(1987) 03 BOM CK 0044

In the Bombay High Court

Case No : Criminal Application No. 482 of 1986

Nawabzada Farook Alam Khan APPELLANT

Vs

Nawabzada Mohammed Sadiq and another RESPONDENT

Date of Decision : 23-03-1987

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 403, 406, 465, 467

Citation : (1987) MhLj 869

Hon'ble Judges : S.W. Puranik, J

Bench : Single Bench

Advocate : Belose, Assistant Public Prosecutor, V.H. Gumaste and Shirish Gupte, for the Appellant; Belose, Assistant Public Prosecutor For State and M.S. Nawabzada, in person for Respondent No., for the Respondent

Final Decision : Allowed

Judgement

S.W. Puranik, J.—By this petition under Article 227 of the Constitution and u/s 482 of the Code of Criminal Procedure, the Petitioner-original accused No. 2 seeks quashing of the issuance of the procees against him for offence under sections 467, 468, 471, 403, 406 read with Sections 511 and 120-B of the Indian Penal Code. The Respondent No. 1 is the original Complainant whereas the second Respondent is the State of Maharashtra.

2. The First Respondent filed a complaint for the aforestated offences against Nawab Mir Sultan Alam Khan-original accused No. 1, his son Nawabzada Farook Alam Khan-the present petitioner-original accused No. 2 and his wife Smt. Ayesha Begum-original accused No. 3 on the following allegation :

That the father of original accused No. 1 by name late Nawab Saheb of Belha and his wife Begum Saheba had created a Trust in February 1938 known as Waqf-A Lal-Aulad. That it was a family Trust and the Trust also owned immoveable property viz. a building known as Belha Court near Appollo Bunder, Bombay. The beneficiaries of the said Trust were the children and descendants of late Nawab Saheb of Belha. Initially the settlers of the Trust were managing the Trust property and after the death of Nawab Saheb, Begum continued to manage the Trust property and after her death, the original accused No. 1 Nawab Mir Sultan Alam Khan became the Managing Trustee. He has two sisters Shahajadi Begum and Ladli Begum. They were also the Trustees of the said Trust. Initially original accused No. 1 requested his youngest sister Ladli Begum to manage the Trust property which she did for a period of about 2% years. Thereafter, the original accused No. 1 again took up the responsibility of management of the Trust.

The Managing Trustee, according to the terms of the Trust Deed is entitled to occupy a flat in the Trust Building Belha Court which is Flat No. 10 on the second floor of the said property. The Managing Trustee is given the possession of the said flat for use arid occupation free of any rent so as to enable him to efficiently manage the trust property.

4. The original complainant is the husband of the eldest sister Shahajadi Begum and holds a power of attorney on behalf of his wife Shahajadi Begum and wife''s next sister Ladli Begum. The Complainant thus represents the other two trustees.

5. It appears that even though the original accused No. 1 was not entitled and/or authorised to transfer, alienate or let out the flat which was given to him in his capacity as Managing Trustee yet after some years around 1966-67 he created tenancy in favour of original accused Nos. 2 and 3. The other two Trustees protested against accused No. 1 as they had noticed the name plate of accused No. 2 fixed on the flat. In the year 1958 accused No. 1 also got the gas and electric connection transferred in the name of his son ace used No. 2. This was also protested. By a letter of 18th June 1968, accused No. 1 regretted his action and agreed to re-transfer the same. Sometime in 1976 the complainant also came to know that rent has been credited in the accounts of the trust on behalf of accused No. 2. After the protest of other Trustees the accused No. 1 cancelled the said receipt as null and void.

6. On the above statement of fact the Complainant alleges that accused No. 1 in conspiracy with his son and accused Nos. 2 and 3 developed dishonest intentions to transfer his tenancy in favour of accused Nos. 2 and 3. The other two Trustees represented that the Complainant also sent Solicitor''s letter dated 28-2-1980 protesting against the illegal attempt of accused No. 1. The accused No. 1 then took a stand that he was forced and coerced by the accused Nos. 2 and 3 in issuing rent receipts to them as also some documents purporting to create tenancy. Thus it is the contention of the plaintiff that the accused have with fraudulent and dishonest intentions and in pursuance of criminal conspiracy prepared false documents namely, the rent receipts in respect of the Trust property - Flat No. 10 and committed an offence punishable under sections 465, 468 and 471 of the Indian Penal Code besides criminal misappropriation and criminal breach of trust in respect of that flat.

7. At the stage when the complaint "Was filed, the learned Magistrate of the Metropolitan Magistrate Court recorded the verification statement of the Complainant and issued process against all the three accused under all the sections stated in the complaint.

8. Accused No. 1 and accused No. 3 were served but the accused No. 2 was not served with the process as he was out of India. After several attempts to serve him had failed, the Complainant requested the trial Court to separate the case of accused No. 2 from that of the other two accused. This request was granted and the case against accused Nos. 1 and 3 proceeded for recording evidence before charge. Charge was framed against accused Nos. 1 and 3. Both of them challenged the framing of the charge in this Court by a Petition u/s 482 of the Code of Criminal Procedure. This Court by its order dated 3rd March 1986 concluded that there was prima facie material against accused No. 1 for framing of charges and dismissed his application. The said court also came to the conclusion that no prima facie case was made out against accused No. 3 for framing of charges under any of the charges and directed her to be discharged from the prosecution.

9. After that case was over accused No. 2 returned to India and surrendered before the trial Court and was released on bail. He thereafter i.e. accused No. 2 has moved this Petition seeking that the process issued against him be quashed.

10. Mr. V. H. Gumaste with Mr. Shirish Gupte appear for the Petitioner-accused No. 2 while the first Respondent/Complainant is represented by the Complainant himself in person. He is also an enrolled advocate of this Court. The second Respondent is represented by Mrs. Belose, Assistant Public Prosecutor. With the assistance of the learned Counsel of both the parties I have gone through the original complaint, the verification statement as also the Judgment delivered by Mohta, J. in the earlier Petition referred above.

11. It was contended on behalf of the Petitioner that the perusal of the Complaint will show that the allegations made against accused No. 2 are too vague and general without giving any material particulars of conspiracy and other events. He further contended that the verification statement also in no way reiterates the complaint allegation and on the other hand the verification statement of the Complainant is solely directed against overt act done by accused No. 1. There is thus not an iota of prima facie material to hold that there are sufficient grounds for proceeding to issue process. If the Petitioner is made to face trial on the basis of these allegations, it would not only be futile but would also cause undue harassment and would cause mental torture. The Complainant supported the order of issue of process firstly on the ground that u/s 482 of the Code of Criminal Procedure, this Court has no power to interfere at an interlocutory stage particularly when the trial Court was satisfied that there are sufficient grounds to proceed. At any rate he submitted that due opportunity is yet to be utilised by the Complainant to adduce evidence to put up a prima facie case for framing of charge. He was arguing at length to contend that the material placed before the

trial Court on the basis of the complaint and the verification statement was sufficient for issue of process.

12. I have perused the complaint allegations in detail. The main allegations are no doubt against accused No. 1, the reference to accused Nos. 2 and 3 comes in paragraph 7 of the Complaint which is stated as follows :

"7. After having taken possession of the said flat in this manner, accused No. 1 in conspiracy with his son N. Farookh Alam Khan and wife, Ayesha Begum developed dishonest intention in respect of the said flat and garage and they have conspired to create tenancy in respect of the said flat and garage in favour of accused Nos. 2 and 3."

The other reference appears in paragraph 12 as follows :

"12. In the year 1973, in pursuance of dishonest intentions and conspiracy amongst the accused, they prepared rent receipts in respect of the said flat and garage, in favour of accused Nos. 2 and 3. This fact came to light in 1976 as accused No. 1 had done it till then, and my wife and her sister protested against this illegal act."

And lastly the general contention is that all those acts have been done in pursuance of the criminal conspiracy. The perusal of the above allegation does now show any specific act or action on the part of accused No. 2 or 3 from which it could be inferred prima facie that accused No. 2 had entered into any conspiracy. The allegations in the complaint are also vague inasmuch as they do not state the period or the date on which the alleged conspiracy had taken place. It is easy to make allegations. But even at the stage of issue of process there must be some prima facie material on record in the shape of specific allegations from which it can be gathered that after the evidence certain allegations could be proved or inquired into. It is for this purpose that usually, to find out whether there are sufficient grounds to proceed, the trial Court examines the Complainant by a verification statement and also gives him opportunity to produce witnesses at that stage. The Complainant in this case chose to examine himself at the stage of verification. I have gone through that verification statement. It is a very brief statement but in that statement he nowhere reiterates even the allegations of conspiracy between accused No. 2 and the original accused No. 1, leave aside giving any sort of particular overt act of the accused. After narrating the relationship and reference to the Trust and the appointment of accused No. 1 as Managing Trustee the relevant averments of the verification may be conveniently reproduced as follows :

"In the year 1967 accused No. 1 tried to transfer the flat in which he was staying to accused Nos. 2 and 3. Other two trustees objected. In 1978 ultimately the accused attempted to transfer one flat and the garage in the name of accused No. 2 his son, and wife and issued rent receipts and also created rent receipts and also created documents for tenancy. The Flat in question viz. No. 10 belongs to the Trust. The Flat is given to the Managing Trustee for specific purpose, viz. :-

to reside and to manage the trust property. The entire building is the Trust property. I am interested because my wife is one of the trustees. I am holding Power of Attorney on behalf of the other two Trustees."

13. On reading of the complaint-allegations and the verification statement, there is absolutely no prima facie material which was placed before the trial Court even to hold that there are sufficient grounds for issue of process. The process has been issued for not less than 5 offences without there being any particulars stated in the complaint or verification statement as regards Petitioner-accused No. 2. During the course of argument it was submitted that there are several litigations pending between the parties in respect of the said flat. The Complainant also referred to some incidents of 1968 and also of 1976 whereas the Complaint has been filed as late as in 1980. In view of the circumstances, I find that there was no material prima facie for issuance of process and to ask the Petitioner-accused No. 2 to face proceedings before framing of charge.

14. The contention of the First Respondent that this Petition should not be entertained against an interlocutory order cannot be accepted for the simple reason that by any such order which attaches finality to a particular stage of a proceeding such as issue of process or of framing of charges, certain rights and liabilities of the parties are created in a proceeding. By framing of a charge, the accused has to face trial for the charge, while, by issue of process the accused is called to the Court as an accused to face the inquiry. In such cases if it is found that there is no prima facie material before the trial Court to take even such a step and if there has been a total non-application of mind then the inherent powers of this Court preserved and reiterated by Section 482 of the Code of Criminal Procedure are wide enough which can be invoked to avoid the abuse of process of law or to meet the ends of justice. In the facts and circumstances of this case, this is a fit case where inherent powers of this Court u/s 482 of the Code of Criminal Procedure can be rightly invoked to quash the issue of process as against the Petitioner-accused No. 2. The petition is allowed. The process issued against the Petition in the Criminal Case impugned be quashed and set aside. Rule made absolute.