

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2282 OF 2014

Dresdner RCM Little Dragons Fund Ltd. ... Petitioners.
(Org. Acc. No.2)

V/s.

The State of Maharashtra & Anr. ... Respondents.
(R.No.2 orig. Complainant)

Mr. Mahesh Jethmalani, Sr. Counsel a/w Mr. Pranav Badheka,
Ashwin Thool i/by Rupesh Karande for the Petitioners.

Mr. D. R. More, APP for the State.

Mr. J. Shekhar a/w. Akanksha Helaskar i/by J. Shekhar & Co.
for Respondent No.2.

CORAM : M.L.TAHALIYANI,J.
DATE : 11th FEBRUARY, 2015

P.C. :

1 The Petitioners are seeking quashment of the order dated 30th September, 2004 passed by the learned Judicial Magistrate, First Class at Pimpri, Pune in C.C. No. 221 of 2002. The petitioners have been asked to answer the charges for the offences punishable under sections 406, 409, 411, 418, 420, 467, 468, 471 & 474 r/w. 34 of the Indian Penal Code.

2 The petitioners are having their office at Bermuda. They are foreign direct investors. They had to purchase some shares of accused no.1. Accordingly, they directed their banker - HSBC to purchase the shares. The HSBC appointed a broker -

ING Baring Securities (India) Pvt. Ltd.. to purchase the shares on behalf of the HSBC for the Petitioners. Accordingly, 27,000/- shares of Satyam Computer Services Limited were bought. These 27,000/- shares included 500/- shares, originally belonging to the husband of the complainant.

3 The complainant alleges that their employee viz. accused no. 3 - Manoj Andhare committed theft or criminal breach of trust in respect of those shares and got it transferred to petitioners with the help of accused no.4- Satish Sabnis. It is further alleged that accused no.1 despite knowing that there was a difference between the signatures on the transfer form with the signatures on the record, transferred the shares from the name of the husband of the complainant to the petitioners. On the basis of these allegations, the Satyam Computer Services Limited, the petitioner, the employee of the complainant Mr. Manoj Andhare and Mr. Satish Sabnis who allegedly assisted accused no.3 Manoj Andhare, were sought to be prosecuted by the complainant for the above stated offences.

4 The compliant was sent to the police under section 156 (3) for investigation and report. The police found no substance in the allegations and submitted the report accordingly. The learned Magistrate, however, was not satisfied with the police report and rejected it. He took

cognizance of the offences and issued summons to all the accused including the petitioners.

5 During the course of the arguments, learned senior counsel Mr. Mahesh Jethmalani has submitted that the petitioners had nothing to do with the transaction and that they have not taken part at any stage of the transaction. It is an admitted position that the HSBC Bank was supposed to purchase shares on behalf of the petitioners. In the circumstances, it is submitted that the transaction which took place between accused nos. 3 and 4 on one hand and the accused no.1 Satyam Computer on the other hand was not within the knowledge of the petitioners.

6 It was also brought to my notice that the Satyam Computer before transferring the shares in the name of the petitioners had written a letter to the complainant that there was a difference in the hand writing/ signature of the husband of the complainant on the share certificate and the signature on the record. The said letter was not replied by the complainant/ respondent no.2. In any event, it was submitted that the petitioners were not even aware of the correspondence between accused no.1 and the Satyam Computers and the complainant.

7 The petitioners are sought to be prosecuted with the help of section 34 of the Indian Penal Code. The learned

counsel for respondent no.2 has submitted that the petitioners were not aware of the developments inasmuch as they had appointed the Bank for purchasing shares.

8 I have gone through the complaint and the report submitted by the police and also the order passed by the learned Magistrate. During the course of the arguments, when it was brought to the notice of learned counsel Mr. J. Shekhar for respondent no.2-complainant that there is no material at all of any nature against the petitioners which may attract either section 120B or section 34 of the IPC, the learned counsel has relied upon few judgments. The judgments are on law points. The issue before this court has to be decided on the basis of the contents of the complaint, police report and the order of the Magistrate. After having gone through the complaint, report of the police and the order of the learned Magistrate, I do not find anything against the petitioners. The order of the Magistrate in respect of the petitioners may be reproduced as under :

“The allegations are also made in the complaint that inspite of notice issued by complainant, no reply has been given by accused no.1, company. Prima-facie documents is filed on record to show that complainant has given instructions to accused-company to stop transfer of shares inspite of that shares has been transferred. There is no explanation on part of investigating agency as to why they have not recorded the statement of officers of National Securities Depositories

Limited and therefore, I find substance in the argument advanced by Ld. Advocate for complainant that, police authorities has not properly investigated the case. From the documents placed on record, prima facie, case is made out against the accused no 1, Satyam Computer Services Limited, accused no.2, Thronton Little Dragon fund Limited and accused no. 4 Satish Sabnis for an offences punishable u/sec. 406, 409, 411,418,420,467,468, 471, 474 r/w. 34 of the IPC on payment of process-fees.”

Thus it can be seen from the order that the learned Magistrate has not examined the case of the petitioners at any stage of his order and has passed the order against the petitioners without application of mind. The order impugned, therefore, needs to be quashed.

9 The proceedings pending against the petitioners in the court of Judicial Magistrate, First Class at Pimpri, Pune vide private R.C.Case No. 221 of 2002 stand quashed.

(JUDGE)

10 At 3 p.m., the learned counsel for the Respondent No.2 prays for stay on the operation of this order. I do not find any substance in the prayer. Prayer is rejected.

(JUDGE)

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