(1992) 07 BOM CK 0055

In the Bombay High Court

Case No : Criminal Application No. 1366 of 1987

Suresh Lalchand Lulla and Others — APPELLANT

Vs

Neela Sudhish Talpade (Smt.) and Another — RESPONDENT

Date of Decision : 13-07-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 420, 463, 464

Citation : (1992) 3 BomCR 394 : (1992) 94 BOMLR 274 : (1992) MhLj 1455

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Advocate : L.R. Chary and Nayantara Rao, for the Appellant; R.T. Walawalkar and A.V. Datar and C.M. Kothari, Public Prosecutor, for the Respondent

Judgement

S.M. Daud, J.—This is a quashing petition u/s 482 of the Code of Criminal Procedure, 1973.

2. Respondent No. 1 -hereinafter to be referred to as ''complainant''-has filed a private complaint in the Court of Metropolitan Magistrate, Andheri at Bombay. Shortly stated, the complaint recites that Flat No. D/1 in Beach House Co-operative Housing society, Gandhigram Road, Juhu, Bombay 400 049 is an acquisition of the complainant. Petitioner Lalchand is the father of petitioners Suresh, Amarnath, Ramesh and one Manohar. These people will hereinafter be referred to as ''accused''-Suresh and Manohar being referred to as ''accused Nos. 1 and 3 respectively''. In about November 1968 accused No. 3 approached the complainant with a request that she give the flat mentioned above for his residential use on a leave and licence basis. The proposal was accepted by the complainant who made it clear that the flat was not to be given to any firm or body corporate as it was meant only for the use of accused No. 3. Accused No. 3 made it clear that he wanted the flat for the residence of himself and his family members. However, he was a partner of a firm doing business in the name and style of M/s. Bombay Spring Works. Having regard to tax planning, he requested

that the document of leave and licence be in the name of the firm. Plaintiff acceded to the proposal and on 1-12-1968 a leave and licence document was drawn up. This document or rather the transaction recorded therein was renewed on the same terms and conditions as before on 1-2-1971. In 1972, accused No. 3 requested the complainant to permit his brother accused No. 1 to use the flat for his residence in view of accused No. 3 having left Bombay for settling down in Delhi. Complainant acceded to this request of accused No. 3 which was supplemented by accused No. 1 also. Again, the first accused requested complainant that the leave and licence document be in the name of a firm doing business in the name and style of M/s. Southern Automatic Industries of which accused No. 1 was said to be a partner. This also was to be from the point of view of tax planning. It was made clear that the flat would be used exclusively for residential purposes by the first accused. It was in this background that a leave and licence document was drawn upon 1st April, 1972. Since that time the accused No. 1 was using the flat. None of the other accused were in occupation of the said flat. The occupation of accused No. 1, his wife and maid-servant was reflected in the electoral rolls drawn up in 1972 and 1978. On 30th March, 1978 the five accused instituted a R.A. Declaratory Suit No. 2070 of 1978 in the Court of Small Causes at Bombay. The suit was for a declaration that the accused were tenants and/or protected licences of the flat in dispute. Though the plaint was filed by all the accuse d the verification thereof was by accused No. 1 alone. It was fraudulently averred in the plaint that the leave and licence agreements had been forcibly obtained by the complainant who had represented that the recitals in the agreements were not to be acted upon. The plaint further averred that Southern Automatic Industries and Bombay Spring Works had by then been converted into private limited companies. Apart from the declaratory suit the accused also moved an application for determination of the standard rent. This was the first indication to the complainant that the accused had taken advantage of her trusting nature. Prior to 1-4-1972 she was not aware that M/s. Southern Automatic Industries was in fact a private limited company or that accused No. 1 had any relationship or interest in the said private limited company when the concern came to be converted into a private limited company. The accused preferred an application on 30th October, 1985 which application was for seeking leave to amend the plaint in the declaratory suit. The application for amendment of the plaint was supported by an affidavit of accused No. 1. It averred that the firms afore-mentioned had been eventually converted into private limited companies and that accused were Directors of the said companies and not partners. The case sought to be set up by the amendment application was that complainant had entered into transactions with two companies for which reason it was necessary to implead those companies as plaintiffs Nos. 6 and 7. The amendment application was dismissed by a learned Judge of the Small Causes Court under an order dated 10-12-1985. Complainant had made enquiries to ascertain what the true position was. It was then that she learnt that M/s. Bombay Spring Works Ltd. was incorporated on 15th March, 1972, whereas Southern Automatic Industries Pvt. Ltd., was in existence way back since 9th of

August, 1967. The accused were the Directors of both these companies and M/s. Southern Automatic Industries had not existed at the time of the agreement dated 1-4-1972. Now comes the seventh paragraph on which considerable emphasis has been placed by learned Counsel representing the complainant. For that reason I will reproduce the said paragraph in full :--

"The complainant then realised that the accused No. 1 along with other accused, in furtherance of their common intention had fraudulently suppressed the fact of incorporation of the said M/s. Southern Automatic Industries Private Limited on 9th August, 1967, that is prior to the signing of the Leave and Licence Agreement in 1972. All the accused misrepresented to the complainant in furtherance of their common intention to practice fraud that M/s. Southern Automatic Industries was a partnership firm which never existed at the time of signing of Leave and Licence Agreement on 1-4-1972 since it was already a Private Limited Company. It also transpires that in or around 1970 the accused No. 1 had entered into an agreement with Mrs. Rekha Agarwal residing in the said Beach House Society (Flat B-3) in the name of M/s. Southern Automatic Industries Private Limited duly incorporated as a Private Limited Company (Exhibit P-11). Inspite of the above the accused fraudulently induced the complainant to part with possession of her said flat making the document in the name of the firm which was non-existent. Had the complainant been disclosed the real facts, she would never have parted with possession of the said flat.''

The eighth paragraph goes on to aver that accused had colluded with one another and had acted in furtherance of their common intention to cheat the complainant thereby dishonestly inducing her to deliver her flat to accused No. 1. They also made false documents mentioned above, committed forgery for the purpose of cheating and had abetted one another. They had used forged documents as genuine. By doing all this they had committed offences punishable under sections 420, 465 and 471 read with 34 and 109 of the Indian Penal Code.

3. The Magistrate took cognizance and issued process under sections 420, 465, 468 and 471 read with 34 and 109 of the Indian Penal Code. It is this order which is impugned in the petition before me. Learned Counsel representing the petitioners submits that the issue-process order was unwarranted and that the same deserved to be quashed. This contention is disputed by Counsel representing the complainant. Before we go into the legal aspect of the matter, it is necessary to emphasise the substances of what had been narrated above. To repeat, the complainant makes it clear that she had given the flat to accused No. 3 and after the departure of that gentleman, to accused No. 1. These persons had taken leave and licence agreements in the names of what were given out to be firms, the names of the firms being M/s. Bombay Spring Works and M/s. Southern Automatic Industries respectively. Whatever be the names entered into in the leave an licence agreements vis-a-vis sets of licensees, the licence was for and only in respect of individuals viz, accused Nos. 1 and 3. Complainant had made it clear that she wanted nothing to do with a firm or a body corporate. This

was acceptable to accused Nos. 3 and 1 respectively. The two individuals said that they wanted the leave and licence agreements to show the two firms as the licensees-this, being only for the purpose of tax planning. In the face of these recitals I find it difficult to understand how the complainant''s belated learning of the concerns not being firms but private limited companies, can be said to constitute any offence whatsoever. Her stand continues to be that the licensees were natural persons being accused Nos. 3 and 1. The concerns shown as licensees in the leave and licence agreements were mere name lenders whose names had been inserted in the leave and licence agreements for, to use the words of the complainant, "tax planning purposes". It was argued that be that as it may, the concerns in whose names the leave and licence agreements were taken were given out to be firms whereas in reality they turned out to be private limited companies. Therefore, a false document had been made or induced to be made and that sufficed for the purpose of a prima-facie indication that offences punishable under various section of the Indian Penal Code had been committed. The mere making of a document, some recitals whereof are at variance with reality, does not constitute an offence. Section 463 of the Indian Penal Code which defines ''forgery'' makes it clear that the making of a false document or a part of document or a part of document has to be inspired with a certain intention. The intention has to be to cause damage or injury to any person or support any claim or title or to cause any person to part with property or to enter into any express or implied contract or with intent to commit fraud or so that fraud may be committed. Now here the complainant had no interest in as to what was the tax planning method. It is not that the names of the firms or entities were entered into the leave and licence agreements with a view to ensure payment of licence fee to the complainant. The purpose of taking the documents in the name of artificial entities was to enable accused Nos. 3 and 1 to circumvent their liability for tax-planning, evasion or avoidance thereof, whatever it be. Section 464 of the Indian Penal Code makes it clear that in order to constitute an offence of making a false document, the Act must be inspired by dishonesty or fraud. The very first specification of section 464 speaks of dishonesty or fraud inspiring the creation of a false document. Similarly, the second and third specifications also conceive of a dishonest and fraudulent intention behind the creation of a false document. The purpose of the document should be to practise deception on someone or the other. Learned Counsel relies upon the Second Explanation to section 464 to contend that the present case falls within the mischief of section 464. Explanation 2 to section 464 reads as follows:-

"The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery."

Now in the present case whether the document was in the name of an existing or a non-existing firm or taken in the name of the firm that had been converted to a private limited company did not have any bearing on the complainant agreeing to enter into transaction. Here, the leave and licence agreements were with individuals and her permitting the documents to show the names of firms as licensees was the result of her acceding to a request made by accused Nos. 3 and 1 respectively. There could not be any cheating because she was aware, and, in fact was bent upon emphasising that the transaction was with individuals, and not with any firm or body corporate. It is argued that para 7 makes it clear that but for the representations made by the accused persons she would not have parted with possession. As a matter of fact, accused other than accused Nos. 1 and 3 had nothing to do with the complainant, at least to the extend of the execution of the leave and licence agreements. Their filling a suit in the Small Causes Court did not render them liable for any offence. It is difficult to believe that complainant was in any way influenced by the use of this or that name, when she knew that the licence was for and in respect of individuals and not artificial entities. Having regard to what has been set out above, the complaint makes out no offence. Learned Counsel argues that whatever be the truthfulness or otherwise of recitals appearing in the complaint, complainant should be given a chance to establish her case. In support of this contention he relies upon certain authorities. These are to the effect that in appraising a quashing petition the High Court will not go beyond the recitals appearing in the complaint or the verification. Correct as this be, where the recitals of the complaint make the factual position clear, the mere use of strong words here or there will not suffice to justify the taking of cognizance. In the instant case the complaint makes out no offence and the complainant is trying to take advantage of a word here or there to drag accused to the Court as a measure of retaliation for accused having dragged her to the Court of Small Causes at Bombay. That surely cannot be permitted and the purpose of section 482 of the Code of Criminal Procedure being what it is, no innocent person can be allowed to be prosecuted. The petition succeeds. The Magistrate''s order taking cognizance vis-a-vis petitioners is hereby quashed. Rule made absolute.

