

Form No. J(1)

IN THE HIGH COURT AT CALCUTTA
Appellate/Revisional/Criminal Jurisdiction.

Present :

The Hon'ble Mr. Justice Pradip Kumar Biswas.

C. R. R. No. 13 of 2000
With
C. R.A.N. No. 627 of 2000

Mrs. Rekha Dixit
Versus
State of West Bengal & Anr.

For the Petitioner :

1. Mr. Sekhar Basu
2. Mr. Milon Mukherjee.
3. Mr. Sandipan Ganguly.

For the Opposite Party

1. Mr. Utpal Majumdar.
2. Mr. P. Kar.

Heard On : 18-02-2003, 05-03-2003, 12-03-2003

judgment On : 08-04-2004

MR. PRADIP KUMAR BISWAS, J. : The instant revisional application is directed against the criminal proceeding being Case No. C-543/99 under Section 420/471 of the

Indian Penal Code presently pending before the Ld. Metropolitan Magistrate, 15th Court, Calcutta praying for quashing of the aforesaid proceeding and also praying for setting aside the order dated 12-04-99 whereby and whereunder summons were issued against the present petitioner.

The facts leading to the filing of this revisional application may be stated as under :-

The aforesaid criminal proceeding was initiated on the basis of the complaint lodged by one Ratanlal Sethia, Opposite Party no. 2 herein before the Ld. C. M. M., Calcutta wherein commission of offence by the petitioner and others punishable under Sections 420, 423, 463, 464, 465, 467, 468, 470, 471 and 474 of the Indian Penal Code was alleged.

It has been alleged by the petitioner that she is erstwhile Director of M/s. Sequence Estates Pvt. Ltd., and she resigned from the post of Directorship of the said Company with effect from 15.09.1998. The aforesaid information was duly communicated to the Registrar of Companies, Delhi and Haryana and the same is apparent from

The Registrar of Companies and the C.C. of Form No. 32 obtained from R.O.C. It has been alleged by the petitioner that during her tenure as a Director she was never involved in the day-to-day functioning of the business of the Company and finding it difficult in her post as the Director of the said Company and specially due to her absolute personal reasons, she resigned from the post of Directorship of the said Company. But the petitioner was surprised to receive a summons dated 23.8.99 issued by the Ld. Metropolitan Magistrate, 15th Court, Calcutta in connection with the aforesaid case whereby she was directed to appear before the concerned court on 7.10.99 to answer a charge under the aforesaid-mentioned sections of the Indian Penal Code.

It has further been alleged that on perusal of the complaint, the petitioner came to learn that a complaint has been lodged by the Opposite Party No. 2 wherein it was stated, inter alia, that the company i.e., **Sequence Estate Pvt. Ltd.**, had cheated and used forged documents in order to obtain a loan of Rs. 1 crore from M/s. Twenty First Century Securities Ltd. i.e., the Company of the Opposite Party No. 2 and such deception and false inducement was initiated on and from 25.9.98. It has further been

alleged by the petitioner that upon receipt of such summons, she immediately filed her appearance before the Ld. Magistrate through her lawyer and also filed an application under Section 205 of the Code of Criminal Procedure praying therein for exemption from personal appearance alleging therein that she was not a Director at the time of inception of the transaction between M/s. Sequence Estates Pvt. Ltd. and the Company which the complainant represents and it was also stated by her that she being a permanent resident of New Delhi her regular attendance before the court would cause serious financial loss.

It has also been alleged that the allegations levelled in the complaint are to the following effect :-

- a) The petitioner has been arraigned as accused no. 3 while her husband has been arraigned as accused no. 6. The father-in-law of the petitioner has been arraigned as accused no. 4.
- b) On 25.09.98 the accused No. 5 namely Prakash Khaitan, who is a finance broker, introduced the accused no. 2 (husband of the petitioner) to the complaint and Mahendra Kumar Jalan at the corporate office of M/s. Twenty First Securities Ltd. at 2, Clive Chat Street, Kolkata and spoke

highly of the accused no. 1 (M/s. Sequence Estates Pvt. Ltd.) and accused no. 2.

- c) The accused nos. 2 (husband of the petitioner), 4 (father of the accused no. 2) and 5 (Mr. Prakash Khaitan) represented to Mr. Mahendra Kumar Jalan and the complainant that the accused no. 4 has been residing at Calcutta and was wealthy person having very high reputation in society and amongst the business community.
- d) The accused no. 2 further represented that accused no. 6 (Jai Prakash Gaur) is a front ranking industrialist in the country who was the father of the petitioner and father in law of the accused no.2.
- e) In Course of such meeting the accused no. 5 (Prakash Jalan) stated that accused no. 2 and the petitioner were desperately in need of money for setting up their factory in the name and style of Rashiva International Ltd., at Buland Sahar, U.P. and that they were holding 32 lakhs equity shares of Rs. 10/- each of Jai Prakash Industries Ltd. valued at about Rs.256 lakhs and those shares stood registered in the name of the accused no. 1.
- f) The accused no. 5 further requested Mr. M. K. Jalan and the complainant to arrange for finance from M/s. Twenty First Century Security Ltd. for accused no. 1, 2 and 3 amounting to Rs.1 crore

against the security of the aforesaid 32 lakhs equity shares of Jai Prakash Industries Ltd. The accused no. 5 further represented that the money thus taken on loan would be repaid with agreed interest @ 30% per annum within 90 days from the date of receipt of the said money.

- g) In order to deceive Mahendra Kumar Jalan and the complainant by inducing with false faith and confidence, the accused no. 2 in course of discussion, made several telephonic calls from his mobile and after one such call, told Mahendra Kumar Jalan and the complainant that he had a talk with the accused no. 6, who is the Chairman cum Managing Director of Jai Prakash Industries Ltd. and that the accused no. 6 had approved of the proposal of the accused no.2 to pledge 32 lakhs shares of Jai Prakash Industries Ltd. and to obtain loan of Rs. 1 crore.
- h) Being induced by these false and fraudulent representations, M/s. Twenty First Century Securities Ltd. agreed to advance a loan of Rs. 1 crore to accused no. 1.
- i) The complainant and Mahendra Kumar Jalan paid an initial sum of Rs. 37.5 lakhs through a cheque drawn in favour of the accused no. 1 which was received by the accused no. 2 in presence of the accused no. 5. The said cheque was deposited by the accused no.2 in the bank account of the

accused no. 1 and the same was also encashed and in acknowledgement thereof, the accused no. 2 issued a receipt. The accused no. 2 also delivered 16 original share scripts of Jai Prakash Industries Ltd. as also executed transfer deeds for the said shares.

- j) On 28-09-98 M/s. Twenty First Century Securities Ltd. through another cheque, paid a further sum of Rs.37.5 lakhs favouring the accused no. 1 and handed over the same to the accused no. 2 in presence of the accused no. 5. Acknowledging payment on behalf of the accused no. 1, accused no. 2 issued a receipt. The accused no. 2 further executed a few documents, inter alia, a letter of request, a promissory note, letter of continuity, an affidavit along with post dated cheques for repayment of the loan as also a deed of pledge. Simultaneously, the accused no. 2 in presence of the accused no. 5 handed over a second lot of equity share scripts claiming those to be original genuine share scripts of Jai Prakash Industries Ltd.
- k) The accused nos. 1, 2 and 3 falsely represented that the accused would redeem pledge shares within 90 days from the date of receipt of the said amount of the deposited loan on repayment of the said sum of money together with interest.

L) On 10-11-98, M/s. Twenty First Century Securities Ltd., paid a further sum of Rs. 25 lakhs through a cheque to the accused no. 1 and the same was received by the accused no. 2 in presence of the accused no. 5.

m) That paragraph 14 of the complaint describes the individual roles played by different accused persons but the same does not ascribe any role to the petitioner, who is the accused no. 3.

n) It is thus the contention of the complainant that the accused persons in conspiracy with each other, had cheated the company of the complainant for which they were liable to be punished under Sections 120B, 420, 465, 467, 468 and 471 of the Indian Penal Code.

The petition of complaint filed by the complainant/opposite party no. 2, therefore, does not specifically allege participation of the petitioner in the transaction at all except the fact that she has been implicated in the instant case solely on the basis of her position as a Director of accused no. 1 and according to the petitioner, the allegations made in the complaint do not make out any ingredient of the offences punishable under Sections 420/471 of the Indian Penal Code against the petitioner and since the petitioner had resigned as a

Director of M/s. Sequence Estates Pvt. Ltd. on and from 15-09-98 as such she could not have been arraigned as an accused in view of her status as a Director of accused no. 1 Company.

It has been contended on her behalf that there is no reason for proceeding with this case against this accused and the continuation of the same will be a clear abuse of the process of law. Hence, this prayer.

This prayer has, however, been opposed by the Opposite Party no. 2 alleging that in view of the allegations levelled against the petitioner, her prayer for quashing is not permissible under the law as materials disclosed in the complaint are sufficient enough to hold, prima facie, that there are allegations against her for proceeding in the matter.

I have heard the learned counsels appearing for the parties at length.

The Learned counsel appearing for the accused petitioner has contended before me that from a reading of

the petition of complaint it will be crystal clear that all the allegations contained therein are mainly directed against the accused no. 2, 4 and 5 as the complaint clearly discloses that the representations were made to the complainant and Mahendra Kumar Jalan of M/s. Twenty First Century Securities Ltd., by the accused no. 2, 4 and 5 and the accused no. 3 is clearly conspicuous in her absence. As per the complaint petition cheques were also received by the accused no. 2 on behalf of the accused no. 1 and all the documents securing repayment of the loan by the accused no. 1 were also executed by the accused no. 2 and the absence of participation of the accused no. 3 is glaring. It has further been contended on their behalf that the opposite party no. 2 has filed a vacating application in the instant revisional application where he has annexed certain documents which also find mention in the said complaint. These two documents, as it appears, would, clearly show that the accused no. 2 had negotiated such loan on behalf of the accused no. 1 Company and the accused no. 3 had no part to play in the said transactions and in those documents, participation of the present petitioner has not at all been reflected.

It has further been contended on behalf of the petitioner that there is overwhelming and convincing documents to show that the present petitioner had resigned from the Company much prior to the alleged date of occurrence i.e. on 25.9.98 as the date of resignation mentioned in the documents is 15.09.98.

Further it has been contended on behalf of the petitioner that primary and basic ingredient of the offence under Section 420 and Section 471 of the Indian Penal Code has not been made out against the petitioner as it will be evident from the reading of the petition of complaint itself inasmuch as paragraphs 5 and 6 of the petition of complainant disclose the false and fraudulent representations given to the complainant by the accused nos.2, 4 and 5 which induced the complainant and his company, M/s. Twenty First Century Securities Ltd. to sanction such loan of Rs. 1 crore and the said paragraphs, however, do not disclose any false and fraudulent representations given by the petitioner which induced the complainant or his company to part with such sum of money. It is, thus, apparent that the accused no. 3 i.e. the present petitioner had no part to play in inducing the complainant or his company to part with the said sum.

Again, it has been contended on her behalf that the penal provisions of Section 471 of I.P.C is applicable only in respect of the person who uses such forged document as genuine and does not by vicarious liability implicate other persons. From the perusal of the complaint itself, it will be clear and apparent that the complainant has alleged that forged share scrips and a false and forged letter of Jai Prakash Industries Ltd. were used as genuine and the statements in paragraphs 8, 11 and clause © of paragraph 14 of the petition of complaint will make it clear that all such forged documents were used by accused no. 2. Now, in the absence of a charge under Section 120B of the Indian Penal code, the accused no. 3 i.e., the present petitioner cannot also be roped in as an accused through vicarious liability. Though the petition of complainant alleged charges under Section 120B of the Indian Penal code, the learned Magistrate while issuing summons, did not find any materials either from the petition of complainant or from the statement of the complaint recorded under solemn affirmation to justify any charge of criminal conspiracy against the accused no. 3.

Again, it has been contended by and on behalf of the petitioner that from the allegation in paragraph 5 of the petition of complaint it will be apparent that the first meeting between the complainant and the accused nos. 2, 4 and 5 took place on 25-09-98 for the first time and as such on the date of the inducement the present petitioner had ceased to be a Director of the said company and as such in any event she could not be implicated as an accused in view of her status as a Director of M/s. Sequence Estates Pvt. Ltd.

Accordingly, it has been contended that in the aforesaid premises the Ld. Magistrate was clearly in error in finding that a prima facie case has been made out against the petitioner and therefore issuance of summons to the petitioner to appear and answer charges under Section 420/471 of the Indian Penal Code by the Ld. Magistrate should clearly be regarded as an abuse of the process of law.

In support of their contention reliance has been placed by them on the decision reported in AIR 1992 SC 604 in the case of State of Haryana vs. Chowdhury Bhojanlal,

AIR 1998 SC 2796 in the case of Ashok Chaturvedi vs. Shital H. Chanchani and another and a decision reported in 1979 Cr.L.J. 998 in the case of N.C. Nagpal and others vs. the state and another and with reference to the above, it has been contended on their behalf that AIR 1992 SC (Supra) has laid down certain criteria, on fulfilment of which the Hon'ble High Courts can exercise their powers preserved under Section 482 of Code of Criminal Procedure, 1973 in order to quash such proceedings.

Drawing my attention to the observation of the Apex Court wherein it has been clearly stated that 'where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused', it was forcefully contented that the High Court can certainly quash the proceedings in exercise of its power under Section 482 of the Criminal Procedure Code and the case in hand being of similar nature, this should be quashed against the present petitioner.

Again it has been contended on their behalf that in the aforesaid judgement the Apex Court has further

observed that 'where the uncontroverted allegations made in the First Information Report or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused', the High Court should be justified in quashing the complaint.

Again it has been contended with reference to AIR 1998 SC (Supra) that it has been laid down by the Supreme Court that the order passed by the learned Magistrate in summoning of an accused can be tested by the higher Courts by looking into the petition of complaint in order to find out whether the ingredient of the offence for which the accused has been summoned has been made out or not.

With reference to the above decisions it has further been contended that upon perusal of the complaint in the present case, it is absolutely clear that the same is devoid of any mention about the participation of the petitioner in the transactions, which forms the bone of contention in the instant case. So, the allegations made in the complaint even if taken at their face value and accepted in their entirety, do not make out a case against the petitioner. In such circumstances, the learned

Magistrate was not at all justified in issuing such summons against the petitioner and the act of summoning to the petitioner was a mechanical act without application of judicial mind and as such the said order needs to be set aside and the impugned proceeding also needs to be quashed so far as it relates to the present petitioner.

Again, drawing my attention to the order dated 12-04-1959 whereby the learned court below has issued summons to the present petitioner. It has been contended that from the aforesaid order it was quite apparent that the Ld. Magistrate had found prima facie materials against the petitioner upon consideration of the petition of complaint, oral evidence and documents filed by the complainant.

Now, the documents, which formed the basis of satisfaction of the learned Magistrate can certainly be looked into by this Court with a view to ascertain the fact as to whether such satisfaction arrived at by the learned Magistrate was proper or not.

But, in the lower court record, no such document could be found nor there is any observation by the Ld. Magistrate that the documents which were filed by the complainant had been returned to them. Now this matter being not properly explained by the complainant/opposite party, adverse inference under section 114(G) of the Evidence Act should be taken against the complainant/opposite party, which clearly establish the hollowness of the claim of the complainant against the petitioner.

It has accordingly been contended on behalf of the petitioner that in the absence of those documents, this Court would not be in a position to consider the materials, on which the Ld. Magistrate obtained his satisfaction, for the purpose of ascertaining the fact whether or not quashing is necessary for ends of justice or to prevent an abuse of the process of law. But, in doing so, it should not embark upon an enquiry in which an

appreciation of the materials may be necessary to support or dislodge the acquisition.

So, in the aforesaid premises, it has been contended on behalf of the petitioner that there is no reason whatsoever to allow this criminal proceeding to be continued against the present petitioner as according to them the continuation of the same will be a mere abuse of the process of law.

In opposing the aforesaid contention of the petitioner, it has been contended on behalf of the opposite Parties that although it is true that the High Court retains plenary power to quash a proceeding if it is found necessary in the interest of justice and to prevent the abuse of the process of court. But at the same time, it has now become settled position of law that this inherent powers of quashing the proceeding at the initial stage should be exercised very sparingly only where the allegations made in the complaint or the F. I. R., even if taken at their face value and accepted in its entirety, do

not prima facie disclose commission of an offence. Disputed and controversial facts cannot be made the basis for the exercise of jurisdiction.

In this connection, reliance has been placed by them on a decision reported in A. I. R. 2002(1) S C C 555 in the Case of Kamala Devi Agarwal Vs. State of West Bengal & Ors.

Again placing their reliance on a decision reported in 2002(1) SCC 652 in the case of State of Bihar and Anr. Vs. Md. Kkalique and Anr., it has been contended on their behalf that such power under Section 482 or extraordinary power under Article 226 of the Constitution of India should be exercised sparingly and with circumspection and that too in the rarest of rare cases and in view of the settled position of law where specific allegations were made in the F.I.R and a prima facie case was made out against the accused persons disclosing commission of the cognizable offence, no interference should be made by the High Court, nor the quashing is permissible.

Again placing their reliance on a decision reported in 2002(3) SCC 89 in the case of State of Karnataka Vs. M. Devendrappa & Anr., it has been contended on their behalf that power of quashing should be exercised ex debito justitiae to prevent the abuse of the process of court and it should not be exercised to stifle a legitimate prosecution and High Court at that stage should not assume the role of a trial court and embark upon an enquiry as to the reliability of the evidence and sustainability of the acquisition on a reasonable appreciation of such evidence.

Again, with reference to a decision reported in 2002(6) SCC 174 in the case of A. V. Mohan Rao & Anr. Vs. M. Kishan Rao & Anr., it was contended on their behalf that such power under Section 482 or extraordinary power under Article 226 of the Constitution of India should be exercised sparingly and with circumspection and that too in the rarest of the rare cases.

Again placing their reliance on a decision reported in 2002(8) SCC 236 in the case of Rajlakshmi Mills Vs. Shakti Bhakoo it has been contended that at the stage of summoning of when evidence was yet to be led by the parties, the Court could not on an assumption of facts

come to a finding of fact that accused petitioner was not responsible for the conduct of the business.

It has, therefore, been contended on their behalf that in view of the aforesaid settled position of law, it is now crystal clear that although this Court possesses plenary power to quash the proceedings and to prevent the abuse of the process of the Court and to meet the ends of justice yet, such power should be exercised with utmost circumspection and that too in rarest of the rare cases and in doing so, the Court is not to embark upon any sort of enquiry and at that stage Court is to accept the allegations of the complaint or of the F.I.R, as the case may be, in its entirety without adding anything or subtracting anything therefrom. If upon reading the complaint as a whole, it appears to the Court that no case has been made out in that event, the Court will certainly be justified to quash the proceeding but in the instant case, looking into the complaint itself specially in Paragraph 5 as also in Paragraph 12, it would be clear that prima facie case under Section 420/471 has been made out against the present petitioner and at this stage, however, that is sufficient to reject the application for quashing the instant application.

It has further been contended on their behalf that question of resignation allegedly tendered by the petitioner being not an admitted fact it would not be accepted at this stage to hold that the petitioner being the accused No. 3 had no liability whatsoever when the actual incident as alleged in the petition of complaint had taken place on 25th September 1998. Again it has been contended on their behalf that although there is certain reference in the order dated 12.4.99 with regard to the documents filed by the complainant, yet, this being not the stage of trial, the Court should not embark upon any sort of enquiry to come to a finding with regard to that and/or to take any adverse presumption as available under section 114(G) of the Evidence Act against the complainant at this stage and when after examining the complainant and perusing the complaint itself along its accompaniments, the Court has exercised its discretion in summoning the accused petitioner under Section 420/471 of I. P.C then at this initial stage, meticulous scrutiny, to ascertain the fact, whether or not the ingredients of those alleged offence have been clearly made out, is neither permissible nor necessary and as such upon existing materials and

placing reliance on the settled position of law in this regard, the prayer of the petitioner should be rejected.

I have given my anxious consideration with regard to the submissions made on behalf of the parties and I have also looked into the decisions cited at the bar with meticulous care.

From the aforesaid decisions, it has ^{now} clearly emerged that although this Court possesses plenary power to quash a proceeding in appropriate cases to prevent the abuse of the process of the court and/or for the ends of justice, yet, such powers should be exercised with extreme circumspection and that too in rarest of the rare cases.

It has again been the settled position of law, as emerged from the decisions of the Apex Court that at this stage of quashing the court should not embark upon any sort of enquiry by assuming a role of the trial Judge and at this stage Court is bound to accept the allegations as made in the complaint in its entirety without adding or subtracting anything therefrom and if upon such materials it appears to the court that there are prima facie allegations against accused petitioner the court will

certainly refuse to exercise its jurisdiction of the quashing under Section 482 of Cr.P.C.

So, examining the materials available on record specially looking into the allegations as made out in the complaint specially in paragraphs 5 and 12 together with the evidence of P. W. 1 taken on Solemn affirmation by the Ld. Magistrate, I am of the clear opinion that there are prima facie materials to hold that there are allegations against the petitioner for committing an offence under Section 420/471 of I.P.C and at this stage meticulous scrutiny of the ingredients, necessary for these offences is neither permissible nor necessary.

That being the position, upon ultimate analysis of the materials available and having heard the rival submissions of the parties and examining the case in hand in the light of the settled position of law, I am of the clear opinion that this is not a fit case where the court should come forward in allowing the application seeking for quashing of the criminal proceedings against the present petitioner. In consequence thereof, I find no merit in this revisional application and the same is accordingly dismissed.

Interim order, if there be any, stands vacated. Liberty is given to the petitioner, however, to raise her all objections before the Ld. trial Judge at its appropriate stage.

Accordingly, this revisional application and the C.R.A.N. application both stand disposed of.

Urgent Xerox certified copy, if applied for, be made available to the parties with utmost expedition.

Sd/- P. K. Talwar, J.
(Pradip KUMAR BISWAS, J.)