(2017) 04 BOM CK 0159

In the Bombay High Court

Case No : 726 of 2017

Mr. Amol Shripabhat Shet — APPELLANT

Vs

The State of Maharashtra — RESPONDENT

Date of Decision : 21-04-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 482 - Saving of inherent powers of High Court
Indian Penal Code, 1860, Section 120B, Section 420, <a hre

Citation : (2017) 04 BOM CK 0159

Hon'ble Judges : S.S. Shinde, K.K. Sonawane

Bench : DIVISON BENCH

Advocate : Joydee Chattarji, Rahul Totla, A.S. Radikar, D.R. Kale, Swapnil S. Patunkar

Final Decision : Disposed off

Judgement

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. Both the applications i.e. No. 726 and 1150 of 2017 are filed under section 482 of the Criminal Procedure Code (for short " Cr.P.C .) to quash and set aside the impugned first information report (for short "FIR") bearing crime No. 73 of 2017 registered at Kranti Chowk Police Station, Aurangabad District Aurangabad against the applicants, for the offence punishable under sections 406, 420, 467, 468, 471 and 120-B of the Indian Penal Code (for short " IPC ") and under section 3 and 4 of the Maharashtra

Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (for short "Act of 1999").

3. In addition, applicants also moved applications bearing criminal application No. 1122 and 1123 of 2017 to admit them on bail pending investigation. Similarly, respondent No. 2 filed criminal application No. 1861 of 2017 seeking permission to withdraw the amount.

4. It is the allegation of the complainant - first informant that he is the Director of Precision Competence Repetitions Pvt. Ltd. His company had a transaction with the company of applicants i.e. Anil Limited, by way of Inter Corporate Deposit (for short "ICD"). Accordingly, a sum of Rupees One Crore was accepted by the company of applicants from the complainant in lieu of ICD transaction for a period of 90 days subject to repayment with additional sum @ Rs.16.50% p.a.. Thereafter, the ICD transaction came to be renewed at the instance of company of the applicants for further period of three months. The company of the applicants delivered a cheque for security in favour of complainant. But, it was transpired that these cheques were allegedly signed by the Officers, who were not authorized to sign these cheque on the date of issuing of it i.e. on 01-10-2016. It was revealed that the applicants with intention to defraud and cheat the complainant played mischief by issuing forged document of cheque etc. Therefore, the complainant preferred the impugned FIR for penal action against the applicants.

5. In response to FIR, Police of Kranti Chowk Police Station, Aurangabad, District Aurangabad registered the crime No. 73 of 2017 and set the penal law in motion. Pending investigation, the applicants preferred present application by availing remedy under section 482 of the Cr.P.C. and prayed to quash and set aside the

impugned FIR as the allegations nurtured on behalf of the first informant are totally false, baseless and unsustainable one for penal action against the applicants. The transaction was of purely commercial in nature.

6. On receipt of notices, the respondents including first informant appeared in the proceedings. However, in order to show bonafides the applicants on behalf of themselves and their company have deposited a total sum of Rs. 1,03,71,000/- in this court being an amount of ICD transaction occurred in between the applicants company and the first informant. Albeit, when the matter was taken up for final hearing on merits, respondent No. 3 - first informant came forward and filed affidavit on record. It has been mentioned in the affidavit that the dispute pertains to the commercial transaction in between the applicants company and first informant has already been settled amicably. The applicants company has agreed to refund the entire amount payable to the first informant. Therefore, the grievances of the first informant raised in the first information report are redressed and no dispute is remained to be resolved in between them. Hence, first informant has no objection to quash and set aside the impugned FIR filed on his behalf against the applicants.

7. In view of affidavit filed on record by the first informant relating to amicable settlement of the dispute in between himself and the applicants'' company, we have preferred to interact with the first informant to know about his intention to compromise the dispute with the applicants'' company on his own volition & it is his voluntary act as well as to test his bonafides. The first informant - Kunal Thirani fervidly submitted that the dispute pertains to commercial transaction in between himself and applicants company i.e. Anil Limited has already been resolved

amicably and he has no objection to quash and set aside the impugned FIR. He had also conceded that compromise of the controversy in regard to mischief committed by the applicants'' company is his voluntary act and all his grievances are now redressed. He has also prayed to grant permission for withdrawal of the amount deposited on behalf of applicants'' company in this court. The learned counsel appearing on behalf of applicants also submits that the applicants'' company has no objection to withdraw the amount deposited in this Court by the respondent No. 3 - first informant Mr. Kunal Thirani.

8. At this juncture, it is to be noted that the impugned FIR came to be registered against the applicants for the offences punishable under sections 406, 420, 467, 468, 471 and 120-B of the IPC and under sections 3 and 4 of the Act of 1999. There are allegations about forgery, criminal breach of trust, cheating and criminal conspiracy etc. against the applicants. The entire dispute is emanated after alleged ICD transaction occurred in between first informant and the applicants company. The first informant blamed the applicants'' company that forged cheques were issued having signatures of the Office Bearers, who were not authorized to put their signatures on the cheques during the relevant period. Admittedly, the offences alleged against the applicants seems to be overwhelming and predominantly having civil in nature arising out of commercial transaction in lieu of ICD. Therefore, we do not find any impediment to arrive at the conclusion that whatever allegations of committing mischief by the applicants'' company is basically wrong to the first informant individually and do not have any adverse impact on the public or well beings of the society. Therefore, in view of settlement of controversy amicably in between first informant and the applicants'' company impugned

criminal proceeding initiated against applicants deserves to be quashed and set aside by exercising powers under section 482 of the Cr.P.C. even though some of the charges are non-compoundable one. Definitely, it would sub-serve purpose in the interest of justice.

9. Moreover, it would be necessary to take into consideration that pursuant to such compromise of dispute amongst parties, there would not be any propriety to continue the criminal proceedings against the applicants. Obviously, it would be an exercise of futility. In contrast, in case the dispute between the parties is allowed to be resolved amicably it would put an end to entire controversy and would prevent abuse of process of law and meet ends of justice. Taking recourse of the guidelines delineated by their Lordship of the Hon''ble Supreme Court in the case of Gain Singh Vs. State of Punjab and another , 2012(10)SC 303 , we are of the opinion that the parties to the proceedings be allowed to act upon the amicable settlement arrived at in the alleged commercial transaction, which is the fall out of impugned FIR against the applicants and their company. Hence, we have no hesitation to accept the versions of the first informant for quashing the impugned FIR filed on his behalf against the applicants by exercising powers under section 482 of the Cr.P.C.

10. In view of above discussion, the applications for quashing the impugned FIR stand allowed subject to depositing costs of Rs. 1,00,000/- (Rupees One Lakh) each in both the applications by the applicants in the Registry of this Court. The impugned FIR bearing Crime No. 73 of 2017 registered against the applicants and their company at Kranti Chowk Police Station, Aurangabad District Aurangabad for the offences punishable under sections 406, 420, 467, 468, 471 and 120-B of the IPC and under section

3 and 4 of the Act of 1999 is hereby set aside and quashed against the applicants of both the applications on depositing costs of Rs. 1,00,000/- (Rupees One Lakh) each in both applications by the applicants in the Registry of this Court at High Court Bench at Aurangabad. After deposing a sum of Rs.2,00,000/-(Rupees two lakhs) as an costs on behalf of applicants from both the applications, amount of Rs.1,00,000/- (Rupees One Lakh) be transmitted to the account of Chairman, Police Welfare Fund, Aurangabad City and rest of the amount of Rs.1,00,000/- (Rupees One lakh) be given to the Government Child Care/Shelter Home, Government of Maharashtra, Paithan, tahsil Paithan, District Aurangabad to utilize the same for welfare of inmates of the Shelter Home. It is stipulated that authority of the Shelter Home shall utilized aforesaid amount of Rs. 1,00,000/- (Rupees One Lakh) in consultation with Government Pleader / Public Prosecutor, High Court, Bench at Aurangabad and shall submit its statement of account for appraisal. Rule is made absolute in above terms.

11. So far as application on behalf of first informant for withdrawal of the amount is concerned, in view of disposal of applications bearing Criminal Applications No. 726 and 1150 of 2017, as well as no objection on the part of applicants'' company, the first informant - Mr. Kunal Thirani be allowed to withdraw the amount subject to his identity for the satisfaction of Registrar (judicial) of this court. Accordingly, application for withdrawal of amount is allowed in terms of prayer clause "B" and stands disposed of accordingly.

12. In view of disposal of applications bearing Criminal Application No. 726 and 1150 of 2017, the very purpose of filing applications bearing criminal applications No. 1122 and 1123 of

2017 to enlarge the applicants on bail do not survive as the impugned FIR against the applicants and their company has already been quashed and set aside and no criminal proceedings initiated against the applicants on the basis of crime No. 73 of 2017 is remained alive. There would not be any question to grant bail to the applicants in this proceeding and whatever bail bond furnished on behalf of applicants, if any, be treated as cancelled. Therefore, criminal applications No. 1122 and 1123 of 2017 stand disposed of.