

(1996) 03 BOM CK 0001

In the Bombay High Court

Case No : Criminal W.P. No. 140 of 1991

Shaikh Shakil Anwar and others

APPELLANT

Vs

State of Maharashtra and another

RESPONDENT

Date of Decision : 12-03-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 204, 482
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (1996) 03 BOM CK 0001

Hon'ble Judges : A.D. Mane, J

Bench : Single Bench

Advocate : S.R. Barlinge, for the Appellant; A.S. Rasal, Additional Public Prosecutor for State and R.N. Dhorde, for the Respondent

Judgement

A.D. Mane, J.—A short but important point is raised in this criminal writ petition, which is filed by the accused persons, for quashing criminal proceedings initiated on the complaint lodged by the respondent No. 2 for the offences punishable under sections 406 and 420 of the Indian Penal Code.

2. The respondent No. 2 is the Managing Director of Belganga Sahakari Sakhar Karkhana Ltd. (for short, hereinafter, referred to as the sugar factory). The sugar factory is engaged in manufacturing sugar. Its activity is to procure sugar-cane from its area of operation and also to sell sugar within the State of Maharashtra or elsewhere in India.

3. The respondent No. 2 filed a complaint stating the petitioners entered into an agreement on 9-9-1989 whereby the petitioners agreed to carry out work of transportation of sugar-cane from various fields located within the area of operation of the sugar factory. The petitioners agreed to provide ten trucks and in pursuance to the agreement they pretended to deploy four trucks initially by receiving an advance amount of Rs. 1,42,096/- in two installments, one on 11-9-1989 and another on 29-9-1989. But to the surprise of the complainant, the accused all of a sudden withdrew trucks from the regular work of

transportation of sugar-cane without any prior notice or intimation whatsoever, immediately after three months, though the agreement was for the period of whole season of 1989-90. The complainant alleged that the petitioners deliberately with certain mala fide and ulterior motive not only breached the terms of agreement but showed their intention to induce the complainant from parting with large amount and as such committed offences punishable under sections 406 and 420 of the Indian Penal Code.

4. The learned trial Magistrate on basis of the allegations made in the complaint, as supported by the statement on oath made by the complainant issued process for those offences returnable on 5-4-1990, on 23-3-1990. It appears that the petitioners, however, challenged the order of issuance of process in the revision before the learned Additional Sessions Judge which came to be dismissed on 7-2-1991 on the ground that the learned Magistrate was justified in issuing process when allegations in the complaint prima facie make out a case for offences punishable under sections 406 and 420 of the Indian Penal Code against the petitioners.

5. In this petition, the petitioners, therefore, challenge the aforesaid orders and pray to this Court to exercise its powers u/s 482 of the Code of Criminal Procedure for quashing the proceeding.

6. In order to appreciate the arguments of the learned counsel for parties, it would be appropriate to mention some of the guidelines governing the exercise of powers u/s 482 of the Code of Criminal Procedure (for short, the Code). They are :

(1) The jurisdiction of the High Court is limited to an examination of the evidence already recorded by the Magistrate and the propriety of the Magistrate's remarks based on that evidence alone.

(2) The inherent jurisdiction should be exercised, -

(i) where there is legal bar against the institution or continuance of the proceedings;

(ii) where the allegations in the first information or complaint do not make out the offence alleged; and

(iii) where either there was no legal evidence adduced in support of the charge or the evidence adduced clearly or manifestly failed to prove the charge,

(iv) and in order to prevent abuse of process of court or to secure ends of justice, in cases such as, where the complaint is filed out of personal vendetta to harass the opponent unnecessarily.

In other words, exercise of inherent powers of the High Court is not justified u/s 482 of the Code, it prima facie, offences have been made out on basis of the allegations made in the complaint without going into the truth or otherwise of these allegations. In recent decision of the Apex Court in case of State of

Maharashtra and others Vs. Ishwar Piraji Kalpatri and others, , it is laid down that the court should not, except in extraordinary circumstances, exercise its jurisdiction u/s 482 of the Code so as to quash the prosecution proceedings after they have been launched. It is further laid down that at the stage of quashing a first information report or complaint, the High Court is not justified in embarking upon an enquiry as to the probability, reliability or genuineness of the allegations made therein. Similarly, the Apex Court observed that the mala fides or animus of the complainant or prosecution is not relevant for quashing criminal prosecution at initial stage by High Court when on the basis of allegations in the F.I.R. prima facie case is made out.

7. Shri Barlinge, learned counsel for the petitioners submits that, in the present case, process ought not to have been directed to be issued against any of the accused-petitioners, because the dispute that was raised in the complaint by the respondent No. 2 was purely of a civil nature even assuming that the facts stated by him are substantially correct. In support of this submission he has cited the decision in case of Sardar Trilok Singh and Others Vs. Satya Deo Tripathi, . Shri Barlinge, further urged that it is open for the High Court to exercise inherent powers u/s 482 of the Code in order to prevent abuse of process of law or to secure ends of justice.

8. In the facts and circumstances of the present case, it is however, not possible to accept the submission of Shri Barlinge, learned counsel for the petitioner. In the first place, the aforestated guidelines for invoking the powers u/s 482 of the Code cannot be overlooked. Of course those principles are subject to the well established test, in case where the power is required to be exercised to prevent abuse of process of court or to secure ends of justice. Ordinarily, the High Court will not interfere at interlocutory stage of criminal proceeding pending in the subordinate court unless an exceptional case is made out or extraordinary reason is shown for exercise of inherent powers of the High Court for preventing abuse of process of Court or to secure ends of justice. One of the tests to apply in order to determine whether any particular case is of that exceptional nature or not is to see whether a bare statement of the facts of the case would be sufficient to convince the High Court that it is a fit case for its interference at an intermediate stage. Another test to be applied is to see whether in the admitted circumstances of the case, it would be a mock trial if the case is allowed to proceed. Broadly speaking the High Court will generally interfere in the interest of justice and to stop abuse of process of laws, where the facts float on the surface and it seems that no assistance from deus ex machina is required to see that there is not even a scintilla of suspicion of criminal liability as against the accused. It will be justified if the High Court will interfere and quash such proceedings because to allow the proceedings to continue would be allowing a farce to be enacted to the great harassment of the accused.

8A. In the present case, what Shri Barlinge, learned counsel for the petitioner wants this court to take into account is the defence that is available to the

petitioners.

9. As said above prima facie allegations in the complaint constitute offence as alleged. The learned Magistrate was justified, on statement of the complainant to take cognizance and issue process and it is not possible to quash the complaint only on basis of additional material which the petitioners want to rely upon in this Court. In case of Smt. Chand Dhawan Vs. Jawahar Lal and others, , the Apex Court held that in such circumstances, the High Court would not be justified to quash the complaint on additional materials filed by the accused. The case relied upon by the learned counsel is clearly distinguishable on facts, inasmuch as, in that case, under the hire purchase agreement right to take possession of property-truck was retained and on default, by the financier the truck was seized and, therefore, the Apex Court took the view that dispute raised by the respondent was purely of civil nature, even assuming the facts stated by him to be substantially correct.

10. It may be stated that in the recent judgment of the Supreme Court in case of Anil Saran Vs. State of Bihar and another, , the Apex Court also reiterated the principle that the court is only to see whether the allegations made in the complaint make out an offence prima facie, whether offence has been made out and whether the accused is liable; and what defences are open to him are not the matters to be considered at this stage. It is for the learned Magistrate to proceed with the trial and to deal with according to law. However, it cannot be overlooked that in case of K.M. Mathew Vs. State of Kerala and another, , the Apex Court interpreted the provisions of section 202 and section 204 of the Code of Criminal Procedure and laid down as under :

".... When the accused enters appearance in response to the summons, the Magistrate has to take proceedings under Chapter XX of the Code. But the need to try the accused arises when there is allegation in the complaint that the accused has committed the crime. If there is no allegation in the complaint involving the accused in the commission of the crime, it is implied that the Magistrate has no jurisdiction to proceed against the accused.

".... It is open to the accused to plead before the Magistrate that the process against him ought not to have been issued. The Magistrate may drop the proceedings if he is satisfied on reconsideration of the complaint that there is no offence for which the accused could be tried. It is judicial discretion. No specific provision is required for the Magistrate to drop the proceedings or rescind the process. The order issuing the process is an interim order and not a judgment. It can be varied or recalled. The fact that the process has already been issued is no bar to drop the proceedings if the complaint on the very face of it does not disclose any offence against the accused."

In the instant case, it is indeed open to the accused to plead before the learned Magistrate that the process against him ought not to have been issued if regard be had to the truth or otherwise of the allegations made in the complaint, lodged

against him.

11. I am, therefore, of the opinion that this is not a case where the power of High Court u/s 482 of the Code of Criminal Procedure can be exercised.

12. The result, therefore, is that the writ petition fails and rule is discharged. Liberty to the petitioners to approach the Magistrate for recalling the process, if they so desire and the Magistrate shall consider the same on merits, in accordance with law.