

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 126 OF 2015

Mr. Natwar Hariprasad Agarwal	...	Petitioner
vs.		
The State of Maharashtra	...	Respondent

Mr. Niranjan Mundargi i/b. Mr. Omkarr Mulekar, Advocate, for the petitioner
Ms.A.A.Mane, APP, for the State.
Mr. Hirdekar, PI at present LCB, Amravati Road.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 10th September, 2015.

P.C.

Heard. Rule. Rule made returnable forthwith with consent of the parties.

2. The petitioner herein is original accused No.1 in Crime No.7/2000, which was being investigated by the Economic Offences Wing. After completion of investigation, the Senior P.I. has filed charge-sheet on 4.7.2002. The case is registered as C.C. No.208/PW/2002 and is pending before the ACMM, 19th Court, Esplanade, Mumbai.

3. It is the case of the prosecution that one Khushilal Ramchandra Mithila, who happens to be the owner of M/s. Mithila Steel industries Ltd., had contacted Satish Chaturvedi and had asked him to help him in getting

bill discounting of letter of credit. Satish Chaturvedi happens to be an agent. That Satish Chaturvedi, who is accused No.3, along with the documents given to him by original accused No.4, had contacted Vinod Bafna, who happens to be another agent in the same field. Vinod Bafna had presented those papers to the office of the present petitioner as the petitioner herein is a regular trader in giving bill discounting facility of the letter of credit through his company. The petitioner happens to be a Director of Navib Constrade Pvt.Ltd.

4. That the present petitioner had met Vinod Bafna and after receiving the papers from him, had asked his employee Vishnu N. Bohara who carried the said papers to UTI Bank, Borivli Branch for availing 60% discount towards the letter of credit. The letter of credit was issued by Punjab National Bank. The officers of UTI Bank verified the documents and were suspicious about the genuineness of the said documents and had accordingly informed the office of the petitioner. The said documents were sent to Punjab National Bank through Vishnu Bohara for the purpose of verification and at that juncture, it was revealed that the letter of credit was not a genuine document, but a fabricated document by original accused No.4 i.e. the owner of Mithila Steel Industries Ltd. who was to be the beneficiary of discounting facility of the letter of credit.

5. After completion of investigation, charge sheet was filed. The investigating officer had arrived at a conclusion that the original accused No.4 had approached the original accused Nos. 2 and 3 to help him to avail of the discounting facility of the letter of credit. That original accused Nos. 2 and 3 have taken the documents to accused No.1 and that all the four had conspired to cheat UTI Bank by submitting sham document in the nature of letter of credit along with its annexures. At this stage, it is pertinent to note that the accused No.3 Satish Chaturvedi had filed an application seeking discharge. The said application was rejected. Charges were framed against accused for the offences punishable under Section 420, 467, 471 read with Section 120B of IPC.

6. That Satish Chaturvedi had filed Criminal Revision Application No.1270 of 2011 before the Sessions Court challenging the order. The revisional Court by a judgment and order dated 30.3.2013, had perused the papers of investigation and was of the opinion that there was no sufficient material to frame charge and therefore, according to the revisional Court, charges framed against Satish Chaturvedi were quashed. The revisional Court had specifically held that the only material against Satish Chaturvedi was the statement of a co-accused i.e. Vinod Bafna who happens to be the original accused No.2. It was specifically observed that

the compilation of charge sheet does not contain statement of any witness who could throw light upon the factual aspect as to whether Satish Chaturvedi had knowledge. That the documents given to him by accused No.4 were genuine documents. The revisional Court was pleased to discharge Satish Chaturvedi of all the charges by a judgment and order dated 17.4.2013. This Court cannot be oblivious of the fact that the said order has not been challenged by the prosecution and therefore has attained finality.

7. The learned APP submits that in fact the order of the revisional Court is not sustainable in the eyes of law since the accused could not have been discharged after framing of charge. It is submitted that once the charge is framed, the trial has to be taken to its logical end. It is true that the learned Sessions Judge in clause 2 of the operative order has stated that the accused stand discharged. However, in the opening paragraph of the judgment itself the learned Sessions Judge has observed that the revision is filed challenging the correctness and validity of framing of charge against the accused. The learned revisional Court has relied upon the Judgment of this Court in the case of **Dr. Dattatraya Narayan Samant vs. State of Maharashtra 1981 Bom.L.R. 553.**

8. In the present case, Vinod Bafna is the original accused No.3 is a person who had submitted the documents along with annexures to the present petitioner for the purpose of availing of discounting facility for original accused No.4. It is pertinent to note that Vinod Bafna against whom the proceedings have been quashed by this Court (Coram: M.L.Tahaliyani) vide order dated 28.8.2013. In that case also, charges were framed against the accused. The Hon'ble Single Judge of this Court has held that the only material against the petitioner is the statement of the employee of accused No.1 Natwar Agarwal i.e. the present petitioner, in which the said employeeE Vishnu Bohara had stated that he had seen the petitioner talking with his employer in respect of the letter of credit. Besides that there was no material against Shri Bafna and therefore the Hon'ble Single Judge of this Court has been pleased to quash the proceedings against Vinod Bafna and has acquitted him. At this juncture, it is necessary to see the statement of Vishnu Bohara who happens to be the employee of the present petitioner.

9. Upon perusal of the said statement, it is clear that Shri Bafna had visited the office of the present petitioner and had sought help to refer

the documents to the appropriate Bank for seeking discounting facility for original accused No.4. This aspect is admitted even by the learned counsel for the petitioner. In fact, Vishnu Bohara had carried the said documents to UTI Bank and then to Punjab National Bank. It is rightly submitted by the learned counsel for the petitioner that at this juncture, there was no occasion for the petitioner to verify the genuineness of the documents since he has only forwarded the documents to UTI Bank and Punjab National Bank. It is a matter of record that Bafna and Satish Chaturvedi have been discharged from the case and the proceedings are quashed against them. The link of the prosecution is broken at that stage and this Court would not be able to draw any inference that accused No.1 had any knowledge and the said documents were sham documents or that Shri Bafna had any knowledge that the documents were bogus. It is difficult to draw an inference that in absence of Satish Chaturvedi and Shri Bafna, it can be said that the present petitioner was in contact with the original accused No.4 or has abetted and facilitated the preparation of the said documents. The judgment and order discharging Chaturvedi and Shri Bafna have attained finality. It is an admitted

position that Shri Bohara was instructed by the present petitioner to take the documents to the respective clients.

10. Perused the statement of Shri Rajendra Naik, who happens to be the Bank Manager of UTI Bank, Borivli. He has specifically disclosed to the police in his statement under Sec. 162 of Cr.P.C. that after he had received the documents, he had verified the genuineness of the letter of credit allegedly issued by Punjab National Bank. He has also disclosed that on the same day i.e. 12th May, Vishnu Bohara on behalf of the present petitioner had informed him not to issue any bank credit. He therefore had been to Punjab National Bank and had verified the genuineness. He has further disclosed that on 13.5.1999, when he was in the Bank, the present petitioner along with Vishnu Bohara had been to the Bank. He had met the Chief Manager along with the petitioner and had informed that the letter of credit is a bogus document. On 14.5.1999, the petitioner had given the original documents in a sealed envelope to the Bank and the same were verified by the Bank Manager. It was clear that the confirmation letter was not issued by Punjab National Bank. The Head Office of UTI Bank had directed the Branch

Manager to lodge FIR and hence the prosecution was set in motion.

11. The Apex Court in the case of **State of M.P. vs. S.B.Johari and others (2000) 2 SCC 57** has reproduced its observation in the case of **Niranjan Singh Karam Singh (1990) 4 SCC 76** held as under :-

“From the above discussion it seems well settled that at the Sections 227-229 stage the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.”

12. Taking into consideration the observations of the Hon'ble Apex Court in the present case, it can thus be seen that even if the parties, which emerged from the material and documents on record, are taken at its face value, it would not be sufficient to convict the applicant with the aid of Section 109 of Indian Penal Code.

13. This Court also cannot be oblivious of the fact that after framing of charge, criminal proceedings against the original accused Nos. 2 and 3 have been quashed by this Court. The learned counsel for the petitioner rightly prays that the petitioner by virtue of the doctrine of parity, should also be entitled to the same relief. Considering the material on record, the submissions advanced across the bar, this Court is inclined to quash the proceedings.

14. Taking into consideration the papers of investigation, the orders passed by the Sessions Court, thereby discharging Santosh Chaturvedi, the judgment and order passed by this Court (Coram: M.L.Tahalaiyamni,J.) quashing proceedings against Vinod Bafna, it would be expedient in the interest of justice to quash the proceedings against the present petitioner.

15. Writ Petition is allowed in terms of prayer clause (c). Rule is made absolute. Petition stands disposed of.

(SMT.SADHANA S.JADHAV, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed order.