

(2018) 08 BOM CK 0081

In the Bombay High Court

Case No : Criminal Writ Petition No.483 of 2018

M/S. Lan Eseda Industries Ltd.

APPELLANT

Vs

Shree Hari Rice And Agro Ltd Thr. Director Shri. Prakash
Ramdeo Jaiswal And Another

RESPONDENT

Date of Decision : 16-08-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 156(3), 195, 195(1)(b)(i), 200
Indian Penal Code, 1860 — Section 34, 120B, 181, 193, 196, 197, 198, 199, 200,
207, 209, 210, 218, 406, 409, 420, 467, 471
Recovery Of Debts Due To Banks And Financial Institutions Act, 1993 — Section 25,
28(3)

Citation : (2018) 08 BOM CK 0081

Hon'ble Judges : MANISH PITALE, J

Bench : Single Bench

Advocate : S.A. Chaudhari, Pramod Agrawal, Geeta Tiwari

Final Decision : Dismissed

Judgement

1. Rule, returnable forthwith. Heard finally with the consent of the learned counsel appearing for the parties.

2. The question that arises for consideration in the present writ petition is, as to whether complaint filed by respondent no.1 under Section 156(3) of the

Code of Criminal Procedure (Cr.P.C.) bearing Misc. Criminal Application No. 264 of 2016 before the Court of Chief Judicial Magistrate, Gondia

against the petitioner and others was maintainable in view of bar under Section 195 (1)(b)(i) of the Cr.P.C.

3. The facts leading to filing of the present writ petition are that the respondent no.1 filed a complaint under Section 156(3) of the Cr.P.C. on

27.06.2016 before the Court of Chief Judicial Magistrate, Gondia against the petitioner company, its Directors and others, claiming that the said

persons arrayed as accused, had committed offences under Sections 181, 193, 196, 197, 198, 199, 200, 207, 209, 210, 218, 406, 409, 420, 467, 471 read

with Section 120-B and 34 of the Indian Penal Code. Â It was prayed that a first information report (FIR) be directed to be registered against the said

accused persons, including the petitioner, under the said provisions and a direction be given for conducting investigation in the matter.

4. The background to filing of the said complaint by respondent no.1 was a set of proceedings that were initiated against the petitioner before the

Debts Recovery Tribunal, New Delhi, pertaining to alleged default of loan by the petitioner in respect of immovable property located at Gondia. The

respondent no.1 claimed to be interested in the said immovable property as it claimed to be an auction purchaser thereof. On the contrary, according

to the petitioner, in reality the respondent no.1 was not an auction purchaser and yet it entered into lease agreement with third parties and recovered

amounts towards rent. The Recovery Officer of the Debts Recovery Tribunal, New Delhi, came to the conclusion that the respondent no.1 was a

trespasser in the said property and accordingly the third party that was inducted by respondent no.1 was directed to vacate the said property. The

respondent no.1 approached the Debts Recovery Tribunal as well as the Debts Recovery Appellate Tribunal in respect of such orders passed by the

Recovery Officer, but the proceedings were dismissed. These orders were confirmed by the Delhi High Court as well as the Honâ??ble Supreme

Court.

5. Thereafter, the aforesaid complaint dated 27.06.2016 bearing Misc. Criminal Application No. 264 of 2016 was initiated by the respondent no.1

before the Chief Judicial Magistrate, Gondia, claiming that the petitioner and others arrayed as accused in the complaint had committed the aforesaid

offences by filing false affidavits before the Debts Recovery Tribunal. It was also claimed that false statements on affidavits had been made in a civil

suit bearing Regular Civil Suit No. 414 of 2012 in the Court of Civil Judge, Junior Division, Gondia. It was claimed that a perusal of the contents of the

said documents demonstrated that the said accused persons, including the petitioner, were guilty of the said offences.

6. The Police carried out investigation in respect of the said complaint and submitted its detailed report after recording statements. It was concluded in

the said report that the allegations made by the respondent no.1 pertained to Court proceedings wherein orders had been passed against the

respondent no.1 and some allegations pertained to pending Court proceedings. The respondent no. 1 filed a protest petition against the said report

submitted by the Police, claiming that the said report was biased and it suppressed material facts. A prayer was made that the investigation be carried out by Officer of Crime Branch.

7. Thereafter, the Court recorded verification of respondent no.1 and by order dated 25.07.2017, the Court of J.M.F.C. Gondia, issued process against

the petitioner and others for offences under Sections 197, 198, 199, 200, 207, 209, 210, 406 and 420 read with 34 of the I.P.C.

8. Aggrieved by the same, the petitioner and other accused filed Criminal Revision Application No. 43 of 2017 before the Sessions Court, Gondia. By

judgment and order dated 10.05.2018, the Sessions Court set aside the order dated 25.07.2017 passed by the Magistrate issuing process. But, the

matter was remitted to the Magistrate with a direction for examination of the complainant in terms of Section 200 of the Cr.P.C. and to proceed to

pass appropriate order on the complaint in accordance with law.

9. These orders of the Magistrate and the Sessions Court are subject matter of challenge in the present writ petition.

10. Mr. S.A. Chaudhari, learned counsel appearing on behalf of the petitioner submitted that a perusal of the complaint filed by the respondent no.1 in

the present case demonstrated that allegations pertained to alleged false affidavits and documents filed by the petitioner and others regarding

proceedings before the Debts Recovery Tribunal and the Court of Civil Judge, Junior Division, Gondia. These allegations pertained to documents that

were filed before the said Tribunal and Court and offences were allegedly committed by the accused in the very proceedings filed before the said

Tribunal and Court. On this basis, it was submitted that the bar under Section 195(1)(b)(i) of the Cr.P.C. squarely applied to the facts of the present

case, because the allegations pertaining to alleged offences under Sections 406, 409, 420, 467 and 471 of the IPC pertained to same transactions on

the basis of which allegations for offences under Sections 193, 196, 199 to 210 were made in the present case. It was submitted that when cognizance

by the Court for such offences could have been taken only on a complaint in

writing by the Court before whom such offences had been allegedly

committed by the accused, the complaint filed at the behest of respondent no.1 in the Court of Chief Judicial Magistrate, Gondia, was not maintainable.

It was submitted that the complaint could not be split in respect of the offences alleged against the accused and, therefore, the said complaint was not

maintainable before the Court of Chief Judicial Magistrate, Gondia, which the Courts below completely failed to appreciate. Reliance was placed on

judgment of the Hon'ble Supreme Court in the case of State of Karnataka .vs. Hemareddy â?" AIR 1981 Supreme Court 1417.

11. On the other hand, Mr. Pramod Agrawal, learned counsel appearing on behalf of respondent no.1, submitted that when the said respondent

(complainant) had already placed on record sufficient material to show prima facie commission of offences by the petitioner and other accused under

the provisions specifically stated in the complaint, the same could not be thrown out, only because of the bar under Section 195(1)(b)(i) of the Cr.P.C.

It was contended that if the entire complaint was thrown out, it would be prejudicial to the respondent no.1 and the petitioner and other accused would

go scot-free, without adjudication of the grievance of respondent no.1.

12. In order to examine the contentions raised on behalf of the parties, it would be necessary to refer to Section 195 of the Cr.P.C. which reads as

follows:-

â??195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents

given in evidence.

(1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public

servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both

inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is

alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged

to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub- clause (i) or subclause (ii), [except on

the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to

which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub- section

(1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court;

and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub- section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a

Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the

appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal

Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate: Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be

subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to

the nature of the case or proceeding in connection with which the offence is

alleged to have been committed.â??

13. A bare perusal of the above quoted provision would show that insofar as offences under Sections 193 to 196 and 199, 200, 205 to 211 and 228 of

the IPC were alleged, the Court could take cognizance of allegations pertaining to such offences only on a complaint in writing of the Court before

whom such offences were committed in a proceeding before that Court. The question that arises for consideration is when other offences are also

alleged against the accused along with the said offences, can an aggrieved person (complainant) be told that he cannot file a complaint in that regard

and that only the Court concerned would initiate such proceedings by means of a complaint in writing. In other words, would a complainant be left

remediless when offences other than those mentioned in Section 195 of the Cr.P.C. mentioned in Section 195 (1)(b)(i) of the Cr.P.C. were alleged

and that the criminal law would be set into motion only by a complaint in writing by the concerned Court.

14. In the case of State of Karnataka .vs. Hemareddy (supra), the Court was concerned with a similar situation. It was held in the said judgment as

follows:-

â??8 We agree with the view expressed by the learned Judge and hold that in cases where in the course of the same transaction an offence for

which no complaint by a court is necessary under s. 195(1)(b) of the Code of Criminal Procedure and an offence for which a complaint of a court is

necessary under that sub-section, are committed, it is not possible to split up and hold that the prosecution of the accused for the offences not

mentioned in s. 195(1)(b) of the Code of Criminal Procedure should be upheld.â??

It was clarified in the said judgment by the Hon'ble Supreme Court that the Legislature could not have intended to extend the prohibition contained in

Section 195 of the Cr.P.C. to the offences mentioned therein when committed by a party to a proceeding prior to becoming such a party or when

forgery or false documents were created but much prior to proceeding in the Court or becoming party in proceeding before the Court. But, it was

clearly laid down in the said judgment that it was not possible to split up the complaint when alleged offences were committed in the course of the

same transaction and some of the offences were hit by the prohibition under Section 195(1)(b)(i) of the Cr.P.C.

15. In a Constitution Bench judgment in the case of Iqbal Singh Marwah .vs. Meenakshi Marwah &" (2005) 4 Supreme Court Cases 370, the Hon'ble

Supreme Court while resolving conflict in judgments in respect of interpretation of Section 195 of the Cr.P.C., upheld the view that the bar under the

said provision would apply when any offence affecting administration of justice had been committed in respect of a document produced in Court or

given in evidence in a proceeding in that Court and that the offence should have been committed during the time when the document was in custodia

legis. Â It was clarified that the bar would not apply if the offence was said to have been committed in the context of a document created far outside

the precincts of the Court and long before its production in Court, merely because that document later reached the Court records.

16. The position of law that emerges from the said Constitution Bench judgment of the Hon'ble Supreme Court in the case of Iqbal Singh Marwah .vs.

Meenakshi Marwah (supra) and the Division Bench judgment of the Hon'ble Supreme Court in the case of State of Karnataka .vs. Hemareddy

(supra) needs to be applied to the facts of the present case to examine whether the petitioner was justified in claiming that the orders of the Courts

below deserved to be set aside and the complaint itself deserved to be dismissed.

17. In the present case, the respondent no.1 has alleged that the petitioner and other accused have filed false documents and false affidavits in the

Civil Court at Gondia and false affidavits were filed before the Debts Recovery Tribunal, New Delhi. The allegations pertaining to offences have been

made in respect of such affidavits filed in the proceedings before the said Court and the Tribunal. The relevant portions of the complaint reads as

follows:-

â??13Â The same accused Mr. Sunil Tukaram Pawaskar changed his identity before the Court of Civil Judge Senior Division, Gondia and

represented himself as employee of accused no.5 known to be SKY HIGH INVESTMENT (P) LTD in Regd. Civil Suit No.414/2012. Filing of this

suit proves conspiracy hatched behind by these accused in clandestine manner to defraud the complainants and to grab the property situated at plot C-

4/1 and C-4/2 which is not belonging to them at any point of time and thereby obtain favorable order by misleading the Hon'ble Court. Fraud was

played by accused no.6 in collusion with accused no. 2,3 & 5 by impugning

fabricated loan documents and false suit with false statement on oath in Civil Suit bearing No. R.C.S.414/2012 which was filed on 21.08.2012 in the Court of Civil Judge Junior Division, Gondia is apparently visible on scrutiny of statement and impugned documents. Entire contents vide para 1 to 36 of said Civil suit was false and manipulation of facts and it amounts to commissioning of cognizable offence and this Hon'ble Court is competent to direct P.S.O., Gangazari to take cognizance of offence and register F.I.R. against all the above accused persons. Copy of Civil Suit dated 29.08.2012 is annexed herewith as Doc D-19/Page No.112-129.

15. Accused no.2 appointed accused no.7 named Philip Amolik s/o sh. Samuel Amolik as their authorized representative to file false application u/s 25,

28(3) of the RDDBFI Act on 05.12.2011 by falsely claiming that said plot C4/1 and C-4/2 was mortgaged with accused no.5 named as M/s sky High

Investment (P) by filing frivolous application under section 25, 28(3) of the RDDBFI Act alleging falsely therein that the complainants have entered

into the properties in question, used the same, illegally let out the same and earned huge money which they are liable to return to them as they are

owner of the properties in question. It has been falsely prayed in the application to (a) recover from the Appellants the amount which they have

received/earned from Adani PML and others for the use and Occupation of the properties in question, (b) recover from the Appellants the use and

occupation charges at the rate of Rs.1,00,000/- per acre from August 2008, (c) recover from Appellants interest @ 21% per annum for the period the

money/benefits has been enjoyed till the date of payment, (d) order Adani PML to file an affidavit detailing the period of their occupation and the

actual amount paid by them qua the use and occupation of the properties in question, (e) order the Appellants to disclose on affidavit the names and

addresses of the occupants of the properties in question since their entering into the possession of the property and also the amounts received by them.

Copy of said application is annexed herewith as Doc D17//Page No.91-103.

16. Said accused no.7 named Philip Amolik s/o sh. Samuel Amolik filed another frivolous, false application in collusion on 13.03.2012 on behalf of

accused no.2 under Section 25, 28(3) of the RDDBFI Act praying therein to recover mesne profit/use and occupation charges/debt of Rs.6.45 crores

which has become due and payable for the use and occupation of the properties

in question along with interest @ 21% per annum till the date of payment.

17. Again said accused no.7 filed another frivolous, false application on behalf of accused no.2 in collusion on 16.09.2013 before DRT, Delhi praying therein to adjust the auction money Rs.62,50,000.00 with up-to-date interest towards the recovery. Copy of said application is annexed herewith as Doc D-23/Page No. 164-169.

18. The said accused no.7 on 05.01.2015 filed appeal bearing no.6 of 2015 before Presiding office, DRT Delhi and in that appeal again made false statement on oath about ownership of property. Vide Paraâ?Bâ? of the said appeal falsely stated that â??the said plots were allotted to the appellant by M.I.D.C. The appellant company was in the possession of the property. Subsequently, the respondent no.2 and 3 forcibly, illegally entered into the property. Vide Para â??Oâ? falsely stated that the appellant has also produced the 2 different possession, despite the orders of the Hon'ble Appellate Tribunal and the orders of the Hon'ble Appellate Tribunal. Vide Para â??Dâ? falsely alleged that appellant is company registered under the Companies Act, and is the owner of the lease hold right of the plot C-4/1 and C-4/2 admeasuring 98.90 acres at Gondia Industrial Area, Village Mundipar, Tehsil and Dist. Gondia, Maharashtra. The said plots were allotted to the appellant by M.I.D.C. The appellant company was in possession of the properties. Subsequently, the respondents No. 1 and 2 forcibly, illegally entered into the properties under the cover of illegal auction conducted by the Ld. Recovery Officer, DRT, Delhi. Further falsely alleged in grounds vide Para â??Nâ? that Respondent no.1 and 2 themselves are fraudulent persons and are claiming that appellant has no right in the properties. Here it is to mention that if the appellant is not the owner of the properties, then how these properteis were put on auction by the Ld. Recovery Officer, and what rights the Respondent No. 1 and 2 were going to purchase in participating in the auction held on 27.06.2008. It is strange to note that on one side the respondent no.1 and 2 denying the ownership of appellants over the property and on the other side are asking for inter-se bidding. Vide Para â??Oâ? it is falsely alleged that the amount received by the respondent no.1 and are illegal and unlawful as the respondent no. 1 and 2 have no right in the properties. The appellant is the owner of the properties

and is thus entitled for the entire amounts received by the Respondent No. 1 and 2 from respondent no.4. Copy of the said appeal is annexed herewith as Doc D26/Page No. 197-220.

20. Relying upon false statement made above by accused no.7, the Presiding Officer DRT, Delhi on 16.09.2015 passed judgment in the said matter

against the complainants ordering appropriation of auction money Rs.62,50,000/ towards debt liabilities payable by accused No.2 and thereby caused

unlawful gain of Rs.62.50 lacs from auction money deposited by complainant by the said criminal act. All the accused are benefited to the tune of

Rs.1.50 crores from the outcome of said order. Copy of the said order is annexed.â??

18. A perusal of the said portions of the complaint show that the emphasis of the respondent no.1 is on â??false statementsâ? and â??false

applicationsâ? as also â??false allegationsâ? made in the proceedings before the Tribunal and the Court. Such allegations clearly fall under the bar of

Section 195(1)(b) (i) of the Cr.P.C. Â as these are allegations pertaining to offences during the time when the documents i.e. affidavits and

applications were/are custodia legis. Â The complaint in the present case cannot be split up in respect of offences pertaining to Sections 406, 409, 420,

467 and 471 of the IPC because allegations pertaining to said offences in the complaint pertained to the same transaction, as held in the aforesaid

judgment of the Hon'ble Supreme Court in the case of State of Karnataka .vs. Hemareddy (supra).

19. The learned counsel for the respondent no.1 contended that the complaint could survive at least in respect of offences under Sections 406, 409,

420, 467 and 471 of the IPC even if the bar under Section 195(1)(b)(i) of the Cr.P.C. applied to other offences mentioned in the complaint. But, in

view of the aforesaid position of law laid down by the Hon'ble Supreme Court , the said contention cannot be accepted.

20. In the light of the above, it becomes clear that the complaint bearing Misc. Criminal Application No.264 of 2016 dated 27.06.2016 filed before the

Court of Chief Judicial Magistrate, Gondia, by respondent no.1 was not maintainable. The Magistrate could not have entertained the same and,

therefore, the orders passed by the Magistrate and the Sessions Court are rendered unsustainable. Accordingly, this writ petition is allowed, the

impugned orders are quashed and set aside and it is held that the aforesaid complaint bearing Misc. Criminal Application No. 264 of 2016 filed by the respondent no.1 is not maintainable and hence it stands dismissed. Needless to say, the respondent no.1 would be at liberty to bring to the notice of the concerned Court and the Tribunal about the allegations made by it against the petitioner for alleged false statements and affidavits submitted by the petitioner. If the respondent no.1 initiates any such proceedings, before the concerned Court and Tribunal, they shall be dealt with in accordance with law.

21. Rule made absolute in the aforesaid terms.