Matoshri Developers and Another Vs. State of Chhattisgarh and Others

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Court : Chhattisgarh

Decided On : Aug-11-2011

Judge : Satish K Agnihotri

Appeal No. : WRIT PETITION Cr NO 812 OF 2011

Appellant : Matoshri Developers and Another

Respondent : State of Chhattisgarh and Others

Judgement :

(Writ Petition under Articles 226 of the Constitution of India)

1. By this petition, the petitioners seek quashing of crime No.241/2010 registered in Police Station Sarsiwa, District Raipur, for offences punishable under Sections 420 and 120B of the Indian Penal Code (for short "the IPC").

2. The facts, in brief, as projected by the petitioners, are that the petitioner No.1 is a registered partnership firm whereas the petitioner No.2 is one of the partners of the petitioner No.1. Deed of partnership was executed on 3-7-2009 (Annexure - P/1) and the registration certificate was issued by the Registrar of Firms and Societies on 1-1-2010 (Annexure - P/2).

3. According to the petitioners, on 4-7-2009, a written agreement was reached between the petitioner society and Royal Vision Care Marketing and Services

Private Limited (earlier respondent No.6, which has been deleted by order dated 13-7-2011 of this Court on the request of the petitioners, at the peril of the petitioners) for sale of certain immovable properties. As per the said agreement, Royal Vision was required to comply with the terms and conditions of the agreement within 90 days, but it failed to do so in spite of the notice.

4. The petitioner No.2 received a notice under Section 91 of the Code of Criminal Procedure, 1973 (for short "the Cr PC") bearing No.SIC/Rai/73/11 dated 20-1-2011 (Annexure - P/4) from the office of the Special Investigation Cell, Raipur. The contention of the petitioners is that the entire advance of Rs.5.00 crores has been deposited by the petitioner No.1 in the Bank i.e. Oriental Bank of Commerce, as is evident from trial balance from 1-4-2010 to 31-12-2010 (Annexure - P/5) and also submitted the return before the Income Tax Department, which can be seen from Annexure - P/6. The petitioner No.1 has neither been summoned nor has been noticed under Section 91 of the Cr PC by the respondent No.3, but the petitioner No.2 and other partners have been threatened to be arrested in registered case as crime No.241/2010 for offences punishable under Sections 420 and 120B of the IPC. Thus, this petition.

5. Shri Tamaskar, learned counsel appearing for the petitioners, would submit that the petitioner No.1 or any of its partners have not committed any offence. As per the provisions of Section 37 (2) of the Chhattisgarh Society Registrikaran Adhiniyam, 1973 (for short "the Adhiniyam, 1973"), no Court shall take cognizance of an offence punishable under this Act except upon complaint made by the Registrar or any other person, authorized in writing by him, in this behalf, therefore, the cognizance taken by the respondent authorities against the petitioners is without jurisdiction and, as such, the same is illegal.

6. Shri Tamaskar would further submit that as per the provisions of Section 235 of the Companies Act, 1956 (for short "the Act, 1956") the Central Government, where a report is made by Registrar of Companies, may appoint one or more persons as Inspectors to investigate into affairs of the company, under the provisions of Section 237 of the Act, 1956 and also other cases under the

circumstances and, as such, the criminal cases registered against the petitioner society and Royal Vision is illegal. The notice issued to the petitioners by the respondent No.3 is gross abuse of process of criminal law.

7. Shri Tamaskar would next submit that the petitioners have no role and as the alleged offences have not been committed by the petitioners. Even otherwise, the partner of the petitioner No.1 is cooperating with the investigation, as is evident from the letter dated 22-1-2011 (Annexure - R/5) of Subhash Chandra Sharma, Partner of the petitioner No.1 to the Special Investigation Cell, Raipur. The entire money has been kept in the bank account, therefore, there was no intention to cheat any person and, as such, the criminal proceedings initiated against the petitioners may be quashed.

8. In compliance of the order dated 10-2-2011, the State has submitted a report relating to the allegations made in the writ petition and submitted that the impugned action has been taken against the petitioners strictly in accordance with law. In para 4 of the report, it has been stated that a written report (Annexure - R/1) has been made by certain villagers of village Manpasar, Bhatgaon, with regard to cheating and criminal conspiracy against Royal Vision and its agents. On the basis of the said complaint, the matter was investigated, charge sheet filed and thereafter, the culprits i.e. the agents and the Managing Director of Royal Vision have been arrested and they are in custody. Final report submitted before the competent Court on 20-2-2011 (Annexure - R/2).

9. In the report, it has also been stated that during the course of investigation the authorities found that the petitioner No.1 and its partners have executed a false agreement with regard to certain lands in spite of the fact that the same are not in the name of the petitioners and realized a sum of Rs.5.00 crores from Royal Vision and thereby they committed cheating by executing a false agreement of sale. The petitioners are creating obstacles in investigation of the matter by the police. During the course of investigation, notices have been served upon the petitioners. The petitioners replied to the same, but they are avoiding to produce the relevant documents.

10. I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.

11. After preliminary investigation in crime No.241/10, which was registered for offences punishable under Sections 420, 409, 120B, 411 and 414 of the IPC and under Sections 4 and 5 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (for short "the Act, 1978"), the final report under Section 173 of the Cr PC has been submitted. The relevant portion of the final report reads as under:

LANGUAGE

12. Contention of Shri Tamaskar that the Registrar of the Cooperative Societies or any other person, authroised in writing by him, only is competent to take cognizance of the offences punishable under the Adhiniyam, 1973. There is no dispute on the proposition, however, in the case on hand, the alleged offences have not been committed by the petitioners under the provisions of the Adhiniyam, 1973 and, as such, the case was rightly investigated by the Police under the provisions of the Cr PC.

13. The petitioners have acted as an agent of Royal Vision. During pendency of this petition, respondent No.6 (Royal Vision) was deleted at the cost of the petitioners. There are certain other documents also produced by the State, particularly statements of the villagers wherein they have clearly alleged that the petitioner No.1 and its partners have executed the sale deed without their authorisation, as they do not know the petitioner No.1 and its partners and also Royal Vision.

14. On considering the overall facts recorded in the FIR and other documents i.e. statements of the various villagers produced by the Police, this is not a case, wherein, it can be held that no prima facie case has been made out for investigation and further filing of charge sheet, leading to trial of the petitioners.

15. In Uma Shankar Gopalika v. State of Bihar and Another, relied on by the petitioners, it was clearly held thatif the complaint does not disclose any criminal

offence and the case is of purely civil dispute it was for the High Court, the charge sheet may be quashed in exercise of the powers under Section 482 of the Cr PC, by the High Court.

16. In Vir Prakash Sharma v. Anil Kumar Agarwal and Another, relied on by Shri Tamaskar, the Supreme Court held that the concerned Court has no jurisdiction, as there was nothing on record to show that any part of cause of action arose within the Court concerned. Thus, taking cognizance by the Special Magistrate was quashed. This is not relevant to the facts of the case, as the entire cause of action arose within the jurisdiction of the competent Magistrate.

17. The case of M.A.A. Annamalai v. State of Karnataka and Another, is with regard to lodging of complaint against the Director of the company that is not relevant to the facts of the case, as the petitioner is a registered partnership firm under the provisions of the Adhiniyam, 1973, therefore, the provisions of the Act,1956 would not be applicable to the facts of the present case.

18. The Supreme Court in Asoke Basak v. State of Maharashtra and Others, observed as under:

"16. Before examining the merits of the rival submissions, it would be appropriate to briefly notice the scope and ambit of the jurisdiction of the High Court under Section 482 of the Code. It needs little emphasis that although the jurisdiction of the High Court under the said provision is very wide but it is not unbridled. The High Court is required to exercise its inherent powers under Section 482 of the Code sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice and to prevent abuse of the process of court. One of the situations when the High Court would be justified in invoking its powers is where the allegations in the first information report or the complaint, as the case may be, taken at their face value and accepted in their entirety do not constitute the offence alleged. (See R.P. Kapur v. State of Punjab and Rupan Deol Bajaj v. Kanwar Pal Singh Gill)."

19. In V.P. Shrivastava v. Indian Explosives Limited and Others, the Supreme Court observed as under:

"18. In G. Sagar Suri v. State of U.P. this Court had opined as follows: (SCC p. 643, para 8)

"8. Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid down certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

20. In State of Bihar and Another v. P.P. Sharma, IAS and Another, the Supreme Court held that "under Section 173 Cr PC has been forwarded to the Magistrate after completion of the investigation and the material collected by the Investigating Officer is under the gaze of judicial scrutiny, the High Court would do well to discipline itself not to undertake quashing proceedings at that stage in exercise of its inherent jurisdiction".

21. Further, in para 70 it was held that

"70..It cannot be considered that this Court laid down as a proposition of law that in every case the court would examine at the preliminary stage whether there would be ultimate chances of conviction on the basis of allegation and exercise of the power under Section 482 or Article 226 to quash the proceedings or the charge- sheet. In Sirajuddin case the Madras High Court and this Court, though noticed serious infirmity committed in the course of investigation by the investigating officer did not quash the charge- sheet."

22. In State of Haryana and Others v. Bhajan Lal and Others, the Supreme Court laid down the broad principles as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR 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.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

23. In State of Maharashtra v. Ishwar Piraji Kalpatri and Others, the Supreme Court held as under:

"24. The position of law, in this regard, has been very succinctly stated in the abovesaid case that at the stage of quashing a first information report or complaint, the High Court is not justified in embarking upon an enquiry as to the probability, reliability or genuineness of the allegations made therein.."

24. The Supreme Court in Mahavir Prasad Gupta and Another v. State of National Capital Territory of Delhi and Others, held that the jurisdiction under Section 482 of the Code of Criminal Procedure or Article 226/227 of the Constitution of India has to be exercised sparingly and with circumspection. It has been held that at an initial stage a court should not embark upon an inquiry asto whether the allegations in the complaint are likely to be established by evidence or not. The Court should exercise its power under Article 226/227 of the Constitution in quashing FIR, complaint or charge sheet in the rarest of rare

cases. However, the Court would also not be justified in embarking upon an inquiry asto thereliability or genuineness or otherwise of the allegations made in the FIR or the complaint.

25. In Ram Babu v. State of Madhya Pradesh and Others, the Supreme Court referred the decisions rendered in Bhajan Lal (supra) and Ishwar Piraji Kalpatri (supra) with approval.

26. In the case on hand, the allegations are that the Managing Director M. Belayutha and the petitioners misrepresented the poor people to deposit a sum of Rs.10,000/- or more, which may be returned back with interest from 12% to 16%. The innocent people believing on the false assurance given by them deposited the amount. The petitioner No.1 and its partners collected the money and got false bogus agreements for sale of 20.44 hectares at Rs.23.50 lacs per hectare, which have been denied by the villagers that they have ever authorized any person to sell the land on their behalf. Thus, the final report was submitted by the police before the competent Court for offences committed by them under the provisions of Sections 420, 409, 120B, 411 and 414 of the IPC and under Sections 4 and 5 of the Act, 1978, whereas in this petition, the petitioners have sought only quashing of the offences punishable under Sections 420 and 120B of the IPC.

27. Thus, prima facie offences have been made out for prosecuting the petitioners. This is not for this Court to examine the veracity or genuineness of the documents produced by the petitioners in support of the contentions advanced by Shri Tamaskar that they had not committed any offence. This is for the trial Court to consider the evidence of the petitioner No.1 and its partners along with others after proper trial and come to a particular conclusion.

28. For the reasons mentioned hereinabove and applying the well settled principles of law to the facts of the present case, it is not a case wherein this Court should exercise its extraordinary jurisdiction under Article 226 of the Constitution of India to quash the charge sheet or the case pending before the competent Criminal Court.

29. As an upshot, the writ petition is shorn of merit and is accordingly dismissed. There shall be no order as to costs.