitioner and the allegations made in the complaint for which the criminal Court has taken cognizance had issued the process against the petitioner.

7. Shri Sathe submitted, that the petitioner happens to be a world famous pop

singer and this complaint has been filed, when he was to come to India for his public concerts, which were very much likely to fetch huge income. Shri Sathe submitted that the complaint seems to have been filed for the purpose of allowing him to part with handsome amount in favour of the complainant and that is the oblique motive with which this complaint has been filed. Unfortunately, the trend is growing these days in catching hold of important persons for the purpose of encashing their amounts, their status in the society, their fortunes. Therefore, the submissions made by Mr. Sathe cannot be said to be substance less and they assume substance and importance when the material on record is totally unable to provide even any nexus between the petitioner and the alleged transaction as alleged in the complaint.

8. No agreement which has been signed by the petitioner or any authorised person permitted to act on behalf of the petitioner, has been annexed with the complaint. Even no document alleged to have been signed by the petitioner or a person duly authorised by him to sign on his behalf has been annexed to the complaint. No such document has been annexed to the complaint which would show that the petitioner gave a false promise inducing the complainant to part with any money on account of such promises made by the petitioner or any person duly authorised by him. Section 415 of Indian Penal Code which makes cut the basis for the offence indicated by provisions of Section 420 of I.P.C. provides that:

"whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat". Explanation has been provided which provides that dishonest concealment of facts is a deception within the meaning of this section."

9. When the complaint was filed, the Magistrate was under legal obligation to examine the allegations made in it for the purpose of satisfying himself whether a prima-facie offence has been indicated by it so far as present petitioner is concerned. It is necessary for each Court to consider that then a complaint is presented before it, and somebody has been indicated as an offender, the reputation, well being, his status in the society and his money all get involved at stake. Every allegation in the complaint has to be considered prima facie so as to come to a conclusion whether a case has really been made out so as to take cognizance. Taking cognizance of a criminal complaint is a serious matter and it has to be done with due application of judicial mind because, any mistake is likely to cause irreparable damage to the reputation, status, well being, comfort and money of such a person. Once it gets damaged, the loss seldom can be restored and never it is restored to the same status to which it was, before the cognizance has been taken by the criminal Court. After taking cognizance if

process is issued such person's well being reputation in society, money and status get damaged and said person is put to a torturesome ordeal of facing the trial.

10. In the present case, there is absolutely no material for any judicial mind to come to the conclusion that the complainant has made out prima facie case against the petitioner, who happens to be a world famous pop singer and in majority days stays out of India. If he is required to attend the Court of the trial Magistrate, what sort of agony he would be facing? what sort of hardship he would be facing? What sort of loss to his reputation he would be facing and what sort of damage to the status he would be facing? Once it is lost it cannot be restored to the tune which he was enjoying prior to the happening of such events which Mr. Sathe is very much apprehensive.

11. Every person against whom a ball has started rolling by filing a criminal complaint has right to file a revision petition for challenging such order of taking cognizance by criminal Courts, of challenging the order of issuing the process against him, when that is so, so far as Section 397 of Code of Criminal Procedure, 1973 (hereinafter referred to as Code for convenience) is concerned, he is entitled to approach the High Court, praying for invoking the jurisdiction and authority conferred on it by provisions of Section 482 of Code.

12. Therefore, this Court is allowing the petition which has been filed by the present petitioner Michael Jackson . It has been filed by his duly authorised lawyer, as it has been stated to be so by Shri A.P. Sathe, his Counsel, who happens to be the Advocate having standing practice at bar for number of years. The petition is allowed. The prosecution pending against the petitioner Michael Jackson , Pop Singer, having his permanent resident in Las Vegas, U.S.A. bearing criminal Case No. 229/S of 1996 pending in the 5th Metropolitan Magistrate Court, Dadar Mumbai stand quashed. It is made clear that the said criminal prosecution has been quashed only so far as present petitioner Michael Jackson is concerned.

Parties concerned to act on a simple copy of this order, duly authenticated by the Court Stenographer/Sheristedar of this Court.