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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION (APL) No. 161 of 2014.

Rajiv Choubey ..Applicant.
Vs
R.B. Jhunhunwala and Anr ..Respondents.

Mr Subodh Desai for the applicant.
Mr B.S. Nayak for the respondent No.1.
Smt. P.P. Bhosale, APP for the State.

CORAM : A.S.GADKARI, J.
DATED : 4th August, 2016

P.C.

- 1) The learned counsel for the applicant seeks leave to amend the prayer clause (b) of the present application. Leave granted. The amendment to be carried out forthwith.
- 2) Heard the learned counsel for the applicant and the learned counsel for the respondent no.1.
- 3) By the present application under section 482 of the Code of Criminal Procedure Code, 1973 the applicant has challenged the Orders dated 25/7/2013 below Exh.10 and 28/11/2013 below Exh.14 respectively in CC No.12/SW/2008 by the learned Additional Chief Metropolitan Magistrate, 40th Court, Girgaon, Mumbai.

4) The record reveals that the respondent no.1 has filed a complaint bearing C.C. No.12/SW/2008 in the Court of Additional Chief Metropolitan Magistrate for the alleged offences under sections 403, 406, 409, 420 read with section 120-B and 34 of the Indian Penal Code against in all ten accused persons named therein. The learned Magistrate, after recording the verification statement, perusing the report submitted by the police under section 202 of the Code of Criminal Procedure and after perusing the contents of the complaint, by its Order dated 19.4.2008 issued process against the accused persons mentioned therein. It further reveals from the record that the original accused no. 3, 4, 6, 7, 8, 9 and 10 have been discharged from the said case by the orders of this Court.

5) That the respondent No.1/original complainant thereafter filed an application below Exh.10 dated 25/7/2013 for amending the complaint so as to include the present applicant as an accused on the ground that the applicant was the Company Secretary of the original accused No.2. The learned Magistrate by its Order of even date allowed the said application without assigning any reasons. In pursuance of the said Order dated 25/7/2013 passed below Exh.10, the respondent no.1 filed an application below Exh.14 dated

28/11/2013 for issuance of the summons/process against the present applicant. The learned Magistrate by its Order dated 28/11/2013 issued the process against the applicant. The said two orders dated 25/7/2013 and 28/11/2013 are impugned herein as stated earlier.

6) The learned counsel for the applicant submitted that there is no provision in the Code of Criminal Procedure to permit amendment of the complaint once it is filed. That if the amendment is of material in nature, then, it ought not have been allowed without hearing the applicant. He further submitted that after issuance of process against the original accused persons and after the said accused persons were discharged from the said case by this Court, the respondent no.1 as an after thought moved the applications below exhibits 10 and 14 respectively. He submitted that the order allowing amendment to the complainant itself is bad in law. In support of his contention, he relied on three decisions namely :-

- i) 2015 ALL MR (Cri) 2898 (S.C.)
S.R. Sukumar Vs. S.Sunaad Raghuram.
- ii) Manu/MH/0333/2003 Behram S.Doctor Vs. The
State of Maharashtra and Smita Shroff.

- iii) 2008 ALL MR (Cri) 3398
M/s Neeraj Cement Structural Pvt Ltd & Anr.
Vs. Bombay J.C.B.Earth Movers & Anr.

He, therefore, prayed that the present application may be allowed and the impugned Orders may be quashed and set aside.

7) Per contra, Mr Nayak, the learned counsel appearing for the respondent no.1, vehemently opposed the application and submitted that by way of the said amendment application, the respondent no.1 has sought to bring on record only then Company Secretary i.e. the applicant herein. He further submitted that the applicant herein was the successor-in-title of the said office and, therefore, it was necessary to implead him in the said case. He further submitted that as a matter of fact the Trial Court after perusing the complaint and after recording the verification statement has already issued process, meaning thereby that there is substance in the complaint filed by the respondent no.1. He, therefore, prayed that the present application may be dismissed.

8) The Supreme Court in the case of S.R. Sukumar (supra) has held that even though there is no such provision in Code of Criminal Procedure, a simple infirmity in the complaint can be cured by way of amendment when it causes no prejudice to other side. In the case

in hand, the impleadment of the applicant materially changes the nature of the complaint including the accusations, made therein. It cannot be inferred or accepted that at the time of filing of the complaint the complainant had forgotten to mention all the relevant and important facts in the complaint and/or the complainant /Respondent No.1 did not give proper instructions to his Advocate in that behalf. After many accused persons impleaded in the said complaint are discharged by the Order of this Court, the complainant cannot be permitted to raise a plea that the present applicant was at that relevant time holding the charge of the Company Secretary as successor-in-title and, therefore, at a belated stage, he may be permitted to be impleaded in the complaint. Even otherwise a bare perusal of the amendment application which is at Exh.10 would reveal that no reasons at all for impleading the applicant in the said complaint at such a belated stage are stated, except mentioning that the applicant was the Company Secretary and legal head of original accused no.2. It is further to be noted here that the learned Trial Court has allowed the application only by mentioning "Allowed" and no reasons at all are given for impleadment of the applicant in the complaint at a belated stage.

9) It further appears from the record that an order of issuance of summons has been passed mechanically on an application below Exh.14 without verifying the fact that whether the said summons was, in fact, necessary to be issued to the applicant herein. By an Order dated 28.11.2013 the learned Magistrate while allowing the application has simpliciter passed the order “issued”.

10) After taking into consideration the facts involved in the present case, I am of the considered opinion that the Orders dated 25/7/2013 passed below Exh.10 and dated 28/11/2013 passed below Exh.14 are ex-facie not in conformity with the law laid down by the Supreme Court and/or the settled position law. According to me, the impleadment of the applicant in the present case is not at all necessary for the just decision of the said case. The orders dated 25/7/2013 and 28/11/2013 passed below Exhs. 10 and 14 respectively in C.C. No. 12/SW/2008 are accordingly quashed and set aside and as a consequence the summons dated 5.12.2013 issued in the said complaint is also quashed and set aside.

11) The application is allowed in terms of prayer clause (a-1) (a-2) and (a-3).

(A.S. GADKARI, J.)