

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2193 OF 2013

Shobhit Rajan & Anr.

...Petitioners

Versus

Akkadian Housing & Infrastructural
Pvt. Ltd. & Ors.

...Respondents

Mr. Amit Desai, Sr. Counsel i/b Bachubhai Munim
& Co. for Petitioners.

Smt. G.P. Mulekar, APP for Respondent No.5-State.

CORAM:-M.L. TAHALIYANI, J.

DATED :3rd JULY, 2015.

P.C.

Admit. Heard finally.

2. Heard learned senior counsel Mr. Amit Desai for the Petitioners. None for Respondent No.1. Respondent Nos.2, 3, 4 and 5 are not contesting parties. Heard learned APP for Respondent No.5-State.

3. I have gone through the impugned order passed under section 91 of the Criminal Procedure Code. The criminal complaint has been filed against the Petitioners by Respondent No.1-Akkadian Housing & Infrastructural Pvt. Ltd. for the offences punishable under

sections 120B and 406, 409, 410 and 411 r/w section 34 of the IPC. Complaint is dated 11th February, 2013. An application was made by the complainant on 8-3-2013 for production of certain documents. Impugn order was passed below said application. Learned Magistrate directed production of certain documents in exercise of his powers under section 91 of the Criminal Procedure Code.

4. Before I examine as to whether order passed by the Magistrate is sustainable or not it is necessary to go through section 91 of the Criminal Procedure Code, which runs as under :

“1. Summons to produce document or other thing.

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed-

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891) or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.”

5. It is clear from the provision of section 91 of the Criminal Procedure Code that production of documents can be sought only when the Court considers that the production of document or other thing is necessary or desirable for the purposes of the enquiry or trial pending before the Court. In the present case reason given by the Magistrate can be reproduced as under :

3. I have gone through the contents of the complaint as well as I have gone through the verification statement of the complainant and documents annexed. It appears that huge amount is allegedly misappropriated by the accused persons, therefore it is just and necessary to allow the complainant to bring necessary documentary evidence in support of his claim on record. Therefore, considering powers vested with the Court under Section 91 of Cr.P.C. and considering submissions advanced by the Ld. Counsel for complainant it would be just and necessary to call the bank statement of the concerned account Bank of Punjab, LIC Housing Finance Ltd, Uco Bank, ICICI Bank, HDFC Bank Ltd., Bank of India and Allahabad Bank of the accounts of Pantheon Infrastructure Private Limited wherein complainant is shareholder as well as accused No.5 Company as sought for. Hence, order.”

4. It is thus, clear that summons were not issued on the ground that Court considered production of documents necessary or desirable. Summons were issued on the ground that Respondent No.1 may be able to substantiate its allegations. In my opinion unless satisfaction of the Court is recorded in the order that the production of documents is necessary or desirable no such order could have been passed. As such, the order is not sustainable and needs to be set aside.

5. The criminal writ petition is allowed. Order passed by the learned Magistrate below application filed by Respondent No.2 issuing summons for production of documents is set aside.

6. Lateron it is brought to my notice by learned counsel for the Petitioners that documents in question had already been produced before the learned Magistrate but they are not examined by the Magistrate. They are in the sealed cover. In view of the order passed by me hereinabove, it is directed that documents produced by the witnesses shall be returned to the respective witnesses.

(JUDGE)