

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1316 OF 2014

The Indian Card Clothing Co. Ltd. and others. ..Applicants.

vs.

Devidas Rishikesh Sharma and another. ..Respondents.

Mr. Jayesh Kotecha for the Applicant.

Shri. Sujit Shelar i/by A.P. Steenson for Respondent No.1.

Smt. P.P.Bhosale, APP. for the State.

CORAM : A.S.GADKARI, J.

DATE : 10th August, 2016

P.C.

By the present application under Section 482 of the Code of Criminal Procedure the applicants have challenged the order dated 11.3.2014 passed below Exhibit 75 in Summary Criminal Case No.653 of 1997 by the Judicial Magistrate First Class, Khadki, Pune thereby directing that, the application preferred by the respondent No.1 under Section 340 of the Cr.PC. shall be registered as Misc. Application for separate judicial enquiry.

2) The record reveals that the applicant No.1 is the complainant in private Case No.653 of 1997 filed under Section 138

of the Negotiable Instruments Act and under Section 420 of the Indian Penal Code. The respondent No.1 is the accused therein. In the said complaint, the applicant No.4 filed an affidavit of examination-in-chief dated 20.4.2006. That, after the said affidavit was filed by applicant No.4, the respondent No.1 filed an application below Exhibit 75 complaining that the applicants herein have committed an offence under Section 191 read with Section 193 of the Indian Penal Code and under Section 340 of the Cr.P.C. i.e. perjury. In the said application, initially the Trial Court had passed an order dated 4.12.2007. It was observed in the said Order that, considering the contentions therein, as of perjury, if any, needs to be considered on appreciation of the entire evidence on record whereas the complainant is yet to be cross examined in the matter and hence the said application was tagged with the judgment in the matter.

3) The Trial Court thereafter by the impugned order dated 11.3.2014 passed below Exhibit-75 directed that the said application preferred by respondent No.1 shall be registered as Misc. Application for separate judicial enquiry. The record reveals that the respondent No.1 is acquitted from the offence under Section 138 of

Negotiable Instruments Act by the Trial Court by its Judgment and Order dated 12.5.2014.

4) Heard the learned counsel for the applicants and the learned counsel for respondent No.1 and also perused the record annexed to the application.

The learned counsel for the applicants submitted that, before directing registration of the said application as Miscellaneous Application for conducting separate judicial inquiry the learned Magistrate ought to have applied its mind and then ought have proceeded to conduct the inquiry. He submitted that the applicant No.1 being a company cannot be treated as a necessary party. In support of his contention, he placed reliance on a decision of Supreme Court in the case of **N. Natarajan Vs. B.K.Subba Rao reported in 2003(2) SCC 76** and of this Court in the case of **Kenneth Desa s/o Late John Desa and anr. vs. Gopal s/o. Leeladhar Narang reported in 2007 (O) BCI 331**. It is to be noted here that in the case of N. Natarajan (supra) the issue before the Supreme Court was whether a stranger can file an application for perjury against the Public Prosecutor of the Special Court, for making different statements at different point of time in the Court

proceedings. In that context, the Supreme Court in Para 18 has held that the learned Trial Court ought to have considered the locus standi of such person before the proceeding to register and/or initiate action under Section 340 of the Criminal Procedure Code. Therefore the said decision is of no help to the applicants.

5) A useful reference at this stage can be made to Para 7 in the case of Kenneth Desa (supra) wherein the learned Single Judge of this Court has held as Under:-

“Whenever an application under Section 340 of Code of Criminal Procedure is filed, the Civil Manual Chapter XIX, Para 337 requires that it should be registered as Miscellaneous Judicial Case i.e. as case where a Judicial Enquiry is contemplated. The learned Civil Judge should have, therefore, directed the application to be registered as Miscellaneous Judicial Case”.

6) The view taken by the learned Single Judge of this Court is squarely applicable to the facts of the present case. The Trial Court after following the proper procedure prescribed in law has directed that the application filed below Exhibit-75 be registered as Misc. Application. That the notice of the said application is not yet issued to the applicants by the Trial Court. It is needless to mention

that the applicants herein will get an appropriate opportunity to represent their case in the said inquiry and before the learned Trial Court comes to the conclusion whether prima facie case under Section 340 of the Cr.P.C. for initiating action under Section-191 read with 193 of the Indian Penal Code is made out or not. According to me the applicants have impugned order dated 11.3.2014 at a premature stage. The Trial Court after considering the provisions of Criminal Procedure Code and Civil Manual has directed only to register the complaint as Misc. Application. In the premise, I find that there are no merits in the application and the application is summarily dismissed.

7) At this stage, the learned counsel appearing for the applicant submitted that the interim relief granted by this Court is running in favour of the applicant since 19.1.2015 and the same may be continued for further period of four weeks as the applicants intend to challenge the present order in the Apex Court. Mr. Shelar, the learned counsel appearing for the respondents vehemently opposed the said prayer and submitted that since January, 2015 the entire proceedings are stayed due to the pendency of the present application and after the dismissal of present application on merits,

the stay need not be extended. As stated earlier, by the impugned order the Trial Court has simply directed that the complaint be registered as Miscellaneous application for a separate judicial enquiry and therefore it is not necessary to continue the stay granted by this Court. The prayer is accordingly rejected.

(A.S. GADKARI, J.)