(1984) 08 BOM CK 0025

In the Bombay High Court

Case No : Criminal Application No. 33 of 1984

Yeshwant C. Golecha and Others — APPELLANT

Vs

Prabhu Radhakrishna Srinivas, Vice President, Cargo Division, Cox and Kings (India) Ltd. and Another — RESPONDENT

Date of Decision : 27-08-1984

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1985) 2 BomCR 72

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

Bench : Single Bench

Advocate : Ajit P. Shah, for the Appellant; N.L. Makhijani and S.S. Kaluskar, Public Prosecutor for respondent No. 2 State, for the Respondent

Judgement

A.D. Tated, J.—This criminal application u/s 482 Criminal Procedure Code is directed against the order of the Metropolitan Magistrate, 23rd Court, Esplanade, Bombay, for issuing process in Criminal Case No. 1133/S/83 (Misc. Case No. 62 of 1983) on the complaint filed by the respondent No. 1 for the offence u/s 420 read with section 114 Indian Penal Code.

2. The respondent No. 1 complainant is the Vice President of Cargo, Division of Cox & Kings (India) Ltd. having its registered office at Dr. Dadabhai Naoroji Road, Bombay. The accused are the partners of the firms styled as Fashions Exporters and Garment International, both having their offence at Galta Road, Jaipur. The accused Nos. 1 and 3 are brothers and the accused No. 2 is their sister in law. The accused in the name of their two firms are dealing in ready made garments, handicrafts, etc. for expert purposes. The respondent No. 1 company are clearing and forwarding agents. The accused were doing their export business through the respondent No. 1 and exported goods to various countries.

3. In or about April 1983 the respondent No. 1 pointed out to the accused that an amount of Rs. 80,000/- was due from them and they should give assurance

from their bankers for payment of the said amount, and accordingly the accused had given the assurance from Oriental Bank of Commerce, Jaipur. The Manager of the said Bank gave a letter dated 20th April, 1983, stating that the amount of the respondent No. 1 would be paid after receiving the collection proceeds from abroad. The accused informed the respondent No. 1 that it had authorised its bankers to make payment of the said amount of Rs. 80,000/- after the recovery of their dues from abroad. It is the case of the respondent No. 1 that soon thereafter, without making payment of their dues, the accused surreptitiously withdrew the bank guarantee and stopped business with it. According to the respondent No. 1, it indicated that the accused cheated it of large sums of money for the work of which it had paid its own money for freight, customs duty and all other things, apart from their fees for services. On those averments the learned Metropolitan Magistrate issued process. That process has been challenged by the petitioner accused in this Court.

4. In the petition filed by the accused they have set out how the respondent No. 1 charged excess amount on account of air freight and on other items and they had called upon the respondent No. 1 to settle the account. They have also averred that the respondent No. 1 did not reply their letters calling upon it to settle the accounts and in order to harass them filed a criminal case against them in the Court at Bombay. The facts stated by the petitioner accused in the petition have not been controverted by the respondent No. 1 by filing a return or reply. I have gone through the complaint and the allegations therein revealed that the Bank assurance for payment of the amount of Rs. 80,000/- was given by the accused after the transactions were over and the respondent No. 1 asked the accused to give Bank assurance for the amounts due. It appears that there were disputes between the parties regarding the freight charged and other charges debited by the respondent No. 1 to the account of the petitioners accused. The petitioners wanted that the respondent No. 1 should settle those disputes, and for that they twice wrote to the respondent No. 1, but the respondent No. 1, instead of replying the letters and settling the disputes, rushed to the Criminal Court and filed complaint against the petitioners for the offence of cheating. It is obvious that there were dealings between the parties and on account of those dealings some amount was due to the respondent No. 1. The petitioners-accused pointed out to the respondent No. 1 that it had overcharged them on certain items and asked it to settle the account. The respondent No.1 instead of settling the account, filed a criminal complaint. The dispute between the parties is purely a civil dispute and the allegations in the complaint do not make out the ingredients of cheating as defined in section 415 I.P.C.

5. Consequently, the process issued by the learned Metropolitan Magistrate against the petitioners-accused will have to be quashed and it is hereby quashed. The respondent No. 1 shall pay the costs of the petition quantified at Rs. 500/- . Rule made absolute.

