(1980) 09 BOM CK 0007

In the Bombay High Court

Case No : Criminal Application No. 485 of 1980

O.N. Khajuria APPELLANT

Vs

The State of Maharashtra and another RESPONDENT

Date of Decision : 10-09-1980

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 500

Citation : (1980) 09 BOM CK 0007

Hon'ble Judges : S.C. Pratap, J

Bench : Single Bench

Judgement

1. This is an application u/s 482 read with Sections 401 and 397 of the Code of Criminal Procedure for quashing and setting aside proceedings in Criminal Case No. 136/S of 1979, filed in the Court of the learned Metropolitan Magistrate, 28th Court, Esplanade, Bombay.

2. Petitioner herein is the Regional Manager of Jammu & Kashmir Bank Limited, having its registered office at Residency Road, Srinagar and its central office at Karan Nagar, Srinagar .The said bank has its branch office at Fort Chambers, Ambalal Doshi Marg, fort Bombay-400 023. On June 17, 1979, the petitioner, in his capacity as the Regional Manager of the above bank, lodged a first information by written complaint addressed to the Additional Commissioner of Police, Crime Branch, Bombay, on the basis of which complaint, the General Branch, C.B. C.I.D., Bombay, registered, vide Crime Register No. 64 of 1979 inter alia, against respondent No. 2 herein, offences u/s 120-B read with Sections 406, 409 and 477-A read with Section 34 of the Penal Code. The said information lodged with the police was with regard to an amount of Rupees ten lacs and odd on the basis of the following particulars :

(a) The Jammu and Kashmir Bank Limited, a Scheduled Banking Government Company and Bankers to the Government of Jammu & Kashmir, has a branch at Bombay. The said branch is under the control of the Regional Manager, the petitioner herein, having his administrative office at Azadpur, Delhi. The Bombay

Branch Officer was in charge of K. K. Dhar, respondent No. 2 - accused No. 1 herein, who took charge as the Branch Manager of the Bombay branch on and from February 28, 1978.

(b) The Branch Manager was authorised overdraft facilities to the extent of Rs. 15,000/- at a time to an individual party. The Officer-staff of the branch consists of the Branch Manager, Accounts Manager and clerical staff of six persons and two peon-cum-watchmen. This Bombay Branch Office was inaugurated on January 30, 1978.

(c) The Branch Manager was under obligation of duty to submit, on last Friday of each month, in the beginning of the following month, the statements of temporary overdraft facilities, granted to the individual parties.

(d) On or about November, 11, 1978, the Central Office belatedly received the statements of temporary overdraft facilities and it revealed that on August 25, 1978 the Branch Manager, respondent No. 2 herein, had allowed an overdraft facility to the tune of Rs. 2,99,999.00 to a concern in the name and style of M/s. Manju Enterprises. This was much beyond the powers of the Branch Manager. The Branch Manager, accused No. 1 - respondent No. 2 herein, was, therefore, asked to explain and the explanation was that the amount was adjusted on November 4, 1978.

(e) On scrutiny of the statement on last Friday of November 1978, it was further revealed that the Branch Manager, respondent No. 2 herein, had granted overdraft facility to the extent of Rs. 3,26,997.00 to M/s. Raj Enterprises. On January 8, 1979, on the basis of the statements received at the central office, these overdraft facilities continued to remain outstanding. It was revealed that when on November 4, 1978, M/s. Raj Enterprises was granted the overdraft facility as stated above, the amount of the overdraft facility of M/s. Manju Enterprises had been adjusted and this aroused suspicion. The Branch Manager, accused No. 1 - respondent No. 2 herein, was again asked to explain for allowing overdraft facilities without prior sanction and was further asked to give full particulars of M/s. Manju Enterprises and M/s. Raj Enterprises.

(f) It was further discovered that similar overdraft facility was granted by the Branch Manager, accused No. 1 - respondent No. 2 herein, to yet another concern in the name and style of M/s. Siddhi Enterprises and as on December 30 1978, large overdraft amounts were outstanding against M/s. Siddhi Enterprises. On a telex message, the Branch Manager was asked to give all particulars again of all the three concerns viz., M/s. Manju Enterprises, M/s. Raj Enterprises and M/s. Siddhi Enterprises.

(g) The Branch Manager, accused number 1 - respondent No. 2 herein, intimated to the Central Office that one Raj Kumar (accused No. 4) was the proprietor of M/s. Raj Enterprises carrying on dry fruit business, having fixed assets of Rs. 1.50 crores and a highly influential person, respected in social and political circles of Bombay. The Branch Manager also intimated that Mrs. Roopa alias Roopmala (accused No. 3) was the proprietor of the concern named M/s. Siddhi Enterprises, having fixed assets over Rs. 2 crores, paying Income Tax and wealth tax and had about Rs. 50 lacs in fixed deposits, carrying on business as a builder constructing multi-storeyed buildings in Bombay. The Branch Manager (accused No. 1) assured the Central Office that he was sure that the overdraft facilities granted would be realised and that there was no risk involved in granting facilities to the parties.

(h) The Branch Manager, accused No. 1 - respondent No. 2 herein, on February 3, 1979, was called upon to explain the temporary overdraft facilities to the extent of Rs. 3.34 lacs and Rs. 3.19 lacs allowed on November 4, 1978 and on November 17, 1978 to M/s. Raj Enterprises and M/s. Siddhi Enterprises respectively : as disclosed from the statements on the last Friday of December 1978, which was obviously much beyond the permissible limit.

(i) The Branch Manager, accused No. 1 - respondent No. 2 herein, was repeatedly called upon to give explanation by letters dated February 28, 1979, March 12, 1979 and March 26, 1979. From the statements of overdraft facilities submitted by the Branch Manager to the central office, it was revealed that the amount Rs. 10.39 lacs was outstanding as temporary overdraft facilities as on March 9, 1979.

(j) The Branch Manager, accused No. 1 - respondent No. 2 herein, by letters dated March 24, 1979 and March 29, 1979, intimated that overdraft facilities of M/s. Siddhi Enterprises were adjusted in full on February 26, 1979 and overdraft facility in the account of M/s. Raj Enterprises had also been adjusted in full on March 26, 1979. It was further revealed and represented that M/s. Manju Enterprises and M/s. Siddhi Enterprises were different concerns and S. R. Sheth (accused No. 5), Raj Kumar (accused No. 4) and Mrs. Roopa alias Roopmala (accused No. 3) are respectively proprietors of these concerns. On a detailed inquiry into the matter, the following facts were disclosed.

(I) Account of M/s. Manju Enterprises :

On May 23, 1978, Mr. S. S. Khosala (accused No. 2) opened Current Account No. 78 as the proprietor of M/s. Manju Enterprises, 2-3 Manju Mahal, 35 Palli Hills, Bandra, Bombay 400-050. It was introduced by M/s. Sun Raj Traders with the initial deposit of Rs. 1001/-. From May 12, 1978 to July 17, 1978 no overdraft facility was granted. From July 19, 1978, overdraft facilities were started and granted by the Branch Manager, accused No. 1 - respondent No. 2 herein, and on September 28, 1978, the credit balance in the account was Re. 1/- and two amounts of Rupees 1.50 lacs each were withdrawn by cheques and a cash of Rs. 3 lacs was paid to the party without sanction of the central office. The account was closed on November 4, 1978 ostensibly after receiving the amount of Rs. 3,04,565.80, which was the amount due inclusive of interest. On the very same day November 4, 1978, an overdraft facility of Rs. 1.99 lacs was given to M/s. Siddhi Enterprises and also an overdraft facility of Rs. 0.96 lac was given to M/s. Raj Enterprises. It is clear that the account of M/s. Manju Enterprises was closed after payment to the above two concerns.

(ii) On August 5, 1978, Current Account No. 92 was opened by Mrs. Roopa alias Roopmala (accused No. 3) in the name of M/s. Siddhi Enterprises, Flat No. 3, Manju Mahal, Palli Hills, Bandra, Bombay-400 050, showing occupation as manufacture of Radium Beads and Curtains, with an initial deposit of Rupees 25,000/-. On the same day, Rs. 26,000/- was withdrawn, leaving the overdraft facility of Rs. 1000/- on the same day. From August 5, 1978 to August 17, 1978, debit balance i.e. overdraft facility rose to Rs. 10,000/- and this was made available to her by the Branch Manager, accused No. 1 - respondent No. 2 herein. Between August 18, 1978 and September 29, 1978, the account shows fluctuations. On November 1, 1978 when there was credit balance of Rs. 410.94, a credit-cheque was withdrawn for Rs. 1.11 lacs, showing overdraft facility to the extent of Rs. 1,10,589.06. This was beyond the permissible limit. On December 24, 1978 the account shows that Rs. 3,97,182.50 were due from the party on account of overdraft facility, which was ostensibly adjusted on February 24, 1979 (Saturday) and the same was allowed to be availed of in the account of M/s. Ambika Traders on February 26, 1979 (Monday). This shows clever manipulation by the Branch Manager, accused No. 1 - respondent No. 2 herein, in conspiracy and active connivance of other accused persons showing the two transactions to be independent. Thus, the account of M/s. Siddhi Enterprises was adjusted with the aid of the funds making available overdraft facilities in the account of M/s. Ambika Traders. It is revealed that the address of Mrs. Roopa alias Roopmala and the address of Mr. S. S. Khosala is the same.

(iii) Account of M/s. Raj Enterprises :

On November 3, 1978, Current Account No. 99 was opened by Mr. Raj Kumar (accused No. 4) for M//s. Raj Enterprises and the said firm and introduced by M/s. Sund Raj Traders, with address as Flat No. 21, Chinti Building, Dadar, Bombay, showing business of dry fruits. No staff member has at any time seen this account holder and the account was opened and transactions were made in the presence of Roopa alias Roopmala (accused No. 3) in the Branch Manager''s cabin. On March 19, 1979, the debit balance of Rs. 3,34,134.83 is shown as the overdraft facility, showing the total overdraft with interests to the tune of Rs. 3,44,708.12. This was adjusted by depositing cash of Rs. 4 lacs on March 19, 1979, showing credit balance of Rs. 55,291.88, which was subsequently withdrawn on March 20, 1979, after closing the account. On March 20, 1979, another overdraft of Rs. 3,44,700/- was allowed by the Branch Manager to the concern in the name and style of M/s. Ambika Traders. Thus, obviously this was grated to M/s. Ambika Traders after closing the account of M/s. Raj Enterprises.

(iv) Account of M/s. Ambika Traders :

On February 8, 1979, a Current Account was opened by Mr. S. R. Sheth (accused No. 5) in the name and style of M/s. Ambika Traders, 5th Floor, Air-conditioned Market, Tardeo, Bombay, with an initial deposit of Rs. 1000/-. This account was operated from February 8, 1979 to March 20, 1979, showing a debit balance of Rs. 10,53,165.07 (inclusive of interest up to March 31, 1979).

3. On the basis of the aforesaid facts and particulars, it was complained that the Jammu and Kashmir Bank Limited was intentionally and wilfully defrauded right from May 1978 when the account of M/s. Manju Enterprises was opened with the Bombay branch. In the said complaint, respondent No. 2 herein was, as already indicated, accused No. 1. Accused No. 2 was one S. S. Khosala of M/s. Manju Enterprises. He was the husband of Mrs. Roopa alias Roopmala, proprietor of M/s. Siddhi Enterprises. This Roopmala was also alleged to be a regular visitor to the Bombay branch officer of the aforesaid band and having close intimacy with K. K. Dhar, accused No. 1 - respondent No. 2 herein. In the said complaint, two more persons were also mentioned viz., Raj Kumar (accused No. 4) who was alleged to be an unknown fictitious person posing to be a Proprietor of M/s. Raj Enterprises, and S. R. Sheth (accused No. 5) the proprietor of M//s. Ambika Traders, Tardeo, Bombay. On the basis of the aforesaid complaint, the Bombay Police investigated the entire conspiracy and thereafter in January 1980 filed against the aforesaid five persons including respondent No. 2 herein as accused No. 1, a charge-sheet in the Court of the learned Metropolitan Magistrate, 27th Court, Esplanade, Bombay, the said case being numbered as Criminal Case No. 620/P of 1980.

4. On the aforesaid facts, circumstances and particulars coming to light, Jammu and Kashmir Bank Limited suspended respondent No. 1 K. K. Dhar and all his powers as the Branch Manager of the Bombay branch of the aforesaid bank were withdrawn. Furthermore, with a view to guard the public against his activities, and with a view to forewarn them in that behalf, the said bank also published by way of abundant caution and precaution a public notice in the issued dated May 24, 1979 of the Indian Express. In the said public notice, it was, inter alia, notified for the information of all concerned that K. K. Dhar respondent No. 2, had been suspended by the bank''s competent authority for his acts of gross misconduct and all powers on behalf of the bank were withdrawn from him and he was barred from signing any instrument or document by whatever name called on behalf of the bank. In the said public notice, it was also mentioned that the said K. K. Dhar was believed to be involved in a number of criminal cases for defrauding the bank for large sum of money and the Board of Directors of the Bank has also rescinded/cancelled the power of attorney issued by the bank in his favour and that he said K. K. Dhar had also been notified about the above action of the bank against him. The public notice further went on to state that all concerned were thus hereby notified that any act or thing done by the said K. K. Dhar for and on behalf of the bank in any capacity whatsoever shall not be deemed to be an act or thing done by him for and on behalf of the bank in any capacity whatsoever and shall not be binding in any manner whatsoever. The public notice further went on to state that any person or persons, who may genuinely or by inadvertence or by misrepresentation, deal with the said K. K. Dhar representing and/or purporting to act as manager of the said bank, shall be

doing so at his own risk and peril.

5. In June, 1979, respondent No. 2 herein K. K. Dhar filed a private complaint against the petitioner herein as also chairman, general manager, manager and directors of the aforesaid bank, being Criminal Case No. 136/S of 1979, in the Court of the learned Metropolitan Magistrate, 28th Court, Esplanade, Bombay, alleging against the aforesaid persons an offence of defamation u/s 500 of the Penal Code in pursuance of the public notice referred to above. On the said complaint, the learned Metropolitan Magistrate issued process only against the petitioner herein and it is against his order directing issue of process that the present petition has been filed.

6. The petitioner is represented by his learned Advocate, Mr. V. V. Kamat. The State is represented by the learned Public Prosecutor, Mr. H. A. Solkar. Respondent No. 2 K. K. Dhar though served has not chosen to appear either personally or through any Advocate of this Court.

7. Considering the fact the circumstances aforesaid and applying thereto the simple tests and principles involved in a matter of this nature, conclusion is irresistible that the order directing issue of process against the petitioner herein u/s 500 of the Penal Code is totally unwarranted and unjustified. Reading the public notice and its contents with great care and responsibility, it is impossible to come to the conclusion that any offence much less one u/s 500 of the Penal Code can be said to have been even prima facie made out. On the contrary and if at all, the public notice in question is a striking illustrating of the high officers of the bank in question performing their duties with due care and responsibility and in the best interest of the bank. Going through the details and the particulars mentioned in the police complaint filed by the petitioner before the Bombay police, there can be no doubt whatever that a strong case was made out by the bank against respondent No. 2 herein and others mentioned in the said complaint. There can also to no doubt that the order suspending respondent No. 2 from his post of Branch Manager was pre-eminently justified. There is also no doubt that the steps taken by the bank in question against respondent No. 2 herein and others by filing the said criminal complaint against them was also more than justified. Indeed, if the bank had not taken the said step by filing a complaint before the police as also by issuing a public notice as done, the bank could have been charged with utter failure in the performance of its own duties towards itself and the public. It is impossible to read any ingredient or element of an offence of defamation in the notice in question. If is learned Metropolitan Magistrate had carefully gone through the police complaint filed by the bank before the Bombay police against respondent No. 2 and others and if the learned Metropolitan Magistrate had adopted a correct approach to a matter of this nature in the context and background aforesaid and thereafter carefully gone through the public notice in question, there could be no doubt whatever that even the learned Magistrate would have dismissed the complaint forthwith. Order directing issue of process in a matter of this nature can only furnish persons such

as respondent No. 2 herein with a handle and weapon to harass and coerce the parties and the management to come to terms. Mr. Kamat, the learned Advocate for the petitioner, is also right in his submission that the public notice in question now sought to be made a subject matter of a complaint u/s 500 of the Penal Code is one pre-eminently issued in public interest and for public good. Mr. Solkar, the learned Public Prosecutor for the State, has also with vehemence supported the petition and the prayer therein for quashing the impugned process. Even reading the public notice as it is, I fail to comprehend even prima facie and defamatory allegation therein. On the contrary, I find the public notice very carefully and appropriated worded, based on investigated facts and particulars and based on shocking disclosures as a result of the said investigation. The bank has, in my view, acted in more than justified manner by issuing the public notice, warning the public against any dealing whatsoever with respondent No. 2 herein in any manner whatsoever relating to the bank in question. Any inference of defamation from a public notice as of the instant nature can only be the result of a figment of one''s imagination. In my view, the instant complaint u/s 500 of the Penal Code is nothing but an abuse of the process of the Court. The said complaint and the proceedings in that behalf pre-eminently deserve to be quashed.

8. In the result, this petition is allowed. The order directing issue of process against the petitioner herein as also the entire proceedings in Criminal Case No. 136/S of 1979 of the Court of the Metropolitan Magistrate, 28th Court, Esplanade, Bombay, are set aside and quashed.

9. Rule earlier issued on this petition is made absolute.

10. Petition allowed.

