(2013) 12 KAR CK 0403

In the Karnataka High Court

Case No : Criminal Petition No. 8167 of 2013

Mr. Deepak Krishnappa, Director of Metrocorp Infrastructure Ltd., Mrs. Sushma Anandu	APPELLANT
Vs	
Pramerica ASPF-II Cyrus Holding Ltd. and State of Karnataka	RESPONDENT

Date of Decision : 26-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0403

Hon'ble Judges : K.N. Phaneendra, J

Bench : Single Bench

Advocate : Ravi B. Naik, for Sri. Devaraj G, for the Appellant; B. Visweshwaraiah, HCGP, for the Respondent

Final Decision : Allowed

Judgement

K.N. Phaneendra, J.—Heard the learned counsel appearing for the petitioner as well as the learned Government Pleader for the State. The brief factual matrix that emanate from the records are that the petitioner along with others are engaged in development and construction of Villas near Devanahalli. The petitioners are the promoters and Directors of a Company by name M/s. Metrocorp Infrastructure Ltd., and others. As the Company required funds for the development of its project, approached the complainant company and the complainant company invested Rs. 110 crores. It is alleged that the petitioners have illegally mortgaged the property belonging to the complainant with Accused No. 6 Company by name Rajesh Exports Ltd. It is alleged that the said mortgage was unlawful and it was made for the benefit of the petitioners and other accused persons. It is also alleged that the petitioners were aware that the property exclusively belonged to the accused No. 1 company and they could not have mortgaged the property without the consent of the complainant company. This illegal act of the petitioners along with other accused persons caused great loss and inconvenience to the complainant and it is alleged that this has been done in order to defraud the complainant company to the tune of Rs. 35 crores.

On making such other allegations in order to attract Sections 420, 403, 405, 418 of IPC, the complainant invoking the jurisdiction of IV ACMM, lodged a private complaint u/s 200 of Cr.P.C. The learned Magistrate registered the case under PCR No. 6154/2013 on 23.03.2013 and on 06.04.2013 after perusing the complaint averments and the documents produced had passed a brief order taking cognizance of the offence alleged against the accused persons in the said case for the offences punishable under Sections 403, 405, 418 and 420 read with Section 34 and 120(B) of IPC and called upon the complainant to lead evidence before issuance of summons to the accused. After few days on 27.07.2013, the sworn statement of the complainant was recorded and two documents were marked and one more witness was examined on 17.08.2013 and some more documents Ex. P23 to Ex. P26 were marked. The learned Magistrate on 03.09.2013 passed an order to issue summons to accused 1 to 11 and posted the case for appearance of the accused persons on 05.10.2013.

2. The learned counsel appearing for the petitioner submitted that though the summons were served, the petitioners could not appear before the Court due to some inconvenience. On 05.10.2013, it appears summons was not served and the summons appears to be in transit. The learned counsel submitted that on 16.11.2013, on service of summons, the present petitioners have made an application for exemption before the Court. The learned Magistrate rejected the said exemption application filed by the petitioners and consequently, issued NBW against the petitioners. Apprehending arrest on the basis of the NBW issued by the Trial Court, the petitioners approached the Sessions Court seeking anticipatory bail in Criminal Misc. No. 6188/2013. The Sessions Court rejected the bail petition on the ground that the Investigating Officer has submitted the charge sheet showing these petitioners as absconding and there are sufficient materials to show that the complainant company invested Rs. 110 crores and the act of the accused persons amounts to misappropriation and breach of trust. Therefore, it rejected the Anticipatory Bail application filed by the petitioners. Again seeking Anticipatory Bail, the petitioners are before this Court.

3. The learned counsel have brought to my notice that the complainant also filed an application before the Company Law Board seeking for Statement of Accounts in respect of the money invested in the project and the Company Law Board has not yet passed any orders in this regard. The matter is seized before the Company Law Board. Without taking the orders from the Company Law Board, the complainant unnecessarily rushed to the Criminal Court and lodged a Criminal Complaint in order to cause inconvenience and harassment to the petitioners herein. The offence alleged against the petitioners, as rightly contended by the learned counsel, are not punishable either to death or imprisonment for life, though heavy amount is involved in the project and undisputed facts that the petitioners, who are the promoters of the Accused No. 1 - Company have also invested huge amount in the development of the Villas and to complete the project. It is argued that if the project is not completed as early as possible, the petitioners also going to loose huge amount. Therefore in

order to expedite the development activities, they have mortgaged the properties in the project in order to secure the loan for the purpose of developing the Villas. Looking to the above said materials on record, it discloses that the factual aspects are both admixture of Civil and Criminal Liability of the petitioners though there is no bar for the complainant to lodge a Criminal complaint. The learned Magistrate as well as the Sessions Judge have not whispered anything about the evidence laid by P.Ws. 1 & 2 and also the documents available on record, in order to ascertain what are the serious allegations against the petitioners, but in single sentence, they have stated that there are serious allegations against the petitioners as if the charge sheet has been filed by the police after due investigation. Only two witnesses have been examined and documents have been produced by the complainant. The Court itself has taken the responsibility of inquiring into the matter. The issuance of summons itself discloses that the Trial Court wants the presence of the accused persons before it for further enquiry into the matter.

4. The accused persons have filed application for.'' exemption and the Magistrate has dismissed the application and directed NBW to secure the presence of the accused persons before it. It is not the case that, the accused have absconded from appearance before the Court. The conduct of the petitioners in engaging a Counsel and making an application before the Magistrate, show that the petitioners will make themselves available as and when required for the purpose of enquiry or trial. Looking to the nature, gravity and severity of the case and that too the conduct. of the petitioners when they are ready and willing to subject themselves to jurisdiction of the Court for further enquiry, I am of the view that they should be granted Anticipatory Bail Subject to certain stringent conditions. The apprehension of the petitioners that they may be arrested, in view of the order of the ACMM in issuance of the NBW against the petitioners is reasonable. Before parting with this order, it is seen that Section 438 of Cr.P.C. does not speak about the severity and seriousness of the offence but the Court has to look into the nature of allegations made and also the conduct of the petitioners and to find out whether they are readily available to the Court for further proceedings. If the Court is rest assured of these conditions, there is no impediment for the Court to grant Anticipatory Bail. With these observations, I am of the opinion that the petitioners have made out a ground for grant of Anticipatory Bail. Hence, I proceed to pass the following order:

ORDER

The petition filed u/s 438 Cr.P.C. is hereby allowed.

Consequently, petitioners shall be released on bail in the event of their arrest by the police or voluntarily surrendering themselves in C.C. No. 15955/2013 on the file of IV ACMM, Bangalore within 10 days from the date of receipt of this order subject to the following conditions:

(a) The petitioners shall execute personal bonds for a sum of Rs. 50,000/-

(Rupees Fifty Thousand) each with one surety each for the likesum to the satisfaction of the jurisdictional Magistrate.

(b) The petitioners shall not indulge in hampering the investigation and tampering the prosecution witnesses.

(c) The petitioners shall make themselves available before the jurisdictional Magistrate on all future hearing dates unless prevented by any genuine case.

(d) The petitioners shall not leave the jurisdiction of the jurisdictional Magistrate without prior permission till the case is disposed of.

(e) The petitioners shall also not leave the Country till the case registered against them is disposed of.

