

(2014) 12 BOM CK 0089

In the Bombay High Court

Case No : Criminal Writ Petition No. 104 of 2014

Vithal Kapuskar

APPELLANT

Vs

State of Goa

RESPONDENT

Date of Decision : 05-12-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 321, 482
Penal Code, 1860 (IPC) — Section 120B, 307, 323, 324, 326

Citation : (2015) ALLMR(Cri) 1535 : (2015) 1 BomCR(Cri) 478

Hon'ble Judges : U.V. Bakre, J

Bench : Single Bench

Advocate : Galileo Teles, Advocate for the Appellant; J.J. Mulgaonkar, Advocate and Mahesh Amonkar, Additional Public Prosecutor, Advocate for the Respondent

Judgement

U.V. Bakre, J.—Heard Mr. Teles, learned Counsel appearing on behalf of the petitioner, Mr. Amonkar, learned Additional Public Prosecutor appearing on behalf of the respondents no. 1 and 3 and Mr. Mulgaonkar, learned Counsel appearing on behalf of the respondent no. 2.

2. Rule. By consent, Rule made returnable and heard forthwith.

3. By this petition, the petitioner has prayed for quashing and setting aside the Charge Sheet No. 12/2012, filed by the respondent no. 1, based on F.I.R. No. 168/2003 and consequently, to quash and set aside criminal proceedings before the learned Chief Judicial Magistrate, Panaji, bearing No. IPC/213/2013/A against the petitioner and others.

4. The said charge sheet has been filed under Section 409, 420 and 120-B of the Indian Penal Code (I.P.C., for short) against the petitioner and two others. The complaint was filed by Shri Mohandas Ramdas, Manager (Recovery) of the respondent no. 2 against the petitioner and eight others alleging that the accused persons hatched criminal conspiracy to cheat the respondent no. 2 and in furtherance of the said conspiracy, accused no. 2 who was lawfully bound to

protect the interest of the Bank stood surety to the petitioner and furnished property with defective title for mortgage and got sanctioned a term loan of Rs. 1,00,000/-on the basis of the recommendation of accused no. 3 and delivered Rs. 38,40,000/-to the accused no. 1 by violating Banking Rules and sanctioned Rs. 6,39,000/-to the accused no. 2. Pursuant to the said complaint, F.I.R. No. 168/2003 was registered for the said offences and the same culminated into the said Criminal Case No. IPC/213/2013/A.

5. The learned Counsel for the parties submitted that the matter has been settled between the parties and that the respondent no. 2 does not want to proceed further with the said case. In this regard, Shri Salvador Pinto, who is working as General Manager of accused no. 2 and who has been duly authorised to withdraw the said F.I.R. by way of resolution of the respondent no. 2 has filed an affidavit on behalf of the respondent no. 2. In this affidavit, the said General Manager has specifically stated that issue regarding withdrawal of the criminal complaint against Kapuskar Exports was discussed in the meeting of the Board of Directors, firstly, in the Executive Committee meeting of the Bank held on 12.06.2013 and specifically discussed on 15.07.2013 in the meeting of the Board of Directors and a decision was taken to withdraw the case by initiating necessary action under Section 321 of the Criminal Procedure Code. It is further stated in this affidavit that the Bank issued a letter under reference No. 479/POND/10/FIR/RO/HO dated 24.07.2013 to the Superintendent of Police to withdraw the prosecution. The said General Manager has thus given no objection if the petition is allowed in terms of prayer clauses (a) and (b) of the petition. A certified true copy of the resolution of the respondent no. 2 has been annexed to the affidavit.

6. It is seen that though the offence under Section 420 of I.P.C. is compoundable, however, offences under Sections 409 and 120-B are non-compoundable. With regard to this, the learned Counsel for the parties have relied upon the judgment of the Hon"ble Supreme Court in the case of Gian Singh Vs. State of Punjab and Another, . In the case supra, the Hon"ble Supreme Court has observed that:-

"Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor."

7. In the recent case of Yogendra Yadav Vs. The State of Jharkhand, , the offences were under Sections 341, 323, 324, 504, 326 and 307 read with Section 34 of I.P.C. Relying upon the judgment in the case of "Gian Singh" (supra), the Hon"ble Supreme Court restated the categories of cases in which the power under Section 482 of Cr.P.C., for quashing criminal proceedings involving non-compoundable offences, can be exercised. The Hon"ble Supreme Court allowed

the compromise and quashing of non-compoundable offences under Sections 326 and 307 of I.P.C.

8. In view of the above, since the respondent no. 2 and the petitioner have amicably settled the matter between them, I am of the view that no purpose will be served by making the petitioner to face the proceedings in Criminal Case No. IPC/213/2013/A, before the learned Chief Judicial Magistrate, since the prosecution would be a waste of time and energy.

9. In the result, the petition is allowed. The Charge Sheet No. 12/2012 based on F.I.R. No. 168/2003 and consequently, the Criminal Case No. IPC/213/2013/A qua the petitioner is quashed and set aside.

10. Rule is made absolute in terms above and the petition stands disposed of accordingly.