
(2010) 11 DEL CK 0298
In the Delhi High Court
Case No : Criminal M.C. No. 611 of 2008

Nafed	Vs	APPELLANT
State and Others		RESPONDENT

Date of Decision : 30-11-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 156(3), 202, 21
Penal Code, 1860 (IPC) — Section 120B, 156(3), 182, 211, 34

Citation : (2011) 1 AD 23 : (2011) 121 DRJ 160 : (2011) 1 JCC 53

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : T.K. Ganju and A.K. Thakur, for the Appellant; Pawan Bahl, APP for the State, Tarkeshwar Nath and P.K. Mishra, for the Respondent

Final Decision : Allowed

Judgement

V.K. Shali, J.—This is a petition filed by the Petitioner for quashing of order dated 5.7.2007 passed by Sh. R.K. Singh, the learned MM, New Delhi directing registration of an FIR u/s 182/211/469/470/471/499/500/501/34 IPC by P.S. Srinivas Puri as well as FIR No. 364/2007 and the FIR so registered on the basis of the said order.

2. Briefly stated the facts leading to the filing of the present petition are that the Petitioner is a national level co-operative society registered under the Multi State Co-operative Societies Act, having its registered office at NAFED HOUSE, 1, Sidharth Enclave, Ashram Chowk, New Delhi -14. It has branches in different cities all over India. The Petitioner is carrying on business of trading in agricultural and non-agricultural products namely food grains, edible oil, dry fruits, spices, metal ores, metal scraps, chemicals, petroleum products etc. The Petitioner also provides financial assistance to persons /firm/company for the purpose of running their businesses, if they approach with some proposal to the Petitioner company.

3. It is stated in the petition that vide letter dated 19.2.2004, the Respondent

No. 2 approached the Petitioner and represented that his company M/s Pylon Traders Pvt. Ltd. was one of the leading traders of Asafoetida (Heeng) and Pistachio (Kaju) apart from others. It expressed its desire to import the aforesaid two items from CIS countries especially from Kyrgystan and Tazakistan. The Respondent No. 2 further vide letter dated 15.6.2004 is purported to have introduced M/s Kripa Overseas, a proprietary concern of Mr. Sandeep Khanna as the leading dealer of dry fruits and Kirana items. It requested the Petitioner to consider its proposal of importing Heeng and rolling scraps from the said two central CIS countries.

4. Acting on the representation and the promise made by M/s Kripa Overseas company, the Petitioner after negotiation is stated to have extended the financial facility of providing an advance of Rs. 10 crores to M/s Kripa Overseas vide cheque No. 903517 dated 22.9.04 drawn on Union Bank of India. It is alleged that M/s Kripa Overseas failed to comply with its own commitment and contractual obligations. It also failed to import the aforesaid two items and did not give the requisite security amount of Rs. 1 crore under the terms of contract to the Petitioner, while as the cheque of Rs. 1 crore which was given had bounced.

5. The Petitioner on account of the aforesaid transaction lodged a complaint dated 18.5.2006 with the DCP, Economic Offences Wing, Crime Branch against M/s Kripa Overseas and M/s Pylon Traders (P) Ltd. because of which an FIR bearing No. 474/06 dated 26.8.06 u/s 120-B/406/420 IPC was registered by P.S. Sriniwas Puri against various persons including one Mr. Adarsh Bhushan Mitra/ Respondent No. 2.

6. It is further alleged that the Respondent No. 2 was arrested and remanded to police/judicial custody after which he was released on bail. The investigation in the said matter was completed and the charge sheet has already been filed by the investigating agency.

7. It is alleged by the Petitioner that while investigation of the said FIR No. 474/06 was still pending, the Respondent No. 2 /complainant made a complaint to the police but on this basis no action was taken and thereafter he lodged a complaint with the learned MM which was marked to the learned Metropolitan Magistrate Sh. R.K. Singh, New Delhi who passed the impugned order dated 5.7.2007 directing registration of an FIR against the Petitioner along with investigation of the same along with the previous FIR No. 474/06.

8. In the said FIR the allegation was made by the Respondent No. 2 that the letter dated 15.6.2004 by virtue of which Mr. Adarsh Bhushan Mitra, the Director / partner of M/s Pylon Traders (P) Ltd. had allegedly introduced M/s Kripa Overseas, is forged by the Plaintiff/company and its Officers and therefore, the FIR be registered and investigation may be done. The learned Magistrate directed the investigation by the local police after registration of the FIR. The exact language of the order passed on 5.7.2007 reads as under:

Submission heard. Case file perused.

In brief the grievance of the complainant Sh. Adarsh Bhushan Mitra is accused in FIR No. 474/06 PSS.N. Puri is that latter dt. 15.06.4 addressed to Managing Director NAFED has been forged in his name and he has been falsely implicated in the case FIR No. 474/06 PSS.N. Puri. On the allegations of the complainant in the present case there should be a separate FIR and investigation of FIR registered on the complaint of Sh. Adarsh Bhushan Mitra may be conducted with the investigation of the case FIR No. 474/06.

SHO PS S.N. Puri is directed to register the FIR and investigation of the FIR so registered be given to EOW (Crime Branch, Delhi Police) for investigation with case FIR No. 474/06. A copy of order be given dasti to SI Anil Kr. For compliance of order.

At this stage SI Anil Kr. Submits that due to urgent work he has to go out of station and he seeks permission to get FIR registered for 09.07.2007. Allowed.

Put up on 16.7.2007 for compliance report.

9. The Petitioner feeling aggrieved by the said order of registration of an FIR by P.S. Srinivas Puri and investigation to be done on the said FIR No. 474/06 preferred a criminal revision bearing No. 277/2007 titled National Agricultural Cooperative Marketing Federation of India v. State and Ors.

10. The said revision petition was dismissed by the learned ASJ, New Delhi on 5.12.2007. Feeling dissatisfied by the said rejection order, the present petition has been filed by the Petitioner.

11. The learned Senior Counsel for the Petitioner Mr. T.K. Ganju has essentially raised two submissions during the course of arguments. Firstly, it is contended by the learned Senior counsel that the Petitioner has already got an FIR No. 474/06 registered under various sections like 419/420/469/471/120B IPC. The Respondent No. 2 Mr. Adarsh Bhushan Mitra is the complainant in the cross FIR. It is contended by him that the Petitioner is a Co-operative Society dealing in agricultural products and other items. It had advanced a loan of Rs. 10 crores to M/s Kripa Overseas services which was given on the basis of the letter dated 15.6.2004 written by the Respondent No. 2. After advancing the said amount to M/s Kripa Overseas through its partners Sandeep Khanna and Kamal Khanna, it transpired that the said amount of Rs. 10 lacs was appropriated for purposes other than for which it was advanced which amounted to the conspiracy or meeting of minds on the part of the Respondent No. 2. It also came to light that the funds were diverted to the account of Mr. Adarsh Bhushan Mitra as well as a cheque for a sum of Rs. 1 crore which was given as a security money by the said M/s Kripa Overseas had also bounced. Obviously, such a deceit of a public organization could not take place without the meeting of minds on the part of these three-four persons of which Sh. Adarsh Bhushan Mitra was an important person, as it was he who had introduced M/s Kripa Overseas vide letter dated 15.6.2004. The said letter was already under examination and investigation by the Economic Offences Wing of Delhi police were being conducted and therefore,

the present FIR which has been registered by the Respondent No. 2 against the Petitioner and its officers is essentially actuated by ulterior considerations with a view to wreak vengeance.

12. It was contended by the learned Counsel that the law regarding quashing of the FIR has been dealt with by the Apex Court in *State of Haryana and others Vs. Ch. Bhajan Lal and others*, , where seven contingencies have been given by the Apex Court indicting that it is in these contingencies apart from others that an FIR/complaint can be quashed.

13. One of the contingencies which is laid down in the said case is envisaged in Clause 7 of para 102, which reads as under:

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with and ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

14. The second ground on which quashing of the FIR is prayed is that the learned Magistrate while directing the registration of the FIR in terms of Section 156(3) Code of Criminal Procedure has not applied his mind at all before passing a direction to the local police to register an FIR. The learned Counsel has contended that the settled legal position is that the learned Magistrate has the power to refer the matter to the local police for the purpose of investigation at two stages, one u/s 156(3) Code of Criminal Procedure before taking cognizance of the complaint and secondly, even after taking cognizance and recording the statement of the complainant u/s 202 Cr.P.C., it can direct the police to make investigation which will be in the nature of an inquiry. But the scope and purport of these two investigations at two different level would be different. Elaborating this argument further, the learned Senior counsel for the Plaintiff has contended that even while directing the local police to register an FIR the learned Magistrate must be satisfied from prima facie reading of the complaint that commission of a cognizable offence is made out as it is only in such a contingency that an FIR u/s 156(3) Cr.P.C. could be registered. Reliance in this regard was placed on the case titled *State v. Mohd. Iqbal Ghazi and Ors.* 154 (2008) DLT 481 and Division Bench judgment of Karnataka High Court titled *Guruduth Prabhu and Others Vs. M.S. Krishna Bhat and Others*, . It has been contended by the learned Senior counsel that in both these judgments, it has been observed that the learned Magistrate does not have the power to direct the police to register an FIR u/s 156(3) without showing that there is any application of mind by him before giving such a direction. The learned Magistrate must apply his mind and see whether such a necessary direction is warranted in the facts of that particular case or not. It was respectfully contended by the learned Senior counsel Mr. Ganju that if one reads the order dated 5.7.2007 passed by the learned Magistrate, it clearly shows that he has not applied his judicial mind at all to direct the registration of an FIR by the local police against the Petitioner / company a Co-operative Society whose employees are also public servants within

the definition of Section 21 of the IPC. The learned Senior counsel has also relied upon the case titled P. Sirajuddin, etc. Vs. State of Madras, etc., to urge since the public servants were involved against whom the FIR was being registered the local police ought to have made some preliminary primary inquiry before directing the registration of an FIR which has not been done. Accordingly on both these counts, the learned Counsel has contended that the FIR deserves to be quashed.

15. So far as the learned APP is concerned, it was contended by Mr. Pawan Bahl that the question of genuineness of the impugned order 15.06.2004 by virtue of which Mr. Adarsh Bhushan Mitra, the Director /partner of M/s Pylon Traders (P) Ltd. had introduced M/s Kripa Overseas is concerned, the said documents were sent for comparison to the Central Forensic Laboratory after obtaining the specimen signatures of different accused persons including that of B. P. Singh an ex-employee of the Petitioner/company as well as the admitted signatures and hand writing of Mr. Adarsh Bhushan Mitra. The Central Forensic Laboratory has given its opinion on 28.05.2007, 31.08.2007 and 27.08.2008. The sum and substance of these examinations is that although the signatures and handwriting of other co-accused persons including that of B. P. Singh were found to be matching but no definite opinion with regard to Adarsh Bhushan Mitra could be expressed by the Central Forensic Laboratory. It was contended that the entire matter has been placed before the Court of competent jurisdiction along with the relevant documents in the final report filed in respect of FIR No. 474 dated 26.08.2006 by P.S. Srinivasपुरi, New Delhi. It is urged that the Court which has taken cognizance of the offence in respect of the said FIR must be permitted to decide the matter.

16. Sh. P. K. Mishra, the learned Counsel for the Respondent No. 2/Adarsh Bhushan Mitra who is the complainant in the FIR bearing No. 364/2007 has alleged that the signatures of Adarsh Bhushan Mitra were forged. It was contended that no harm will be caused in case the present FIR is also tried along with the same FIR because no definite finding came from the Central Forensic Laboratory to the effect that the signatures on the impugned letter dated 15.06.2004 were that of Adarsh Bhushan Mitra who is alleged to have introduced the other co-accused persons to the Petitioner/company in the instant case.

17. I have considered the submissions made by the respective sides.

18. The final report of FIR No. 474 dated 26.08.2006 of P. S. Srinivasपुरi, New Delhi u/s 406, 420, 120B IPC against the various accused persons which include Bhupender Pratap Singh an ex-employee of the Petitioner/company as well as the Adarsh Bhushan Mitra who is purported to have written the letter dated 15.06.2004 has already been filed. If the said letter was already in issue in the FIR No. 474/06 it was not open to Adarsh Bhushan Mitra to have initiated a private complaint u/s 156(b) Cr.P.C. and that too after a lapse of more than a year and much less for the learned Magistrate to have given a straightaway direction to the police to register an FIR against the officials of the Petitioner

namely the Managing Director and the Secretary. The reason for such an exercise on the part of the complainant Adarsh Bhushan Mitra was not fair to seek. He wanted to use this as a ploy to taint the official of the Petitioner/company so as to wriggle out of the difficult situation in which he was put because of his alleged involvement in the FIR No. 474/06 where a case of conspiracy using forged document as genuine, cheating and breach of trust was alleged against them all.

19. The Apex Court in case titled P. Sirajuddin, etc. Vs. State of Madras, etc., has specifically observed that where public servants are alleged to have committed serious criminal offenses, some preliminary inquiry must be held to prima facie establish the involvement of the accused person as registration of an FIR straightaway is bound to do incalculable harm to the reputation of not only the high official against whom the FIR is registered but also the organization to which he belongs, if ultimately such a prosecution is going to fail.

20. In the instant case, there is no definite prima facie evidence against the Petitioners or against any of the employee except B.P. Singh which warranted registration of an FIR has come. Therefore, the registration of the FIR was not at all called for because the letter in question was already under investigation in the earlier FIR.

21. The signatures and handwriting of the complainant/Respondent No. 2 Adarsh Bhushan Mitra have been sent for comparison to the Central Forensic Laboratory, on number of occasions and it could not express any definite opinion that the signatures on the letter dated 15.06.2004 were tallying with the admitted signatures of Adarsh Bhushan Mitra but the reasons which have been given by the Central Forensic Laboratory are very important and revealing. It has observed that the specimen writings marked S-1 to S-3 and S-25 to S-32 do not reflect true and complete written habits of the writer namely Adarsh Bhushan Mitra. The specimen signatures mark as S-4 to S-6, S-19 to S-24 are all different models and as such are not comparable with the questioned signatures and further specimen writings marked S-33 to S-39 do not contain similar letters and contention for comparison. In the light of these observations, it had further opined for a thorough scientific observation, it is felt that admitted signatures of Adarsh Bhushan Mitra preferably of the contemporaneous period written by him in normal course of routine of some existing documents be sent for comparison. Accordingly, procurement of said material was sought in its letter dated 27.08.2008. It is not known as to whether the said material has been supplied to the Central Forensic laboratory or not in any case the question as to whether the letter dated 15.06.2004 which is forming the basis of the present FIR is already under judicial scrutiny in FIR No. 474/2006, therefore, there is absolutely no reason as to why the present FIR should continue as a democles sword on the head of the Managing Director and the Secretary of the Petitioner/company. The case of the Petitioner seems to be fully covered by the illustrative guidelines of Nabia Bai Vs. State of Madhya Pradesh, for one of the grounds for questioning the FIR is where the said FIR has been registered with a view to wreck

vengeance against the accused persons.

22. I, accordingly, quash not only the summoning order passed by the learned Magistrate but also the FIR No. 364/07 u/s 182/211/469/471/500/501/34 IPC P.S. Srinivaspuri, New Delhi with the observation that the learned Court dealing with the FIR No. 474/06 u/s 420/406/120B IPC of P.S. Srinivaspuri, New Delhi where Adarsh Bhushan Mitra is facing a trial in various offences will give a clear finding with regard to the factum as to whether the Adarsh Bhushan Mitra was a signatory to the letter dated 15.06.2004 or not whether the said document was forged on his behalf and once such a finding is handed down at the end of the trial the necessary consequence of the same will follow. This petition is accordingly allowed in the light of the above-mentioned observations. Copy of this order be sent to the learned Trial Court.