

(2014) 03 BOM CK 0086

In the Bombay High Court

Case No : Criminal Writ Petition No. 187 of 2014

Samarth Sahakari Sakhar Karkhana Ltd.

APPELLANT

Vs

Govind and The State of Maharashtra

RESPONDENT

Date of Decision : 14-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 340 397 399 401 439
Negotiable Instruments Act, 1881 (NI) — Section 138 141

Citation : (2014) 03 BOM CK 0086

Hon'ble Judges : A.I.S. Cheema, J

Bench : Single Bench

Advocate : V.D. Salunke, for the Appellant; S.G. Chincholkar, Assistant Public Prosecutor for Respondent No. 2/State, for the Respondent

Final Decision : Dismissed

Judgement

A.I.S. Cheema, J.—Heard counsel for petitioner-complainant. Notice to respondent No. 2 only at admission stage. The Writ Petition is heard finally at admission stage. In the trial Court, in proceedings u/s 138 of the Negotiable Instruments Act, application Exhibit 18 was filed for discharge, which came to be rejected. Subsequently, the accused filed yet another application Exhibit 47 for discharge, in which detailed orders were passed, discarding the grounds raised by the accused for discharge. Another application filed by the accused for taking action u/s 340 of the Code of Criminal Procedure, 1973 (Cr.P.C. for short) also came to be rejected. Judgment was in favour of the complainant as far as regards the grounds which had been raised by the accused in the trial Court. However, in the revision, the revisional Court expanded the jurisdiction of revision so as to consider additional point and while considering those points, the revisional Court has dismissed the complaint. It has been submitted by learned counsel for the petitioner-complainant that, scope of revision was limited and the revisional Court could consider only grounds on which the matter was disputed in the trial Court and not further. I have gone through the order concerned of the revisional Court. Para 6 of the order shows that, at the stage of revision,

additional grounds were raised and considering those grounds also, the revision was heard. The revisional Court considered the complaint. Argument was raised before the revisional Court that the complaint should have been filed in the name of Company and Bajirao Tukaram Pawse could have represented the Company. However, the complaint has been filed in the name of Bajirao Tukaram Pawse. In para 16, revisional Court observed that, "It is, therefore, amply clear that in the instant case the complaint is filed by Bajirao Pawse, projecting himself as complainant. Merely because he happens to be the Managing Director of the Company, he has no right to file the complaint projecting himself as a complainant". It was observed that, the complaint has to be filed by the payee and not by the alleged authority holder. Revisional Court found that, the complaint is not filed by the payee as required by the Act and as such, the same is not maintainable. Another point considered was that, the complaint is not maintainable as the Company Vaishnavi Sugar (India) Limited, is drawer of the cheque and the said Company has not been made accused in the complaint. The Sessions Court relied on the case of Aneeta Hada Vs. Godfather Travels and Tours Pvt. Ltd., and observed that it was necessary for the complainant to make Vaishnavi Sugar (India) Limited, which is a company as per Negotiable Instruments Act, as an accused in this case and then only Govindprasad Chaudhary can be made as an accused u/s 141 of the Act.

2. u/s 397 of the Criminal Procedure Code, the High Court or the Sessions Court may call for and examine the record of any proceedings before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and "as to the regularity of any proceedings of such inferior Court". If Section 397 is read with Section 399 of Cr.P.C., it is apparent that, revisional Court can even suo moto look into the regularity of any proceedings which are going on before the subordinate Court. In the present matter, as observations in para 6 of the impugned order show, the additional ground was allowed to be raised and it was considered and then the order had been passed. In the light of the judgment of the Hon''ble Supreme Court, it does not appear that, the impugned order dismissing complaint could be found fault with.

3. In the matter of Pratap Vs. State of U.P. and Others, , Hon''ble Supreme Court was dealing with revisional powers of the High Court u/s 439 of the Code of Criminal Procedure, 1898 (as was then applicable to the case concerned), and it was observed as under:

The power u/s 439 of Criminal Procedure Code is one which the High Court can exercise suo moto and all that a person filing a revision petition under that Section does, is to draw the Court's attention to an illegal, improper or incorrect finding, sentence or order of a subordinate Court.

Present Section 401 corresponds to old Section 439 with some changes. Section 399 of present Cr.P.C. linking powers of Sessions Judge with Section 401 is new.

Thus, a Sessions Judge can also suo moto look into the aspect of regularity of the proceedings.

4. Learned counsel for the petitioner has relied on the case of Prakash Bankatlal Ostwal Vs. The State of Maharashtra & ors., reported in 2012 MCR 1 to submit that the proceedings before trial Court being summary trial, an application for discharge could not have been moved. Thus, the revision could not have been carried from such order. In the above matter of "Prakash" (supra), Additional Chief Judicial Magistrate had discharged respondent No. 2 from Summary Criminal Cases and the revisions filed were dismissed. In that context, it was held that, the criminal revision applications filed were beyond the scope of the jurisdiction vested in both the Courts. However, I find that, once the matter was before the revisional Court, looking to the provisions of Cr.P.C. and judgment of the Hon"ble Supreme Court in the matter of "Pratap Vs. State of U.P." (supra), the revisional Court rightly entertained additional grounds raised and on the basis of those grounds, dismissed the complaint.

In the present matter, I find that, for reasons discussed above, u/s 397 read with Section 399 of the Criminal Procedure Code, the revisional Court could have itself also seen whether the proceedings being carried on before the subordinate Court were as per the law. Thus, I do not find that any error has been committed. Apart from technicalities regarding power of Revisional Court, even in writ jurisdiction, I can see that the complaint as brought is not maintainable as the Companies as Payer and Payee have not been arrayed and thus, also I decline to interfere in the impugned order as continuation of such proceedings, as is appearing from the record in the light of judgment of Hon"ble Supreme Court, would be an abuse of process of law.

I do not find any reason to invoke writ jurisdiction so as to interfere with the impugned order. The writ petition is rejected.