(2006) 05 BOM CK 0021

In the Bombay High Court

Case No : Criminal Writ Petition No. 1963 of 1999

Ravi APPELLANT

Vs

State of Maharashtra and Another RESPONDENT

Date of Decision : 04-05-2006

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 420

Citation : (2007) 3 BC 258

Hon'ble Judges : V.M. Kanade, J

Bench : Single Bench

Advocate : G.K. Masand, for the Appellant; M.M. Deshmukh, APP, Jinesh Shah, instructed by Law Global, for the Respondent

Final Decision : Allowed

Judgement

V.M. Kanade, J.—This petition is filed by the petitioner who has been shown as an accused in a complaint filed by one Devichand Jain for the offence punishable u/s 420 of the Indian Penal Code.

2. Brief facts which are relevant for the purpose of deciding this Writ Petition are as under.

A Plantation Company, known as Arrow Global Agrotech Ltd. having its Office at Thane, floated a Scheme in the year 1995 known as Arrow Bond and, under the said Scheme, the investor had to invest Rs. 5,000/- per Bond and it was represented that the investor would get regular income through post-dated cheques which were payable quarterly. Number of investors invested in the said Scheme and they were all issued quarterly cheques by the Company. The petitioner was studying in the final year B.Com. and he was appointed as an agent of the Company for mobilising the investments from various investors. As many as three thousand such agents were appointed by the Company and it was agreed that the agents would receive commission based on the business procured by them and their promotion was linked to the volume of business procured by such agents. The petitioner was 20 years old and within a short span of three years, he procured business of Rs. 1 crore and was promoted from the lowest post of Business Manager to that of Vice-President.

3. Some time in March, 1998, SEBI issued directions to the Company restraining it from mobilising any further money from the public or from the investors under the existing Schemes and this resulted in the Company stopping the payment of the cheques which were earlier issued to the investors. The father of the petitioner viz. Ratan Ramchand Badlani also joined the Company as Director in October, 1997. After the payment of the cheques were stopped by the Company, some of the investors lodged the complaint and the petitioner and his father and the Chairman were arrested and, thereafter, released on bail. Initially, a criminal writ petition was filed by the petitioner being criminal writ petition No. 1192 of 1998. In the said writ petition, the petitioner was directed to apply for discharge in the Trial Court. The petitioner accordingly filed an application for discharge. However, the said application was rejected. The revision filed against the said order also was dismissed. Against the said order, the petitioner has filed this petition under Article 227 of the Constitution of India read with Section 482 of the Criminal Procedure Code for quashing the complaint which is filed against him.

4. It is submitted by the learned Counsel appearing on behalf of the petitioner that the petitioner was neither the employee of the Company nor was involved in any manner in the offence of cheating as alleged. It is submitted that in the entire complaint and the charge-sheet, there is no whisper about any role played by the petitioner in the alleged offence. He submitted that out of 3000 agents who were working for procuring business for the Company, the petitioner alone has been made as an accused mala fidely by Devichand Jain who was the complainant and was having rival business. The learned Counsel appearing on behalf of the petitioner invited my attention to the FIR and the charge-sheet. He submitted that nowhere it has been staled that the petitioner was responsible in any manner for the commission of the alleged offence. The learned Counsel submitted that the petitioner was 20 years of age when the alleged offence was committed. He submitted that there was absolutely no material to show that the petitioner was either the Director or an official employee of the Company.

5. The learned APP appearing on behalf of the Stale submitted that the petitioner had been named as an accused in the complaint in which it was alleged that several investors had been duped by the Company. She submitted that though there was no record to show that the petitioner was Director, even according to be petitioner, he was working as an agent for procurement of business for the Company. She submitted that, therefore, the actual role of the petitioner would be disclosed after the evidence was led and, therefore, this Court should not, at this stage, consider the role played by the petitioner in the commission of the said offence. She submitted that the application for discharge which was filed by

the petitioner had been rejected. The revision against the said order also had been dismissed by the Sessions Court and, therefore, this Court should not interfere with the order passed by the Sessions Judge, Thane.

6. I have heard the learned Counsel for the petitioner and the learned APP for the State. I have perused the complaint filed by the complainant as also the other letters which have been written by the complainant to the Commissioner of Police. The learned APP for the State, during the course of arguments, candidly submitted that there was no record to indicate that the petitioner was working as a Director at any time or that his name has been mentioned in any of the correspondence.

7. The legal position regarding the scope of power of the High Court while exercising its jurisdiction under Article 227 read with Section 482 of the Criminal Procedure Code is quite well settled. It is the duty of the Court to ensure that there is no abuse of the process of law and, an individual, against whom false or frivolous complaint is filed, can approach this Court and seek relief of quashing the complaint. The High Court in its inherent jurisdiction is empowered to quash the private complaint or even the police complaint if the averments in the complaint and the material which is placed on record do not disclose commission of any offence. The Supreme Court in the case of Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, , has observed in para 28 as under:

28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording the preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

8. Keeping in view the ratio of the judgment of the Supreme Court in Pepsi''s case and other judgments in respect of quashing of a complaint, I will now consider whether a case has been made out by the petitioner for quashing the complaint which is filed against him.

9. It is an admitted position that the petitioner was 20 years of age when the said offence is alleged to have been committed. The said Scheme of issuance of Arrow Bond was floated by the Managing Director and Chairman of the Company in the year 1995. The petitioner''s father joined the Company as a Director in

1997. The petitioner, admittedly, was not an employee of the Company nor a Director of the Company. He was merely acting as an agent on commission basis. I have perused the complaint and the charge-sheet and nowhere any specific role has been attributed to the petitioner though there is a reference to the role played by the petitioner''s father. It is an admitted position that out of 3000 such agents appointed, none of them has been made an accused. Further, none of the complainants has made any complaint against the petitioner. The Sessions Court in its judgment and order has made a reference about the statement of Premchand Dungaji Choudhary. The Sessions Court has observed that the said Choudhary had, in his statement, stated that the petitioner was the office bearer of the Company. This was seriously challenged by the learned Counsel for the petitioner. It is submitted that the Sessions Court had erred in coming to the said conclusion since the said Premchand Choudhary, in fact, had not made any statement to that effect. The learned APP appearing on behalf of the State was unable to point out that Premchand Choudhary had made that statement about the petitioner being office bearer of the Company in his statement which was recorded by the police.

10. Taking into consideration these facts and circumstances, in my view, no case is made out by the complainant against the present petitioner. The complaint, therefore, against the present petitioner is liable to be quashed and set aside. The writ petition is, therefore, allowed in terms of prayer Clauses (a) and (b). The orders passed by the Magistrate and Sessions Court dated 7.11.1998 and 16.8.199 respectively insofar as they relate to the present petitioner are quashed and set aside. The petitioner is discharged. Rule is made absolute accordingly.

11. Petition is accordingly disposed of.

