IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1314 OF 2002

Kirtikumar alias Sham s/o. Pandurang Patil
Aged about 30 years, residing at Village-
Navade, Taluka-Panvel, Dist. Raigad .....Petitioner

V/s.

1). State of Maharashtra
Through the Commissioner of Police
Navi Mumbai, C.B.D.,
Konkan Bhavan, Navi Mumbai.

2). Vijay Shri Krishnalal Jindal
aged about 40 years, residing at
Ranav Peacock Palace, Bhulabhai
Desai Road, Mumbai-400 026.

3). M/s. Jindal Laboratories Pvt. Ltd.
a Company registered under the provisions
of Companies Act, 1956 and having their
office at 220, Bhaktwar, 6th floor,
Nariman Point, Mumbai-400 021.

4). Atmaram Dharma Patil,
Aged about 45 years, residing at
Navade, Taluka-Panvel,
Dist. Raigad. .....Respondents

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Mr. G.J. Mohan Rao, Advocate for the applicant.

Mr. S.R. Agarkar, APP for State, respondent no.1.

Mr. Rahul Sinha i/by. DSK Legal, Advocate for respondents no.2 and 3

Mr. Piyush N. Shah i/by. Ms. Sonia Muskin, Advocate for respondent no.4.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED :- 12TH JANUARY, 2017.

P.C. :-

1). The petitioner herein had filed a private complaint being Criminal Case O.M.A. No. 43 of 2000 in the Court of Judicial Magistrate First Class, 2nd Court, Panvel, Raigad alleging offences punishable under Sections 120B, 379, 380, 406, 409, 419, 420, 467, 468, 471 read with Section 34 and 109 Indian Penal Code. By the order dated 16th February, 2000 the trial Court directed investigation into the complaint under Section 156(3) Criminal Procedure Code. Accordingly, Local Crime Branch (L.C.B.), Navi Mumbai Police Commissionerate conducted investigation into the complaint and made its report dated 3rd July, 2000. The L.C.B., Navi Mumbai reported that, there is no evidence available establishing commission of any offence by respondents no.2, 3 and 4. This report was accepted by the trial Court. The applicant, thereafter filed an application requesting for investigation by CBI or DCB, CID. The trial court, by its order dated 4th January, 2001 dismissed the application and dropped the charges against respondents no.2 to 4 and dismissed the complaint. Being aggrieved by the order, the petitioner had approached the Sessions Court, Raigad, District-Alibaug with Criminal Revision Application No. 22 of 2001. That Revision Application was dismissed by the order dated 24th January, 2000. Thereafter, the petitioner has filed the present application to challenge the order of dismissal of his complaint.

2). In his complaint, the petitioner claims that, he has been carrying on business in civil construction in the name and style of "Shashank Enterprises" as it's sole proprietor since the year 1994 with it's office situate at 105, Vasudeo Laxmi Society, Dombivli (East), District-Thane. Respondent no.2, the owner is the Director of respondent no.3, M/s. Jindal Drugs Co. at Turbhe. Respondent no.4 is the uncle of the applicant. According, to the applicant respondent no.4 is an employee in his proprietory concern.

3). In the month of January, 1996 respondents no.2 and 3, through an Architect invited tenders from civil contractors for construction of a building at Taloja. The tender filed in the name of Shashank Enterprises was accepted and agreement dated 23rd January, 1996 executed. According to the applicant, he had from time to time submitted his bills for the work done. However, respondent no.4 conspired with respondents no.2 and 3 and illegally received from respondent no.2 a sum of Rs.79,00,000/- due and payable to the proprietory concern of the applicant. Respondent no.3, opened another Account in the same name with another Bank and diverted the amount to himself. It also alleged that, respondents no.2 to 4 had issued threats to the applicant of dire consequences in connection with the payment made. It is further alleged in the complaint that, respondent no.3 had, after opening the Bank Account impersonated the applicant and illegally collected cheques from the debtors of the applicant, stole cheques from the office of the applicant and appropriated the same by depositing the cheques in his own Account. Respondent no.4 is alleged to have forged certain documents for the purpose of opening the Bank Account. These facts, according to the petitioner, disclose offences punishable under Sections 120-B, 379, 380, 406, 409, 419, 420, 467, 468, 471 read with Sections 34 and 109 of Indian Penal Code. In his complaint, the applicant has given neither the details of the bank account opened by respondent no.4, nor the details of the instances of impersonation nor details of the debtors nor the details of the amounts due from the debtors nor the details of the cheques stolen from his office.

4). As per the report of the Investigating Officer, respondent no.4 claimed to be the proprietor of Shashank Enterprises and had executed power of attorney in favour of the applicant to look after the construction business. According to him, from the material collected during the course of investigation, it was not possible to determine as to who is the owner of Shashank Enterprises.

5). After receipt of the above report, the applicant applied for re-investigation by State, C.I.D. The trial Court, considered the extensive submissions on the application and by the detailed reasoned order, dismissed the application, as well as the complaint. The trial Court, noted that the documents produced on record by the applicant, the documents procured by the Investigating Officer and the statements of witnesses recorded by the Investigating Officer reveal that, the work of construction was looked after by both, the applicant and respondent no.4. There is no documentary evidence available as regards the ownership of the business. None of the witnesses were in the position to state as to who is the owner of the business. Both have bank account in the name of Shashank Enterprises. Admittedly, both have worked for Shashank Enterprises. Respondents no.2 and 3, have later withdrawn the work from Shashank Enterprises. Thus, the real dispute is between the applicant and respondent no.4 and it is of civil nature. It does not disclose any criminal intention on the part of respondent no.4. It has been further observed that, merely because respondent no.4 has opened an Account in the name of Shashank Enterprises in the year 1996, it cannot be said that, he had any criminal intention behind that. The trial Court has next noted that, the allegations of offences of forgery and theft are absolutely vague. The applicant does not specify in his complaint what were the forged documents and what were the documents stolen by respondent no.4.

6). The Sessions Court, while sustaining the order of trial Court of accepting the report of the police, has also arrived at the same conclusion that the report of the Investigating Officer clearly indicates that, there is no evidence of commission of any offence by respondents no.2, 3 and 4. There is no evidence as to who is the proprietor of Shashank Enterprises. Both are closely related to each other and there are several monetary transactions between them.

The business of Shashank Enterprises cannot be said to be the exclusive business of the applicant since there is no evidence to come to the definite conclusion to that effect.

7). Bare perusal of the complaint itself, is sufficient to know that the contents therein are vague and without necessary particulars. There could not have been investigation of forgery and misappropriation by the police without disclosure of the necessary details. In any case, the fact that, both the applicant and respondent no.4 are into the same business and have also been working together, any dispute as regards the income of Shashank Enterprises will essentially be a civil dispute to be dealt with a civil Court in appropriate proceedings. Thus, there is no merit in the challenge to the two orders. Hence, the application is dismissed.

(SMT. R.P. SONDURBALDOTA, J)