

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

CRIMINAL APPLICATION NO. 684 OF 2015

Faizal N. Syed

... Applicant.

V/s.

State of Maharashtra & Anr.

... Respondents.

Mr. Kevic Setalvad, Senior Counsel a/w. Sumit Patni, Sidharth Sethi & Hormuz Mehta i/by J. Sagar Associates for the Applicant.

Ms. V. S. Mhaispurkar, APP for the State.

Mr. Ventakesh Dhond, Sr.Advocate a/with Mr. Pranav Badheka, Mr. Rashmin Khandekar, Mr. Vikrant Makhare and Mr. Prashant Pawar i/by Negandhi, Shah & Himayatullah, Advocate for Respondent No. 2.

CORAM : M.L.TAHALIYANI,J.

DATE : 22nd JULY, 2015

P.C. :

1 Admit. Heard finally.

2 Heard the learned counsel for the applicant, learned APP for the State-Respondent No.1 and learned counsel for Respondent No.2.

3 The applicant is one of the accused in a criminal complaint no.1504/SS/2011 pending in the court of

Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai and is facing trial for the offence punishable under section 500 r/w. section 34 of IPC, in the alternative r/w section 109 of the Indian Penal Code.

4 In all there are four accused. The applicant is accused no.4. The complaint is based on the alleged defamatory material contained in the letter written by the accused no.1, signed by accused no.2 addressed to the shareholders of New Tirupur Area Development Corporation Ltd. and copies forwarded to some authorities in the Reserve Bank of India. The New Tirupur Area Development Corporation Ltd. is a public limited Company. The AIDQUA Holdings (Mauritius) Inc. are shareholders in the said company. The complainants are also shareholders in the said company.

5 Without going into the details of facts of the case what is material to be mentioned here is that an amount of Rs. 90/- crores was kept in escrow by the complainant for certain reasons mentioned in the complaint. There was a special audit and the audit report discloses that some unwarranted deductions were made by the applicant from the said amount. The applicant-accused no.4 was named as the Director of the New Tirupur Area Development Corporation Ltd. on behalf of AIDQUA Holdings (Mauritius) Inc.. The report of the auditor

was forwarded to AIDQUA Holdings by the accused no. 4. On the basis of the report of accused no.1, the AIDQUA Holdings wrote a letter in question to the shareholders.

6 The learned senior counsel Mr. Kevic Setalvad appearing on behalf of the applicant-accused no.4 has submitted that the applicant had no role to play in the said letter. It is submitted that even if it is assumed for the sake of the arguments that certain portion of the letter is defamatory, there is no material to show that the applicant had shared the intention of the accused no.2 or had in any manner abetted the commission of offence of defamation.

7 The learned counsel Mr. Venkatesh Dhond for respondent no.2 has raised a preliminary objection and submitted that the order of the Magistrate can be examined by the Sessions Court in exercise of powers under section 397 of the Cr. P.C. and, therefore, the applicant should be directed to move the learned Sessions Court and this criminal application under section 482 of the Cr.P.C. may not be entertained. It was submitted that it is well settled that the powers of this court under section 482 are to be exercised sparingly. It is submitted that this is not an exceptional case where this court shall exercise such powers.

8 Reliance was placed by learned counsel Mr. Dhond on the judgment of this court in the case of **Smt. Pushpa Ashok Singh Thakur vs. Shri Kishan Karamchand Lalwani & Ors.**, reported in 2014 ALL MR (Cri.) 1857. No doubt, this court had observed in the said order that if the powers under section 397 are available, this court should not interfere in exercise of powers under section 482 of the Cr. P.C.. However, in the present case, the arguments were advanced at length and the matter was argued before me at a threadbare. In the circumstances, I do not think it necessary to ask the applicant to move the Sessions Court. In my considered opinion since there is no absolute bar to exercise powers under section 482 of the Cr. P.C. and since the arguments at length have been advanced and the court has been taken through and perused the documents, it is be just and proper to decide the application under section 482 of the Cr. P.C. .

9 Coming back to the merits of the case, whole case against the applicant can be found at para 12 of the complaint at page no.9. Admittedly, the letter is written on the letter head of the accused no. 1-AIDQUA and it is signed by accused no.2. Only allegation against the applicant is that he was instrumental in sending audit report to the accused no.1 and he was further instrumental in getting the said letter issued under the signature of accused no.2. This is what has been stated in the complaint. However, there is no material in the complaint

to support this assumption of the complainant. In my opinion, the bare statement cannot be considered as a material which can be translated into evidence. There should be some material which should be capable of being translated in the evidence and it should ultimately prove that there was either sharing of intention or abetment on the part of the applicant.

10 The only allegation which can be made against the applicant is that he had sent the report of the auditor to the accused no.1. The learned counsel for the applicant has submitted that it was the duty of the applicant to send the report to accused no.1 inasmuch as the applicant was nominated director of New Tirupur Area Development Corporation Ltd. on behalf of the AIDQUA Holdings. He had discharged his duty by sending the report to accused no.1.

11 After examination of the complaint, particularly, paras 11 and 12 of the complaint, in my view, there is no material at all to support that the applicant was instrumental in getting the letter in question issued to shareholders which contained the defamatory material. I, therefore, pass following order.

- i. The proceedings against the applicant pending in the court of Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai vide Criminal Case No. 1504/SS/2011 for

the offence punishable under section 500 r/w. Section 34 of the IPC are hereby quashed.

12 The criminal applications stands disposed of accordingly.

(JUDGE)

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