IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 766 OF 2013

1	Mohan Bhosale, Aged 56 Years, having his office at 130, Pandurang Budhkar Marg, worli, Mumbai 400 018	**PETITIONERS**
2	Sunil Mathur, Aged 50 years, having his office at 130, Pandurang Budhkar Marg, Worli, Mumbai 400 018	

V E R S U S

1	State of Maharashtra, through the Public Prosecutor	**RESPONDENTS**
2	S. Srinivasan, Aged 53 Years, having residence at Flat No. 402, 'Sumeet Chhaya', Plot No. A-213, Sector – 20, Nerul, Navi Mumbai – 400 706	

W I T H

CRIMINAL WRIT PETITION NO. 767 OF 2013

1	S.K. Madan, Aged 56 Years, having his office at 130, Pandurang Budhkar Marg, Worli, Mumbai – 400 018	**PETITIONERS**
2	Rupesh Basu, Aged 42 years, having his office at 130, Pandurang Budhkar Marg, Worli, Mumbai 400 018	

3 Pramod K. Bhambani, Aged 53 Years, having his office at 130, Pandurang Budhkar Marg, Worli, Mumbai – 400 018

V E R S U S

1 State of Maharashtra, through the Public Prosecutor

RESPONDENTS

2 S. Srinivasan, Aged 53 Years, having residence at Flat No. 402, 'Sumeet Chhaya', Plot No. A-213, Sector – 20, Nerul, Navi Mumbai – 400 706

Mr. Ashok Mundargi, Senior Advocate, a/w
Mr. Pranav Badheka, Advocate, a/w
Mr. Adhip Iyer, Advocate &
Mr. Divij Kishore, Advocate, i/b
ALB and Parnters, Advocates for the Petitioners
in both Petitions

Mr. Deepak Thakhare, A.P.P. for Respondent No.1 – State
in both Petitions

Mr. Abad Panda, Advocate, a/w
Mr. Sandeep Barve, Advocate, a/w
Ms. Archana Lad, Advocate, a/w
Ms. Sheetal Tanpure, Advocate, i/b
Mr. B.K. Barve and Company for Respondent No.2
in both Petitions

CORAM : A.V. NIRGUDE, J.

RESERVED ON : 19th NOVEMBER, 2015

PRONOUNCED ON : 30th JUNE, 2016

J U D G M E N T :

1. These petitions are challenging the order dated 21st November, 2012, passed by the the learned Metropolitan Magistrate's 62nd Court, Dadar, Mumbai in Criminal Complaint No. 51/SW/2011 qua the petitioners.

2. The petitioners suggested that on perusal of the complaint, no offence whatever would be attributed to them. In order to appreciate the submissions at the bar, one has to read the complaint. Respondent no.2 is the complainant. The petitioners are employees of a Public Limited Company. The other accused are also similarly placed.

3. ***The allegations made in the complaint can be narrated in short as under*** :-

Complainant was an employee of a company by name Webel as Company Secretary and Accounts Manager. Webel got amalgamated with Siemens Ltd. After completion of amalgamation formalities, the complainant's services were transferred to Simens Ltd. He was transferred to Mumbai as Chief Manager, Corporate Finance in or about 1998. In 2004, he got transferred to Real Estate Division as General Manager Commercial etc.

4. While working as General Manager, he noticed several malpractices taking place in the department. But, thereafter, the Company removed him in April, 2006 from the post of General Manager and

recruited another person, who is accused no. 5. Accused no.6 is superior officer of the complainant. He asked him to meet him. On 11th May, 2006 the complainant had meeting with accused no.6. He suggested to the complainant that the complainant should start working in Corporate Finance Department. The complainant then started working in Corporate Finance Department, but the senior of the department did not like the complainant's returning to Finance Department and started harassing him. The complainant alleged that his superior officer purposely denied him several service benefits. The complainant raised an issue about this harassment and denial of service benefits with his superior officers, but in-vain. The complainant asserted that he was entitled to higher pay and salary but same was denied to him. He also demanded arrears etc. In 2009 or so, he received a suggestion from accused nos. 1 and 5 that he should resign from service. In turn they agreed to him a compensation of Rs.35 lac. The compensation subsequently was raised to Rs.45 Lac and also payment of arrears of salary etc. The complainant resisted this offer and thereafter continued in dialogue with superior officer on this issue.

5. Ultimately, on 26th February, 2010, the accused prepared a letter of resignation and under a pretext of having a meeting, accused no.5 called the complainant to his room where accused nos. 1 and 2 were already present. All three accused then kept the complainant in confinement. They threatened him that they would terminate his service and thereby tarnish the complainant's image and reputation if he refused to put his signature on the resignation letter which was already prepared before hand. They did not allow the complainant to go to bathroom and to have a lunch or to speak to his wife on telephone. Then they forced him to

put his signature on letter of resignation. The complainant faced terrible shock and unable to several physical and mental pressure, under which he succumbed and signed the letter of resignation. On the same day, accused no.5 promised the complainant that the Company would pay compensation of Rs.60 Lacs and settled all other legal dues. The accused also asked the complainant to put signatures on two more letters one about confidentiality agreement and the other about handing over possession of Company's flat on or before 31st May, 2010. the complainant then sent a letter on 19th April, 2010 to accused no.8 setting out details of his claim. To this, accused no.8 demanded that the complainant should fulfill obligations which were recorded vide letter dated 26th February, 2010. The Company suggested to him unless he fulfills all the obligations he would not be paid his dues. Ultimately, the complaiant signed confidential agreement on 12th May, 2010. He even vacated the company's flat on 25th May, 2010. According to the complainant, he took these steps only in order to secure payment from the Company as per his demand. On 31st May, 2010, Company paid him a sum of Rs.43.18 Lacs and also promised to settle the balance dues. The Company did not honour the commitment thereafter. The Company eventually sent a cheque of Rs.34,954/- on 27th July, 2010. The complainant alleged that as per computation statement of outstanding claims, the Company of the accused owed him a sum over Rs.1.96 Crore etc. Since this was not paid to him, the complainant made complaint to police, but in-vain. Ultimately, he lodged his complaint to the Court, on which the impugned order was passed on 21st November, 2012. The impugned order reads as under :-

"Read complaint, verified statement and the report. Head. The complainant in his statement has stated that accused No.1, 2 and 5 did not allow him to excess answer natures call. It prima facie speaks that there is material for proceeding against them for an offence under Section 342 of I.P.C. Similarly they have threatened him, which prima facie makes out an offence under Section 506 of the I.P.Code. He has further stated that the accused had forged some documents in respect of fixation of his salary. But those documents have been placed on record. Therefore no case is made out in respect of offence under Section 468 and 471 of the I.P.Code. The Complainant has further stated that on the inducement of the accused No.1 to 4 and 8 he had handed over the room to the company on the premise that he would get the amount of dues. But the same has not been paid. Thus, prima facie case for an offence under Section 420 of the I.P.Code against accused No. 1 to 4 and 8. Hence issue process against accused No. 1, 2 and 5 for an offence under Section 342 and 506 of the I.P.Code and accused No.1 to 4 and 8 for an offence under section 420 read with 120 of the I.P.Code. Complainant against accused No.6 and 9, 10 stands dismissed under Section 203 of Cr.P.C."

6. On perusal of the complaint, I have no doubt in my mind that this is a spiteful action, an utterly false complaint. The incident of 26th February, 2010, happened long back. At that time, the complainant was

allegedly confined and wrongfully restrained. Thereafter, several events took place including signing of other two letters, out of which one was quite vital. Through this letter, the complainant agreed to vacate the Company's flat. He even gave up the flat in May, 2010. Around that, within few days he received a large sum from the company.

7. In this background there could be a legitimate grievance of the complainant that the amount was not as per his demands and claims. It cannot be said even *prima facie* that the complainant was induced for making commitments to the Company including handing over possession of the Flat. Apparently that was part of the deal between the parties. The Company agreed to give certain amount to the complainant only after he had surrendered valuable property back to the company. What happened between the parties after payment of Rs.43.18 Lac is apparently a civil dispute. By no stretch of imagination it can be made a subject matter of a criminal case. Filing of this complaint thus apparently amounted to a arm twisting. The impugned order on facts is grossly erroneous. The learned Magistrate ought not to have passed this order.

8. This Court has earlier noted one more defect in this complaint vide order dated 1st March, 2013. This court opined that the complaint was filed rather belatedly after expiry of period of one year from the cause of action. This Court also noted the fact that the resignation letter which was allegedly forcibly obtained was acted upon and the complainant even accepted the compensation.

On the face of it, the case would fall on all forces would be covered by the judgment of the Supreme Court in the case of ***State of Haryana v. Bhajan Lal (1992 SCC (Cri) 426)***. The Supreme Court not only in this judgment, but in several earlier judgments discussed the scope of powers of the High Court under Article 226 of the Constitution and under Section 482 of the Code of Criminal Procedure. The Supreme Court categorized cases by way of illustrations wherein such power could be exercised to prevent abuse of process and/or to secure ends of justice.

9. In the light of above, the Court is now required to examine only on facts as to whether the present case would roughly fall within the parameters of above referred illustrations. I am of the view that this would certainly fall within the parameters of Category No. (1) (3) (5). I am of the aware of the direction of the Supreme Court in this judgment that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection, that too in rarest of rare cases. I am of the view on facts this could be one of such case.

10. The question as to whether the present case would fall within one of the categories is that on facts and no amount of legal submission would affect it. Learned counsel for the respondent no.2 placed on record number of judgments. Learned counsel for Respondent filed following copies of judgments :--

(1) Monica Kumar (Dr.) and another v. State of Uttar Pradesh and others - (2008) 8 Supreme Court Cases 781;

(2) State of Maharashtra v. Ishwar Piraji Kalpatri and others - (1996) 1 Supreme Court Cases 542;

(3) Zandu Pharmaceutical Works Ltd. and others v. Mohd. Sharaful Haque and another – (2005) 1 Supreme Court Cases 122;

(4) State of Bihar and another v. J.A.C. Saldanha and others - (1980) 1 Supreme Court Cases 554;

(5) State of Orissa and another v. Saroj Kumar Sahoo – (2005) 13 Supreme Court Cases 540;

(6) State of A.P. v. Golconda Linga Swamy and another – (2004) 6 Supreme Court cases 522;

(7) Dhanalakshmi v. R. Prasanna Kumar and others – 1990 (Supp) Supreme Court Cases 686;

(8) Rupan Deol Bajaj (Mrs) and another v. Kanwar Pal Singh Gill and another – (1995) 6 Supreme Court Cases 194;

(9) State of Kerala and others v. O.C. Kuttan and others with Seena and another v. State of Kerala and others – (1999) 2 Supreme Court Cases 651;

(10) State of U.P. v. O.P. Sharma – (1996) 7 Supreme Court Cases 705;

(11) Rashmi Kumar (Smt) v. Mahesh Kumar Bhada – (1997) 2 Supreme Court Cases 397;

(12) Satvinder Kaur v. Stae (Govt. of NCT of Delhi) and another – (1998) 8 Supreme Court Cases 728;

(13) Rajesh Bajaj v. State NCT of Delhi and others – (1999) 3 Supreme Court Cases 259;

(14) State of Karnataka v. M. Devendrappa and another – (2002) 3 Supreme Court Cases 89;

(15) Lee Kun Hee, President, Samsung Corporation, South Korea and others v. State of Uttar Pradesh and others – (2012) 3 Supreme Court Cases 132;

(16) Umesh Kumar v. State of Andhra Pradesh and another – (2013) 10 Supreme Court Cases 591;

(17) State of Andhra Pradesh v. Bajjoori Kanthaiah and another – (2009) 1 Supreme Court Cases 114;

(18) Kailashi Bai v. Aarti Arya and another – (2009) 13 Supreme Court Cases 548;

(19) Shakson Belthissor v. State of Kerala and another – (2009) 14 Supreme Court Cases 466;

(20) HMT Watches Ltd. v. M.A. Abida and Ors. - BomCR(Cri) 461.

These submissions were in my view not useful to the Court. I am holding on facts that the complaint deserves to be quashed. Both the petitions are allowed. The complaint is quashed as against the petitioners.

(A.V. NIRGUDE, J.)

At the request of learned counsel Mr. Sandeep Barve for the respondent no. 2, the effect of this order is stayed for a period of four weeks, however, the proceeding in the trial Court shall also remain stayed for a period of four weeks. If they are not revived by any further order passed by any Court, the complaint would stand quashed after four weeks.

(A.V. NIRGUDE, J.)

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