(2007) 02 BOM CK 0004

In the Bombay High Court

Case No : Criminal Revision Application No. 57 of 2006

Shri Querobino C. Dias, House No. 348/1 APPELLANT

Vs

Shri Vincent Rodricks RESPONDENT

Date of Decision : 01-02-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 416
Penal Code, 1860 (IPC) — Section 120A, 120B, 415, 416, 417

Citation : (2007) 02 BOM CK 0004

Hon'ble Judges : N.A. Britto, J

Bench : Single Bench

Advocate : A.F. Diniz, for the Appellant; Anthony D''Silva, for the Respondent

Judgement

N.A. Britto, J.—Heard the learned Counsel on behalf of the applicant/complainant and the respondent/A3. This Criminal Revision Application is directed against the Order dated 692006 of the learned Additional Sessions Judge, Panaji, by which the learned Additional Sessions Judge has allowed the revision filed by the respondent/A3 and consequently has quashed the process issued against the respondent/A3 under various sections of I.P.C, by Order dated 262005.

2. Some facts are required to be stated to dispose of the present revision petition.

3. There is a property admeasuring 125 sq. meters and shown on form Nos. I and XIV in the name of one Camilo Furtado. The said property has been sold by A1/ Fr. Aloysius Joseph Furtado claiming to be known also as Camilo Furtado through power of attorney Dinanath L. Salgaokar/A2 vide sale deed dated 1751999 to the respondent/A3 for a sum of Rs. 20,000/. The said property bears survey No. 1/40 of Village Ambarim. The power of attorney was executed by A1/ Fr. Aloysius Joseph Furtado alias Camilo Furtado before the Notary at Mumbai in favour of A2/ Dinanath L. Salgaokar who is stated to have expired after the filing of the complaint. The complaint came to be filed by the applicant in September, 2004 and the learned Magistrate after recording the statement on oath of the complainant issued process against the accused under Sections 120A, 415, 416,

419, 420, 463, 468, by Order dated 262005. Needless to observe, the said process came to be issued by the learned Magistrate without any application of mind in that both defining and punishing sections, if I may use that expression, were included in the said Order issuing process. This was not expected of the learned Magistrate, with such a long standing. For example Section 120A defines criminal conspiracy whilst Section 120B provides punishment for it. Likewise, Section 415 defines cheating whilst Section 417 provides punishment for it, etc.

4. The complainant in his statement on oath, inter alia, stated that A1/ Fr. Aloysius Joseph Furtado was his cousin and the said Camilo Furtado was his uncle and further stated that the said Camilo Furtado had died on 28121977 and produced a Death Certificate in support of the same. According to the complainant, the said property known as Ambarim surveyed under No. 1/40 of Village Ambarim admeasuring 125 sq. meters belonged to his said deceased uncle. The complainant also stated that the accused nos.1, 2 and 3 in collusion with each other and in order to cheat the complainant and other coowners of the said property Ambarim got executed the said sale deed dated 1751999. Again, the complainant stated that accused nos.1, 2 and 3 in conspiracy with each other and knowing fully well that the said property was owned by late Camilo Furtado, A1 impersonating himself to be said Camilo Furtado and in connivance with accused nos.1, 2 and 3 fraudulently executed the sale deed, which the complainant produced, and further stated that on the basis of the said fraudulent document, A3 obtained construction license and permission from the Office of the Village Panchayat and the Town and Country Planning Department. It is essentially on the basis of the aforesaid statements made by the complainant that the learned Magistrate issued process against all the accused, as aforesaid.

5. The respondent/A3 having filed a revision petition, the learned Additional Sessions Judge, in disposing of the same noted that the name of A3 did not appear as a witness in the power of attorney executed by Fr. Aloysius Joseph Furtado alias Camilo Furtado in favour of A2, the late Dinanath L. Salgaokar and therefore it could not be said from the said document that A3 was in collusion with A1 and A2. The learned Additional Sessions Judge also observed, referring to the sale deed dated 1751999 by which A3 purchased the disputed property from A1, through the said power of attorney, A2 that there was nothing in it to show that A3 had acted in collusion with A1 and A2 to cheat the complainant. The learned Additional Sessions Judge also noted that the complainant had not produced any document to show that the complainant was related to Camilo Furtado nor had produced any document to show that the said Camilo Furtado who expired on 28121977 was the same person whose name appeared in form nos. I and XIV of survey No. 1/40. The learned Additional Sessions Judge also noted that there was no material to support the bald statement of the complainant that A3 and the other two accused were knowing fully well that the property was owned by late Camilo Furtado.

6. On behalf of the complainant, the learned Counsel strenuously submits, as he

always does, that process issued could not have been quashed at the threshold of the proceedings. The learned Counsel further submits that the case against the accused was a warrant triable case and the complainant would have been at liberty to lead his evidence in the inquiry before framing of charge and in case the complainant had failed to produce necessary material then only the accused could have been discharged. The learned Counsel further submits that A3 is a neighbour of the complainant and is also adjacent owner of the property sold by A1 to A3 and from that the conspiracy could have been inferred. The learned Counsel further submits that all the accused were the residents of the said Village Ambarim and as such they would have known that the disputed property did not belong to A1/ Fr. Aloysius Joseph Furtado but belonged to the said Camilo Furtado who is the deceased maternal uncle of the complainant. On behalf of the complainant, reliance has been placed on the decisions in the cases of Yash Pal Mittal Vs. State of Punjab, , Hardeo Singh Vs. State of Bihar and Another, and M. Krishnan Vs. Vijay Singh and Another, . Reliance has been placed on the aforesaid case of Hardeo Singh v. State of Bihar and others(supra) to bring home the point that the case at hand was similar to the facts of the case where general evidence pertaining to conspiracy was available.

7. On the other hand, Mr. Anthony D''Silva, the learned Counsel on behalf of the respondent/A3 has submitted that the statement on oath of the complainant was not sufficient to issue process against the respondent/A3 and the process issued was contrary to the observations of the Apex Court in Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, . The learned Counsel further submits that there was delay in filing the complaint since as per the complainant, the offence was committed in the year 1999 a suit was filed in June, 2004 and the complaint was filed in September, 2004.

8. The complainant has sought to pin down the respondent/A3 as one of the conspirators in the offences allegedly committed by A1/ Fr. Aloysius Joseph Furtado alias Camilo Furtado on the wild allegation that they were either acting in conspiracy or collusion without setting out the facts from which the said inference could be drawn.

9. The Apex Court in the case of Yash Pal Mittal v. State of Punjab(supra) relied upon on behalf of the complainant, has stated, with reference to Section 120A of I.P.C. that it is a distinct offence. The Apex Court has further stated that the very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are coparticipators in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be

committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or overshooting by some of the conspirators. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy. The Court referred to Major E. G. Barsay v. The State of Bombay((1962) 2 SCR 196) and stated that the gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts... etc.

10. Admittedly, a criminal conspiracy u/s 120B could be proved by direct or circumstantial evidence showing that there was an agreement between two or more persons to commit an offence. In most cases, it will be difficult to get direct evidence of an agreement to conspire but a conspiracy can be certainly inferred even from circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence.

11. The Apex Court in the case of Vijayan @ Rajan Vs. State of Kerala, has observed that it is no doubt true that it is difficult to establish conspiracy by direct evidence and, therefore, from established facts inference could be drawn but there must be some material from which it would be reasonable to establish a connection between the alleged conspiracy and the act done pursuant to the said conspiracy.

12. The Apex Court in Hardeo Singh v. State of Bihar (supra) again stated that some general evidence pertaining to the conspiracy would be sufficient to form part of the charge of conspiracy in the chargesheet. As a matter of fact some connecting link or connecting factor somewhere would be good enough for framing of charge since framing of charge and to establish the charge of conspiracy cannot possibly be placed at par. On behalf of the complainant, an effort has been made to show that in this case there has been many connecting links or connecting factors from which it could be presumed that the respondent/A3 was a conspirator along with A1. It is pointed out on behalf of the complainant that the sale deed produced by the complainant shows that the respondent/A3 had paid to A1 Rs. 20,000/as sale price even before the power of attorney was executed by A1 in favour of A2. It is further contended that the respondent/A3 would not have paid the said amount of Rs. 20,000/to A1 when he knew that the property was standing in the name of the said Camilo Furtado. It is also submitted by the learned Counsel that the sale deed shows that the eastern boundary of the disputed property is the property of the father of the respondent/A3 and therefore respondent/A3 ought to have known that the property did not belong to A1/ Fr. Aloysius Joseph Camilo Furtado. It is also

submitted that the respondent/A3 and the other accused were the residents of same village and therefore ought to have known that the subject property did not belong to A1/ Fr. Aloysius but to late Camilo Furtado, the uncle of the complainant. These are as per learned Counsel of the complainant, connecting links, which collectively raise suspicion of involvement of respondent/A3 in the criminal conspiracy.

13. In my view, none of the said submissions made on behalf of the complainant could be accepted since they are not on speaking terms with the statement on oath of the complainant. If these were the connecting links then the complainant ought to have stated them in his statement on oath. In his statement on oath a complainant is required to state all facts which are necessary to constitute an offence or from which inference could be drawn. The statement on oath of the complainant apart from wild or bald statement of conspiracy did not indicate any facts from which inference of conspiracy could be drawn. That apart the fact that respondent/A3 paid the sale price to A1/ Fr. Aloysius before executing the power of attorney or the sale deed is no indication that he was a party to the criminal conspiracy. In case A3 knew that the said property belonged to the deceased uncle of the complainant, the complainant ought to have specifically stated as to how he knew about the same. There is no material to support the said statement of the complainant that the respondent/A3 knew that the property purchased by him from A1 was owned by his uncle, the late Camilo Furtado except his bare statement and that too even without showing his own relationship with the said Camilo Furtado. Only because the eastern boundary is shown in the name of Lourenco Rodrigues and the respondent/A3 is described as the son of Lourenco P. Rodrigues, one need not jump to the conclusion that Lourenco Rodrigues and Lourenco P. Rodrigues are one and the same persons and therefore the respondent/A3 was the son of the neighbouring owner who ought to have known that the disputed property belonged not to Fr. Aloysius but to the late uncle of the complainant. It is only A1/ Fr. Aloysius Furtado and respondent/A3 who are the residents of the same village but even if all three accused were the residents of Ambarim was insufficient to jump to the conclusion that they all knew that the property sold by A1 belonged to the uncle of the complainant and not to A1.

14. Process is issued on the basis of the statement on oath of the complainant and of the witnesses and the result of the inquiry or investigation, if any, made u/ s 200 of the Code of Criminal Procedure, 1973(Code, for short). Here was a case where the process was issued only on the basis of the statement on oath of the complainant. The recording of the statement on oath of the complainant u/s 200 of the Code is not an empty formality. Commonly it is nick named as verification. To verify is to establish the truth. In other words verification is done in order to ascertain as to what is pleaded by the complainant is true or not. It is with a view to separate chaff from the grain, as many a times complaints do contain unfounded allegations and it is the duty of the Court to ensure that what is stated in the complaint is also stated by the complainant on oath and it is only then that based on such statement that process can be issued. The corollary of

this would be that unless offences are disclosed from the statement on oath, no process can be issued only based on averments in the complaint. The complainant is bound to make a statement on oath as to how the offence was committed and how the accused persons are responsible therefore.After the statement on oath is recorded, a Magistrate is required to apply his judicial mind to the facts of the case and the law applicable thereto and find out what offence/ s is made out, notwithstanding that the other party at that stage is unrepresented.

15. The law as regards quashing of criminal complaints or process issued is well settled from the time of R.P. Kapur Vs. The State of Punjab, , State of Haryana and others Vs. Ch. Bhajan Lal and others, , Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, to M. Krishnan Vs. Vijay Singh and Another, wherein the Apex Court has stated that revisional or inherent powers for quashing the proceedings at the initial stage can be exercised only where the allegations made in the complaint or the first information report, even if taken at their face value or accepted in their entirety, do not prima facie disclose the commission of an offence or where the uncontroverted allegations made in the FIR or complaint and the evidence relied in support of the same do not disclose the commission of any offence against the accused or the allegations are so absurd and inherently improbable that on the basis of which no prudent person could have reached a just conclusion that there were sufficient grounds in proceeding against the accused or where there is an express legal bar engrafted in any provisions of the Code or any other statute to the institution and continuance of the criminal proceedings or where a criminal proceeding is manifestly actuated with mala fide and has been initiated maliciously with the ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge.

16. As already stated, apart from making wild and sweeping statements, the complainant did not state any facts in his statement on oath which would connect the respondent/A3 with the conspiracy to which the respondent/A3 was a party along with A1. Even if there is to be suspicion the same has got to be based on materials. There was no material produced by the complainant in his statement on oath except for the sweeping statements the complainant made that all the three accused conspired with each other and A1 in impersonated himself as Camilo Furtado, the late uncle of the complainant.

17. Considering the statement on oath given by the complainant, the conclusion arrived at by the learned Additional Sessions Judge could not be faulted. Before concluding it must be stated that the thrust of the case of complainant is that the complainant was cheated by A1/ Fr. Aloysius J. Furtado representing he was Camilo Furtado. However, it is not the case of the complainant that any of the accused dishonestly induces the complainant to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the complainant to do or omit to do anything which he would not do or

omit if he were not so deceived, that being the main ingredient of cheating. In other words, Section 416, on which the entire thrust of the complaint is placed was clearly inapplicable. There is no merit in this revision. Consequently, the same is hereby dismissed.