
(2013) 07 BOM CK 0027
In the Bombay High Court
Case No : Writ Petition No. 236 of 2013

M/s. Chowgule and Company Private Limited	APPELLANT
Vs	
State (Police Inspector)	RESPONDENT

Date of Decision : 01-07-2013

Acts Referred:

Citation : (2014) ALLMR(Cri) 914

Hon'ble Judges : U.V. Bakre, J;A.P. Lavande, J

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

U.V. Bakre, J.—Heard Mr. Lotlikar, the learned Senior Counsel, appearing on behalf of the petitioner and Mr. Amonkar, learned Additional Public Prosecutor (APP), on behalf of the respondent. Rule. Rule made returnable forthwith. The learned APP waives service of notice on behalf of the respondent. By consent heard forthwith.

2. By this petition, the petitioner has prayed that the order dated 22/11/2012 passed by the learned Judicial Magistrate First Class at Panaji (J.M.F.C., for short) in Criminal Misc. Application No. 70/2012/D be quashed and set aside and the respondent be directed to register F.I.R. on the basis of the complaint filed by the petitioner with Panaji Town Police Station and investigate the same in accordance with law.

3. On 3/11/2010, the petitioner lodged a report with the Panaji Town Police Station in which, in short, it has been alleged as under:

The petitioner is the lawful tenant of the portion of the ground floor of the building situated at Dayanand Bandodkar Marg, Panaji, having a carpet area of 163.5 square metres on monthly rent of Rs. 865/-. The vacant possession of the said premises was handed over by the petitioner to M/s. Rizvi Estate and Hotels Pvt. Ltd., the then owner of the building in terms of an agreement dated 2/4/1988 and pursuant to the Consent Decree dated 12/04/2007 passed by the

Civil Judge, Senior Division, Panaji in Special Civil Suit No. 294/1991/A, the vacant possession of the demised premises were restored to the petitioner and the petitioner had regularly remitted the monthly rent to M/s. Rizvi Estates and Hotels Pvt. Ltd. About five months ago, the petitioner learnt that forcible possession of the whole of the demised premises, except one room thereof admeasuring 46 square metres, had been illegally and clandestinely taken over by Mr. Tahir Isani and his wife Mrs. Zeenat Isani, partners of a business firm. Both Mr. Tahir Isani and Mrs. Zeenat Isani are guilty of committing the offence since the forcible dispossession is the act of both of them who have acted in concert and with common intention of committing offences. The accused persons have renovated, reconstructed and modified the said portion of the demised premises and they are using the same for their business. Therefore, F.I.R. be registered against Mr. Tahir Isani and Mrs. Zeenat Isani for the offences punishable under Sections 427, 441, 442, 443, 444, 445, 446, 451, 453 and 456 read with Section 34 of Indian Penal Code (I.P.C.) and the matter be investigated.

4. It is the case of the petitioner that since no F.I.R. was registered by the Panaji Police, for nearly 9 months, the petitioner sent reminder to the Officer-In-charge of Panaji Police Station on 27/8/2011. In response to the same the Police Inspector wrote to the petitioner that the matter was of civil nature.

5. The petitioner thereafter filed Criminal Misc. Application No. 70/2012/D before the J.M.F.C., Panaji and by impugned Order dated 22/11/2012, the J.M.F.C. rejected the said application. The learned J.M.F.C. held that, the report does not disclose criminal intention and that ingredients of the sections of I.P.C. are not made out.

6. According to the petitioner the impugned order is patently illegal and suffers from total non-application of mind since the complaint made by the petitioner clearly disclosed commission of cognizable offences mentioned therein.

7. By order dated 6/5/2013, this Court directed the respondent No. 1 to file an affidavit disclosing the inquiry, if any, carried out pursuant to the report dated 3/11/2010 filed by the petitioner. Accordingly, the Police Inspector of Panaji Police Station has filed affidavit-in-reply. He has, inter alia, stated as follows:

As per the records of Panaji Police Station the report dated 3/11/2010 along with all enclosures was received by Police Inspector Shri Sandesh Chodankar, then attached to Panaji Police Station, who handed over the investigation to the then Police Sub-Inspector Shri Ramnathkar but there are no records at Panaji Police Station to show that the notice was issued by the said Shri Ramnathkar to the petitioner for inquiries. Subsequently, on 25th January, 2011, Shri Chodankar and Shri Ramnathkar were suspended from services on account of custodial death of one Mr. Cipriano Fernandes. The additional charge of Panaji Police Station was given to the Police Inspector Shri Ramesh Y. Gaonkar. On 27th August, 2011, the petitioner sent a reminder to the Panaji Police Station inquiring about the complaint dated 3/11/2010, which was received by said R.Y. Gaonkar.

Upon receipt of the said reminder and after going through the complaint dated 3/11/2010 and enclosures thereto, Mr. Gaonkar concluded that the said complaint was of civil nature and accordingly by letter dated 12/9/2011 informed the petitioner about the same and requested them to approach the Civil Court for redressal.

8. Learned Senior Counsel appearing on behalf of the petitioner submitted that by virtue of Consent Decree passed in Special Civil Suit No. 294/1991/A, copy of which has been produced on record, M/s. Rizvi Estates and Hotels Private Limited had restored to the petitioner the possession of the demised premises admeasuring 163.5 square metres. He further submitted that Mr. Tahir Isani and Mrs. Zeenat Isani took law in their own hands, criminally trespassed in the demised premises and forcibly dispossessed the petitioner of the demised premises, except to the extent of one room admeasuring only 46 square metres. He further submitted that the said Mr. Tahir Isani and Mrs. Zeenat Isani then committed mischief by renovating, reconstructing and modifying the said portion of which forcible possession was taken by them and continued the criminal trespass by occupying and using the same for their business. He invited our attention to the report dated 3/11/2010, in which all the said facts have been duly mentioned. According to the learned Senior Counsel, the above facts clearly disclose offences punishable under Sections 427, 441, 442, 443, 444, 445, 446, 451, 453 and 456 read with Section 34 of I.P.C. against Mr. Tahir Isani and his wife Mrs. Zeenat Isani. He further submitted that the petitioner had filed Civil Suit against the said trespassers for recovery of possession and that the said Suit has been decreed.

9. Learned Counsel for the petitioner further submitted that the reply filed by the respondent No. 1 reveals that absolutely no inquiry was conducted and there was no basis for treating the case as civil matter. He submitted that the impugned order dated 22/11/2012 discloses total non-application of mind and is patently illegal and therefore is bound to be quashed and set aside. He submitted that the petition therefore be allowed. He relied upon

Superintendent of Police, C.B.I. and Others Vs. Tapan Kr. Singh, .

10. On the other hand, learned APP submitted that the owner of the building had sold the same to Mr. Tahir Isani by Deed of Sale dated 24th April, 2007. He submitted that there is lot of delay in lodging the report and that a preliminary inquiry was duly conducted by the Investigating Officer and since he found that matter was totally of civil nature, by letter dated 12/09/11, the petitioner was accordingly informed. He submitted that the learned J.M.F.C. has dealt with the said matter appropriately and there is no scope for interference with the impugned order. He therefore urged that the petition is liable to be dismissed.

11. During the course of arguments, the learned APP was directed to produce the records of the Panaji Police Station pertaining to the said report dated 03/11/2010 and accordingly the learned APP had produced the same before us.

12. We have perused the petition, reply, documents annexed to the petition as also the records of the Panaji Police Station pertaining to the said report dated 03/11/2010, made available to us.

13. There is no dispute that the petitioner had annexed the copies of the agreement dated 02/04/1988, consent terms dated 12/4/2007 and order passed thereon by the learned Civil Judge Senior Division, Panaji in the said Special Civil Suit No. 294/1991/A, and other documents to the report dated 03/11/2010. Prima facie, it is seen that by said agreement dated 02/04/1988, the petitioner had agreed to vacate temporarily the demised premises admeasuring 163.5 square metres. The consent decree dated 12/4/2007, passed in the said special Civil Suit No. 294/1991, reveals that M/s. Rizvi Estates and Hotels Private Limited had restored to the petitioner the possession of the demised premises to the extent of 163.5 square metres. Therefore, prima facie, there was ample evidence to show that the petitioner was in lawful possession of the said area of 163.5 square metres i.e. the demised premises. The report dated 3/11/2010 specifically says that Shri Tahir Isani and his wife Mrs. Zeenat Isani have illegally taken forcible possession of the demised premises except one room admeasuring 46 square metres and have renovated, reconstructed and modified the said portion, and this has been done stealthily and the accused are guilty of committing serious offence of criminal and house trespass as well as mischief. When a report relating to the commission of cognizable offence/s is received by an officer-in-charge of a police station, he has to register FIR in terms of Section 154(1) of Cr.P.C. in the case of "Tapan Kumar Singh"(supra), the Apex Court has held thus:

It is well settled that a First Information Report is not an encyclopedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eye witness so as to be able to disclose in great details all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details, he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a

cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the concerned police officer is empowered u/s 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can.

14. There can be no dispute that in appropriate cases a preliminary inquiry may be conducted before registering the FIR. A perusal of the records of Panaji Police Station pertaining to the report dated 03/11/2010 lodged by the petitioner, does not reveal that any preliminary inquiry was really conducted for coming to the conclusion that the case is of civil nature and that no cognizable offence is disclosed. It is pertinent to note that the report was lodged on 03/11/2010 but absolutely no action was taken on the same for a period of 9 months due to which the petitioner had to send a reminder dated 27/08/2011. It is only thereafter that by letter dated 12/09/2011 the petitioner has been informed by Police Inspector namely R.Y. Gaonkar that on going through the contents of the complaint and on inquiry, he came to the conclusion that the case is of civil nature. There is absolutely no whisper as to what kind of preliminary inquiry was conducted. In the case of Sandeep Rammilan Shukla Vs. The State of Maharashtra and Others, , a Full Bench of this Court has held that Section 154 of the Criminal Procedure Code places an "absolute duty" on the part of the "Officer-In-charge of a Police Station" to record information and place substance thereof in the prescribed book, where the information supplied or brought to his notice shows commission of a cognizable offence. It has been further held that the power to make preliminary inquiry to pre-registration of a case can be exceptionally or rarely exercised by the officer-in-charge of a Police Station. It has been held that such an inquiry should be completed expeditiously and in any case not later than two days. In the present case, admittedly, no preliminary inquiry was made within the said time limit prescribed in the case supra. The records do not reveal the nature of the alleged inquiry conducted by Police Inspector.

15. It may be that the facts stated in the report dated 03/11/2010 give cause of action to the petitioner to file a Civil Suit. However, the same, prima facie, also disclose the ingredients of many of the offences mentioned therein, some of which are cognizable. In such facts and circumstances, law permits the victim to sue for civil wrong and at the same time proceed against the wrongdoer for

having committed criminal offences. Hence it was incumbent upon the respondent to have registered the F.I.R.

16. As it is stated in the report that the forcible dispossession was carried out clandestinely and stealthily, by keeping the petitioner-company in dark, by taking law into the hands, prima facie it means that the accused persons had taken precautions to conceal the house trespass from the petitioner who has right to eject the trespassers from the demised premises, which is the subject of the trespass. If there was some bona fide claim of right or belief, then the question of doing any acts clandestinely does not arise. Since there was forcible dispossession, prima facie, the entry must have been effected by "house-breaking". The act of trespass was with the intention of causing annoyance. Prima facie, criminal intention is made out. These are the ingredients of Sections 441, 442, 443 and 445 of I.P.C. which are punishable under Sections 447, 448, and 453 of I.P.C. These are cognizable offences. Since there is allegation of reconstruction and modification of the demised premises, it means that material alterations have been made in the premises and the question is whether any wrongful loss has been caused to the petitioner by such alteration. Prima facie, case for registering the offence u/s 427 I.P.C., has been made out. In our view, the said report dated 03/11/2010, prima facie, discloses the commission of offences punishable under Sections 447, 448, 453 and 427 read with Section 34 of I.P.C. as against Mr. Tahir Isani and his wife Mrs. Zeenat Isani. The finding of the learned J.M.F.C. to the effect that the allegations in the nature made in the application and the complaint cannot form the basis for registration of F.I.R. as there is no cognizable offence for proceedings u/s 156(3) of Cr.P.C. as there is a flavour of civil nature is erroneous and liable to be set aside. The respondents are bound to register F.I.R. for the offences as stated above.

17. It is made clear that the findings given hereinabove are for the limited purpose of deciding as to whether the respondent was bound to register the F.I.R. in terms of the report dated 03/11/2010 lodged by the petitioner.

18. In the result, the petition is partly allowed. (a) the impugned order dated 22/11/2012 passed by the learned J.M.F.C, Panaji in Criminal Misc. application No. 70/2012/D is quashed and set aside;

(b) the respondent shall register the F.I.R. on the basis of the report dated 03/11/2010 for offences punishable u/s 447, 448, 453 and 427 read with Section 34 of I.P.C., and investigate the same in accordance with law.

Rule is made absolute in the above terms, with no order as to costs. Petition stands disposed of accordingly.