
(2013) 02 BOM CK 0098

In the Bombay High Court

Case No : Criminal Revision Application No. 64 of 2008

Mohammad Basitoddin Siddiqi, Syed Gilani, Padmakar
Kulkarni and Mohamad Ahesanoddin Siddiqi

APPELLANT

Vs

The State of Maharashtra and Mohamad Khaisroddin Siddiqi

RESPONDENT

Date of Decision : 05-02-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 244, 245

Citation : (2013) ALLMR(Cri) 967 : (2013) 2 BomCR(Cri) 19

Hon'ble Judges : U.D. Salvi, J

Bench : Single Bench

Advocate : S.S. Choudhari, for the Appellant; D.V. Tele, Assistant Public Prosecutor for respondent No. 1/State and Shri Dhananjay Deshpande, advocate, for the Respondent

Judgement

U.D. Salvi, J.—Heard. Perused. The petitioners, the accused in R.C.C. No. 659/1994, pending in the Court of the Chief Judicial Magistrate, at Latur, have assailed the judgment and order dated 28.1.2008, passed by the learned Adhoc Sessions Judge-4, at Latur in Criminal Revision Petition No. 68/2007.

2. The respondent No. 2 lodged the complaint being R.C.C. No. 659/1994 against the petitioners in the Court of the Chief Judicial Magistrate, Latur on 12.12.1994. The respondent No. 2 alleged that the petitioners have forged the document dated 29.10.1989, described as "Kararnama" for the purposes of falsely claiming share in his property and used the said document for his own benefit. It appears that during the process of leading evidence before charge, the respondent No. 2/complainant had examined himself and was to examine few more witnesses in support of his case for the purpose of framing charge; and an application for discharge came to be moved before the learned Judicial Magistrate, First Class on 20.7.2007 when the cross-examination of the respondent No. 2 complainant was not over or reserved and the respondent No. 2 complainant had not closed his evidence before charge. Learned Magistrate heard the parties and discharged the

petitioners/accused on two grounds:

(1) That there was a delay in recording evidence before charge and the complainant had failed to adduce evidence for 12 long years and had proceeded with the process of leading evidence before charge only when the Court was likely to discharge the accused in absence of the evidence, and

(2) The allegation that the respondent No. 2 complainant came to know regarding the alleged forged document/agreement after receipt of summons of Civil Suit No. 601/1992 instituted by the petitioners is doubtful.

3. Before the revisional Court, the order of discharging the accused did not find favour. The learned revisional Court took into consideration the fact that the evidence before charge was not concluded and the order of discharge could have only been passed after giving due opportunity to the respondent No. 2 complainant to lead all his evidence before charge and it was then open for the learned Magistrate to come to the conclusion on the basis of the evidence led by the complainant as to whether no case against the accused had been made out. It is for this reason the learned revisional Court reversed the order of discharge of the petitioner and directed the learned Magistrate to hear the plea on the discharge after giving due opportunity to the parties to canvass their pleas.

4. Learned Advocate Mr. S.S. Choudhari for the petitioners submitted that the learned Magistrate was right in discharging the petitioners/accused as there has been undue delay in leading the evidence before charge and the allegations regarding the knowledge of the forged document to the respondent No. 2 complainant were suspicious. Though he fairly conceded to the warrant u/s 244 requiring giving of opportunity to the respondent No. 2 complainant to lead all his evidence before framing of the charges, he pointed out clause (2) of Section 245 of the Code of Criminal Procedure giving liberties to the Magistrate to discharge the accused in previous stage of the case for good reasons to be recorded by him to hold that, the charge is found to be groundless.

5. Learned Advocate for the respondent No. 2-complainant submitted that it is the requirement of the law as could be seen from the provisions of Section 244 of the Code of Criminal Procedure that it is only on the basis of all the evidence led by the complainant in the cases instituted otherwise than on police report, the Magistrate can conclude whether charge could be framed or no case against the accused has been made out to frame the charges. He further pointed out that the evidence before charge was not concluded and the complainant had in stock few more witnesses to be examined for the purposes of placing before the learned Magistrate all such evidence requisite for framing of the charges. As regards clause (2) of Section 245 of the Code of Criminal Procedure, he submitted that the learned Magistrate had failed to give cogent reasons for reaching the conclusions that the charge made against the petitioners/accused was groundless much so when all the evidence before the charge was not before the learned Magistrate.

6. Pertinently, the offences alleged against the respondent No. 2 arose out of forgery and, therefore, it is incumbent upon the learned Magistrate to have considered all such related evidence which the complainant/prosecution intended to lead before framing of the charges. Section 244 of the Code of Criminal Procedure, which reads as under:

244. Evidence for prosecution.

(1) When, in any warrant-case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

requires the Magistrate to take all such evidence as may be produced in support of the prosecution before framing of charges, and even to go a step further by giving necessary assistance to the prosecution to procure the witnesses or to produce any document or other thing by issuance of summons to any of its witnesses.

7. Section 245 of the Code of Criminal Procedure, which reads as under:

245. When accused shall be discharged:-

(1) If, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

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casts an obligation on the Magistrate to discharge the accused if upon taking all the evidence referred to in Section 244 the Magistrate considers that no case against the accused has been made out, which, if unrebutted, would warrant his conviction. Clause (2) of this provision grants liberties to the Magistrate in the matter of discharge of the accused at any previous stage of the case. However, it expects cogent reasons for considering the charge to be groundless.

8. In the instant case, the respondent No. 2-complainant on oath did not admit the execution of the disputed document or Kararnama and maintained that it was a forged document. His cross-examination was not over. Nothing has come out from the cross-examination that had been done to point out that the disputed document was in fact executed by the complainant. It is only on the basis of the

premise that alleged knowledge of the disputed document is doubtful the learned Magistrate proceeded to discharge the accused. Certainly for the reasons adduced by the learned Magistrate the charge cannot be viewed as groundless. It was, therefore, incumbent on the learned Magistrate to have allowed the complainant/prosecution to lead all such evidence as he wanted to produce in his support before framing of the charges.

Giving of opportunity by the learned revisional Court to lead such evidence cannot be regarded as an illegal or perverse act warranting interference in the present petition. No merit is, therefore, seen in the present petition. However, it is necessary to pass certain directions binding the respondent No. 2 complainant to a time bound schedule in presenting all such evidence necessary for sustaining the charges. Such directions would curtail the mischief of delaying the proceedings unnecessarily. Hence the order:

9. Rule is discharged with no order as to costs. The parties are directed to appear before the learned Chief Judicial Magistrate, Latur on 26th February 2013. The respondent No. 2 complainant shall file list of witnesses and shall secure the assistance of the learned Chief Judicial Magistrate for procuring witnesses, if any, on the date of his appearance and shall complete his evidence before charge expeditiously, preferably within a period of four months. Record and proceedings be sent back to the Chief Judicial Magistrate, Latur.