(2017) 09 BOM CK 0118

In the Bombay High Court

Case No : 768 of 2014

Mukesh Kumar Godara APPELLANT

Vs

The State of Maharashtra, Through Police Inspector, & Anr. RESPONDENT

Date of Decision : 21-09-2017

Acts Referred:

Indian Penal Code, 1860, Section 354D(2)

Citation : (2017) 09 BOM CK 0118

Hon'ble Judges : S.S. Shinde, A.M. Dhavale

Bench : DIVISON BENCH

Advocate : Dhananjay B. Thoke, M.M. Nerlikar

Judgement

1. This Petition is filed praying therein to quash and set aside the First Information Report bearing Crime No.I-80 of 2014 registered with Begamupra police station, Aurangabad for the offence punishable under Section 354D(2) of the Indian Penal Code.

2. It is the case of the Petitioner that he is working as Branch Manager with the Bank of Maharashtra, Umberkhed Branch, TqChalisgaon, DistJalgaon since 28th October, 2013. In the capacity of the Manager, the Petitioner received phone call from the firm which is being run in the name and style as "Sign N Quality", Aurangabad, which provides sign boards to the said Bank. The said firm claimed that they are having tieup with the said bank in respect of supply of sign boards. Since the Petitioner was having power and authority to place such order, the Petitioner placed the order of sign boards which were subsequently delivered at the Branch at Umberkhed. After receipt of the said delivery, it was revealed that the sign boards so supplied were not as per the required specification. Thereafter, the said firm raised the bill to the tune of Rs.20,700/, which according to the Petitioner was too high and therefore the Petitioner disputed the said bill. Thereafter the informant, who claims to be handling the position as a senior telecalling assistant, used to call the Petitioner in respect of the said bill.

The Petitioner was disputing the said bill, as the consignment was not worth more than three thousand Rupees. The Petitioner in the capacity of the branch manager of the said bank, was responsible and answerable for said expenditure and therefore he refused to fall in line to the demands made by the informant. The informant used to call the Petitioner since from December, 2013 and onwards till the date of registration of the crime. It is part of record that the Petitioner never called back the informant at any point of time in the past, and it is the informant who all the while used to make the phone calls to the Petitioner in respect of the arrears of the said bill. Consequently, on 21st May, 2014, Respondent No.2/informant lodged the complaint with Begampura police station, Aurangabad, and on the basis of said complaint the Crime No.I-80 of 2014 came to be registered for the offence punishable under Section 354D(2) of the Indian Penal Code.

3. It was alleged in the F.I.R. that the informant is working with the said firm since last five years on the position of senior telecalling assistant. As a part of her duty, she made a phone call on 21st May, 2014 at about 4.48 p.m. from her cell No.8237050250 on the land line Number of the said Branch bearing No.02589-240224. After making the phone call, the informant asked for the payment of the arrears of the bill which was pending since long. It is alleged that at that time the Petitioner/accused stalked the informant and used filthy language. Not only this, the Petitioner/accused also tried to seek the sexual favour from the informant. Thereafter the said lady also made the phone call. At that time, as per the version of the informant, the phone was picked up by person namely Deshmukh and he replied that they have not placed any such order and the signature appearing on the stamp is false and forged one. On the basis of said allegations, the F.I.R. in question seems to have been lodged with Begampura police station for the above referred offence.

4. It is the case of the Petitioner that the Petitioner and the said company are having the series of exchange of mails, by and between them after the receipt of the bill dated 6th December, 2013. There is exchange of Emails from 29th January, 2014 to 14th February, 2014, between the Petitioner and the said firm as regards the issue of the bill. In the mail dated 14th February, 214, the said firm also threatened that they would be lodging complaint with the Banking Ombudsman and would also issue legal notice from the Court.

5. It is the further case of the Petitioner that on the date of registration of the crime itself, one SubInspector namely Subhash Hivrale attached to the Begumpura Police Station made a phone call to the petitioner and informed him in respect of registration of the said crime, and also made another phone call on 27th May, 2014 and threatened the petitioner to settle the dues of the said Company. The Petitioner further submits that on 1st July, 2014, the said Sub Inspector threatened the petitioner and asked him to settle the dues of said Company and also demanded the bribe of Rs.50,000/for not arresting the petitioner. As the Petitioner was not intending to pay the bribe, the matter was

reported to the Deputy Superintendent of Police, Anti Corruption Bureau, Jalgaon. Thereafter, said ACB Unit conducted the pretrap panchnama and laid the trap at Chalisgaon. But the said Sub Inspector got clue of the ACB trap and ran away and hence the trap was failed.

6. We have heard learned counsel appearing for the Petitioner and learned A.P.P. appearing for the State.

7. Learned counsel appearing for the Petitioner referring to the grounds taken in the Petition submits that, no prima facie case is made out on the basis of the allegations made in the F.I.R. and an ingredients of Section 354D(2) of the Indian Penal Code do not get attracted. The entire prosecution is motivated and has been initiated for wreaking the vengeance on the Petitioner. Thus, on the face of it, the continuance of the said prosecution would be amounting to abuse of the process of law. . Learned counsel further submitted that conspiracy has been hatched by the concerned Sub Inspector in connivance with the informant for recovery of the illegal amount from the Petitioner. The F.I.R. is false, vexatious and concocted one and has been lodged just to recover the illegal amount of socalled consignment. It is submitted that, even if the facts stated in the F.I.R. are taken as it is, the offence under Section 354D(2) of the Indian Penal Code is not made out. The allegations levelled in the said F.I.R. do not in any way, amounts to monitoring the use by a woman of the internet, Email or any other form of electronic communication. The allegations made in the First Information Report are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is a sufficient ground for proceeding against the Petitioner. Lastly, learned counsel appearing for the Petitioner submits that the Petition deserves to be allowed.

8. On the other hand, learned A.P.P. appearing for the State invites our attention to the allegations in the First Information Report and also the investigation papers. He submits that upon reading the allegations in its entirety, alleged offences have been disclosed.

9. We have given anxious consideration to the submissions of the learned counsel appearing for the Petitioner and learned A.P.P. appearing for the State. With their able assistance, we have perused the pleadings in the Petition, grounds taken therein, annexures thereto and in particular the averments in the First Information Report.

10. It would be apt to reproduce the relevant allegations in the First Information Report, which reads as under: "VERNACULAR MATTER OMITTED"

11. Upon careful reading of the allegations in the First Information Report, as aforestated, the ingredients of the alleged offences have been attracted and consequently alleged offence has been disclosed against the Petitioner. The Supreme Court in the case of Bhaskar Lal Sharma and another vs. Monica and others, (2014) 3 S.C.C. 383 has held that the facts, as alleged in the complaint, will have to be proved which can only be done only in the course of a regular

trial. The appreciation, in a summary manner, of the averments made in a complaint petition or FIR would not be permissible at the stage of quashing of FIR and the facts stated will have to be accepted as they appear on the very face of it. In our opinion, once the ingredients of the alleged offences have been disclosed and alleged offences are constituted, in that case the prayer for quashing the First Information Report deserves no consideration.

12. We have perused the investigation papers which are made available by the learned A.P.P. for our perusal. During the course of investigation, the Investigating Officer has also collected the "Call Detail Records (C.D.R)". Said call record prima facie lends support to the story put forth by the informant. If the further investigation is carried out, truth will surface on record. Mere investigation would not cause any prejudice to the Petitioner.

13. In that view of the matter, when the alleged offence has been disclosed, the same needs investigation, and therefore the prayer of the Petitioner for quashing the First Information Report cannot be entertained. Hence the Writ Petition stands dismissed. Rule stands discharged.

14. We make it clear that the observations made herein before are prima facie in nature and confined to the adjudication of this Writ Petition. This order will not preclude the Petitioner from availing of an appropriate remedy as available in law in the event of filing chargesheet by the Investigating Officer.

