
(2013) 07 BOM CK 0178

In the Bombay High Court

Case No : Criminal Writ Petition No. 685 of 2013

Mr. Dnyananda Sameer Nilekar and Others

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 26-07-2013

Acts Referred:

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

Citation : (2013) ALLMR(Cri) 3522 : (2014) 3 BomCR(Cri) 87

Hon'ble Judges : K.U. Chandiwal, J

Bench : Single Bench

Advocate : K.M. Irani, instructed by and A.A. Kocharekar, for the Appellant; D.R. More, APP for State-Respondent No. 1, Mr. Mayuresh Shrinivas Kulkarni, Respondent No. 2, Party-in-person and Mr. Ketan Chottani, for the Respondent

Final Decision : Allowed

Judgement

K.U. Chandiwal, J.—The respondent no. 2, an Advocate (complainant) desires to argue the matter for himself. His Counsel, Mr. Ketan Chottani is discharged. Heard extensively. Rule made returnable forthwith. A unique litigation between an Advocate and his client has reached this court. On a complaint by respondent no. 2, process for offence u/s 420, 120B of I.P.C. issued by learned Judicial Magistrate, First Class, Pune, on 15.2.2012, confirmed in Criminal Revision No. 157 of 2012 by the learned 9th Additional Sessions Judge, Pune, is questioned by original accused.

2. The accused-applicants, a couple had difference in their matrimonial life, had approached respondent no. 2 for his legal advise. Applicant no. 1 Smt. Dnyananda (Wife), was known to the complainant through her parents. The complainant advised that a petition for Divorce by mutual consent could be filed. Parties had 4-5 sittings. Complainant e-mailed draft of such consent petition to the wife, while it could not reach the husband. After the draft having been transmitted to the accused-applicants, the complainant/Advocate did not receive

any response. He felt, he was deceived as his skill in legal profession was utilized and a fraud was played upon him by the couple, by using the draft of mutual divorce.

3. During submissions of learned Counsel for the accused-applicants, at the midst, court has asked him whether his clients are ready to pay professional fees by whatever name it is called, to original complainant and on instructions he has said his client would release Rs. 20,000/- without prejudice to their rights, to get rid of the mischievous prosecution which is according to him is indeed a persecution.

4. During turn, for the original complainant- an Advocate, same question was put to him and he says, if Rs. 50,000/- are released, he has no objection to entertain the petition for quashing.

5. Learned Counsel for the applicant submits that there could not be an element of breach of contract or there could not be element of criminal conspiracy to attract effect of provisions of Section 120B. He says, the couple was at the loggerhead at the initial stage, and it could not be termed that they had hatched a conspiracy to deceive the complainant, an Advocate known to them. It is an act of God having approached for legal advice, but the prosecution brought them together and now they are fighting unitedly.

6. The party-in-person/the complainant, at the outset raised objection in respect of maintainability of the petition as scope of exceptional jurisdiction u/s 482 Cr. P.C. could not be exhausted lightly and in such a superficial manner. He says, it is a chance litigation. According to him, his services as a professional/advocate were availed. They had promised to pay him half of the professional charges, but they did not pay it. The element of deception is apparent. According to him, two situations are carved out in Section 415 of I.P.C. and his allegations squarely fit in the later part thereof. He has relied to the judgment of Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, , to the judgment in the matter of Indian Oil Corporation Vs. NEPC India Ltd. and Others, , and to the judgment of the Supreme Court in the matter of Iridium India Telecom Ltd. Vs. Motorola Incorporated and Others, .

7. There should not be a contest on legal proposition in respect of exercise of powers of this Court in terms of Section 482 Cr. P.C. In AIR 1960 SC 866, in the matter of R.P. Kapoor, the legal position was explained which has been referred in subsequent judgments. The three Judges bench in the matter of Gian Singh Vs. State of Punjab and Another, while dealing with situation of permitting compounding in non compoundable cases, has also again impressed as to what are the parameters for exercise of powers u/s 482 Cr. P.C. In the latest judgment in the matter of Amit Kapoor Vs. Ramesh Chander and Another, these principles are reiterated. In most of the reported judgments the principles enunciated in the matter of R.P. Kapur Vs. The State of Punjab, and in the matter of State of Haryana and others Vs. Ch. Bhajan Lal and others, are referred. The three

Judges Bench, in the matter of Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, cautioned the courts about exercising of its powers. In Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others, , the Supreme Court observed in para 7, 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 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 utilized for any oblique purpose and where in the opinion of court chances of ultimate conviction is bleak, and, therefore, no useful purpose is to be served by allowing the prosecution to continue, the court may while taking into consideration the special facts of the case also quash the proceeding even though it may be at a preliminary stage.

8. It is also a settled principle, that judicial process should not be an instrument of oppression for needless harassment. Foundation of justice and maintaining of law and order in the society are prime objects of criminal justice. It should not be a means to use as a weapon to wreak personal vengeance. The parameters indicated in the matter of Bhajanlal or in the matter of Nagawwa are as under:

(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

9. Keeping in view the legal position indicated above and the latest view of the Apex Court, I have no hesitation to hold this is a fit case to exercise powers u/s 482 Cr. P.C. Such powers need to be put on wheels to interdict such a proceeding as continuance of criminal proceeding amounts to an abuse of the process of court. This is more so the complaint prima facie do not disclose a triable offence. Accused applicant need not be faced with the agony of such legal proceeding. This is the root basis requiring interference in the matter.

10. Conspectus to facts/case needs revaluation. The accused-applicants, already harassed couple, with trust deficit, difference of opinion in matrimonial life, though well educated, approached the complainant for legal advise. This contact

was with a hope of proper advise. Naturally, to a person professing a noble profession. The complainant, as Advocate, after hearing the parties handed draft petition for mutual divorce. There is no controversy to this aspect. The fact remains, if the couple has thereafter decided not to prosecute their controversies or discord and to have a happy married life, can it be said to be dishonest intention to approach the complainant for his legal advise. The answer is, there could not be of dishonest intention at initial stage. It is absurd to think, for a couple, to hatch a conspiracy, will approach an advocate making a show of difference in their marital life and ensure the Advocate to part with his valuable knowledge which is his property to deliver by way of a divorce petition. Basic requirement for invoking criminal prosecution is, such intention must be shown to exist at the time of making of inducement. Mere failure to keep promise subsequently, will not lead to cheating. There is no element by the accused-applicant to induce the complainant by any representation to draft petition and thereafter back out.

11. Even if as the complainant says, his case squarely comes within the parameters of Section 415 of I.P.C. the above referred factual situation illustrates the scenario, wishfully was developed by the complainant to achieve his agenda for recovering his professional fees. He knew, being well versed in the field, how to squeeze a litigant, not familiar to court system. Resultantly, gullible litigant has faced the brunt. Reading of the complaint petition as a whole, the basic ingredients for infraction of Section 420 or 415 or 120B of I.P.C. are miserably lacking. Not acting on legal advice and not paying fees could be stretched to a civil wrong, without clamour of criminality. Both the courts were expected to look into the legal position, peculiar facts relating to recovery of fees and then to have adverted for appropriate order in legal frame. There should not be poverty of thoughts. I quite see this litigation has proved a windfall for the couple to unite and contest. However, that will not primarily mean that the couple prognosticate conspiracy. It may be their personal mutual satisfaction, which made the couple not to further prosecute and accelerate the divorce proceeding. It will not amount to an deception, a withdrawal from solemn undertaking or disowning rights. There was no inherent propensity to commit offence. Criminal writ petition is allowed. Rule made absolute.