

(2013) 08 BOM CK 0192

In the Bombay High Court

Case No : Criminal Writ Petition No. 56 of 2012

Royal Palms (India) Pvt. Ltd.

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 07-08-2013

Acts Referred:

Citation : (2013) 6 ABR 817 : (2014) ALLMR(Cri) 611 : (2013) 4 BomCR(Cri) 731

Hon'ble Judges : Thipsay Abhay M., J

Bench : Single Bench

Advocate : Prasad Apte instructed by Amarendra Mishra, for the Appellant; G.P. Mulekar, Assistant Public Prosecutor, for State and S.K. Mishra, for the Respondent

Judgement

Thipsay Abhay M., J.—Rule. By consent, Rule made returnable forthwith. Respondents waive service.

2. By consent, heard finally forthwith.

3. The petitioner is a company registered under the Companies Act. It had filed a complaint through its authorized representative, before the Metropolitan Magistrate, 26th Court at Borivali against the respondent No. 2 herein, and some unknown persons alleging commission of offences punishable under sections 408 IPC, 420 IPC, 465 IPC, 467 IPC, 468 IPC, 471 IPC read with section 34 of the IPC. In the said complaint, the prayer that was made, was for an order u/s 156(3) of the Code of Criminal Procedure (for short "the Code") i.e. for directing investigation into the matter by the police. The learned Magistrate, after perusing the said complaint and certain documents which appear to have been brought to his notice, formed an opinion that a prima facie case against the accused was made out, and that the matter needed investigation. He therefore, passed an order directing the police to investigate into the matter as contemplated u/s 156(3) of the Code, and to submit a report to him within two months from the date of the said order which was passed on 1 March 2011. It is not in dispute

that pursuant to this order, a First Information Report came to be registered by the Aarey Police Station, Mumbai, and the respondent No. 2 apprehending arrest, approached Court of Sessions for grant of Anticipatory Bail to him. It is also not in dispute that Anticipatory Bail was granted to the respondent No. 2 by the Court of Sessions.

4. The respondent No. 2 had approached the Court of Sessions by filing an application for revision on 4 March 2011. The learned Addl. Sessions Judge at Dindoshi, Mumbai, by an order dated 11 November 2011 allowed the said revision application by setting aside the order dated 1 March 2011 passed by the Magistrate. The learned Addl. Sessions Judge clarified that the original complainant was at liberty to move the Magistrate by filing a private complaint as defined in section 2(d) of the Code. The learned Addl. Sessions Judge further directed the dismissal of the complaint, as in his view, it did not satisfy the ingredients of a complaint as defined in section 2(d) of the Code. The petitioner being aggrieved by the order passed by the Court of Sessions in revision, has approached this Court invoking its constitutional jurisdiction.

5. I have heard Mr. Prasad Apte, learned Counsel for the petitioner and Mr. S.K. Mishra, learned Counsel for respondent No. 2. I have also heard Mrs. G.P. Mulekar, learned APP for the State.

6. A perusal of the complaint filed by the petitioner before the Magistrate clearly brings out the nature of allegations levelled against the respondent No. 2 - accused No. 1. As per the averments made in the said complaint, the respondent No. 2 was working as the Project Engineer of the petitioner company, and was responsible and authorized to procure building materials for the purposes of the construction of buildings that were to be build by the petitioner company. That, the petitioner company, on a letter from its Assistant Chief Security Officer - one Mr. S. Shivkumar - learnt that the petitioner had committed offences of Criminal breach of Trust and cheating etc., and had misappropriated a sum of about Rs. 52 lakhs and odd, belonging to the said company. The modus operandi adopted by the respondent No. 2 is alleged to be preparing false, fabricated and bogus bills and challans in respect of supply of building materials like metals, sand, cement etc. The bills and challans used to be submitted by the respondent No. 2 without there being any actual delivery of any building materials. It is also alleged in the complaint that purchase orders were found to be given to M/s. Chandravati Transport having its office at a particular address on terms of 100% advance payment against the purchase order, and that, advance payments were actually made by cheque to M/s. Chandravati Transport. However, M/s. Chandravati Transport did not supply the building materials as per the purchase order, inspite of having received the payments. That, the said M/s. Chandravati Transport was introduced by the respondent No. 2 as a company known to him, and the purchase orders were given to the said M/s. Chandravati Transport at the instance of the respondent No. 2. The bills purporting to be issued by M/s. Chandravati Transport were submitted by the respondent No. 2. Totally, a sum of

more than Rs. 58,00,000/- (Rupees Fifty Eight Lakhs) was paid to M/s. Chandravati Transport between May 2010 to November 2010 without any supply of building materials, on the basis of forged and bogus bills and challans. Though the delivery challans were submitted by the respondent No. 2, the record maintained at the main security gate did not show any such supplies made by, or on behalf of the said M/s. Chandravati Transport. It is, therefore, alleged that the respondent No. 2 prepared false and bogus bills and challans, and claimed the amount without there being any actual supply of the building materials. When this was revealed, attempt was made by the petitioner company to trace the concern M/s. Chandravati Transport at the given address, but it was found that no such concern existed at the given address. On these facts, it is alleged that the respondent No. 2 had committed the aforesaid offences.

7. It is clear that there are averments in the complaint which, if taken at face value, disclose commission of cognizable offences by the respondent No. 2. It is therefore not possible to hold that it was not open for the learned Magistrate to order investigation into the matter, as contemplated u/s 156(3) of the Code of Criminal Procedure.

8. The grounds on which the learned Addl. Sessions Judge interfered with the order passed by the learned Magistrate in revisional jurisdiction, are not sound or convincing. The learned Addl. Sessions Judge was of the view that the complaint filed by the petitioner was not a proper complaint, inasmuch as the prayer was only for a direction or order u/s 156(3) of the Code. He was of the view that this was not in conformity with the definition of a complaint given in section 2(d) of the Code. It is difficult to agree with this view. Section 2(d) defines "complaint" as under:

"complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

(emphasis supplied)

Thus, the requirement of section 2(d) is only that (i) it should be an allegation (ii) made orally or in writing (iii) to a Magistrate (iv) with a view to his taking action under the Code, (v) that some person whether known or unknown has committed an offence. Now, the learned Addl. Sessions Judge has not indicated which ingredient of a "complaint" as defined in section 2(d) was missing in the instant case. Certainly, passing of an order as contemplated u/s 156(3) of the Code would be "an action under the Code". The phrase "action under this Code" occurring in section 2(d) cannot be read as action under Chapter XV of the Code". Therefore, the reasoning of the learned Addl. Sessions Judge in that regard, cannot be accepted. However, the crucial issue was not whether the complaint was proper and whether it fitted in the definition of a complaint given in section 2(d) of the Code. Even assuming it was not a complaint proper, and a mere application seeking a direction from the Magistrate to the police to

investigate into the matter, still, such an application cannot be said to be illegal or not maintainable. Thus, even if the learned Addl. Sessions Judge was of the erroneous view that what was presented before the Magistrate was not a complaint as defined in section 2(d), there was no basis for a belief that an order u/s 156(3) of the Code can be passed only on such a complaint. Consequently, the order passed by the Magistrate could not be termed as bad or illegal, even on the reasoning that what was before the Magistrate, was not a "complaint".

9. The learned Addl. Sessions Judge also observed that there was "no sufficient material produced before the Magistrate for enabling him to pass an order for investigation". This view is also not correct inasmuch as it was within the discretion of the Magistrate to order investigation into the matter, once the commission of a cognizable offence was disclosed from the complaint. What and how much material should be before the Magistrate before he feels satisfied about the necessity of ordering investigation, cannot be laid down by any precise formulae. Really speaking, at that stage, the Magistrate is mainly concerned with the examination of the averments made in the complaint for ascertaining whether any cognizable case is disclosed therefrom. Sub-section (3) of section 156 speaks of "such an investigation", as has been referred to in sub-section (1) thereof. Certainly, if the complaint/application would not disclose or allege commission of a cognizable offence, it would neither be possible for the Magistrate to order investigation u/s 156(3) of the Code, nor would it be open to the police to investigate into such a matter. However, when the commission of a cognizable offence is alleged in the complaint, no fault can be found in the order directing investigation on the ground that there was "no sufficient material before the Magistrate".

10. It ought to be kept in mind that investigation can commence if there is reason to suspect the commission of a cognizable offence" (See section 157 of the Code). Investigation itself is a process for collection of evidence, by which truth is expected to be revealed. Commencement of investigation cannot be taken as formation of a belief that the person named as an accused in the First Information Report or the complaint, is guilty. It is not necessary that the investigation would result only in filing of charge-sheet. If there would be no sufficient evidence to put a person on trial in the opinion of the Police Officer conducting investigation, then such Officer would file an appropriate final report. Therefore, anxiety felt by the learned Addl. Sessions Judge about the necessity of further evidence at the stage of commencement of investigation itself, was not really justified. It has already been observed that the complaint/application alleged commission of cognizable offences. The allegations were not patently absurd, and/or inherently improbable. The order of the Magistrate directing the police to investigate into the matter was therefore, proper and legal.

11. The revisional jurisdiction is meant to be exercised for the purpose of correcting a manifest error of law resulting in miscarriage of justice. Even if the learned Addl. Sessions Judge himself would not have ordered investigation on

the basis of the complaint/application as was before the Magistrate, that was not a sufficient justification for interfering with the discretionary order passed by the Magistrate, in exercise of the revisional jurisdiction. The learned Magistrate had exercised the jurisdiction vested in him by law.

12. As such, the impugned order is contrary to law and needs to be interfered with.

13. Since the respondent No. 2 is already protected by grant of Anticipatory Bail, there is no question of prejudice being caused to him on account of the order directing investigation being revived. As a matter of fact, it appears that pursuant to the order passed by the Magistrate, First Information Report was registered and investigation had already commenced. From this point of view also, the learned Addl. Sessions Judge ought not to have interfered with the investigation that had already commenced, without knowing the nature, status and effect of the investigation that had been carried out till then.

14. Petition succeeds.

15. Petition is allowed in terms of prayer Clauses (a) and (c). Rule is made absolute accordingly.