

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.164 OF 2017

Pradip Kumar Kapani

Applicant

versus

State of Maharashtra and another

Respondents

Mr.Subhash Jha with Ms.Ankita Pawar i/by Law Global for Applicant.
Mr.Mandar Soman i/by MGK Legal for Respondent no.2.
Ms.Rutuja Ambekar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 21st August 2017

PC :

1. The applicant has challenged the order dated 20th January 2017 passed by the Metropolitan Magistrate rejecting the application preferred by the applicant for vacating the order dated 21st July 1992.

2. The applicant is the original complainant in CR No.216 of 1991 who had earlier preferred an application vide notice No.435/N/92 before the Trial Court and prayed that the Respondent nos.1 to 3 therein may be directed not to allow the benefits of shares to be accrued, as narrated in the application dated 24th April 1992, to respondent therein. The Trial Court passed an order on 21st July 1992 directing the Respondent nos.1 to 3 therein not to allow benefits likely to be accrued in respect of shares to Respondent no.4 namely Sanjay Agarwal or any other transferee/transferees of the said shares.

3. The applicant had lodged CR No.216 of 1991 dated 30th April 1991 against Sanjay Agarwal u/s 420 of Indian Penal Code, which was investigated by GB, CB CID vide CR No.87 of 1991. The charge sheet was filed in the Trial Court vide CC No.23/P/2000.

4. Learned advocate for applicant submits that subsequently the issues between the complainant and the accused were settled and consent terms were filed before the Trial Court lelinquishing their right, title or interest in respect of shares of Bharat Forge Ltd; G.R.Magnetics Ltd. and National Rayon Ltd. and the proceedings were settled. The accused also executed affidavit-cum-indemnity bond in favour of applicant. Mr.Sanjay Agarwal and family members also executed memorandum of understanding in favour of applicant on 25th July 2000. The copies of consent terms and other related documents are annexed to this application. While hearing the application for vacating the order dated 21st July 1992, an affidavit was filed by the Vice President (Legal) and Company Secretary of M/s.Bharat Forge Limited which was affirmed on 1st June 2016. It is stated in the said affidavit that the shares in question were of the said company. The said company had received order dated 21st July 1992 whereby they were restrained from transferring the benefits of the said shares to Mr.Sanjay Agarwal. It was further stated that the company has no objection on vacation of said prohibitory order for restoration of payment of corporate benefits on the shares of the company subject to compliance of all required formalities as may be required in the matter in accordance with applicable laws.

5. The application preferred by the applicant was rejected by the Trial Court vide order dated 20th January 2017. In the said order it

was observed that the parties have settled the dispute and the proceedings are compounded in pursuant to the consent terms. The Court, however, rejected the said application on the ground that original Respondent no.4 Sanjay Agarwal is not before the Court.

6. Learned counsel for applicant submits that with great difficulty the dispute between the accused and the complainant was settled wherein Sanjay Agarwal had remained present before the Trial Court and executed consent terms. It is further submitted that the shares of M/s.Bharat Forge Limited are transferred in the name of applicant, which is fortified by letter dated 25th March 2016 of M/s.Bharat Forge Limited, which is annexed as Exhibit-K to this application. However, the benefits were not allowed to be disbursed to the applicant in view of prohibitory order.

7. Learned advocate for Respondent no.2 submitted that they have no objection for releasing the benefits in respect of said shares of M/s.Bharat Forge Ltd. in the event prohibitory order is vacated. He relied upon the affidavit referred to hereinabove of M/s.Bharat Forge Ltd. which was filed before the Trial Court.

8. Taking into consideration aforesaid circumstances and considering the fact that dispute between the parties was settled wherein consent terms were executed, this application can be allowed. It is pertinent to note that as per Clause 4.1 of the consent terms, it was agreed that there were 450 shares of Bharat Forge Ltd. being transferred as per consent terms and the same shall be deemed to have been transferred as on 20th February 1991 and the complainant shall be entitled to all benefits including rights to bonus,

dividend or other benefits which may have been accrued on the basis of said shares, which should go to the complainant.

9. In view of the above, I pass following order :

ORDER

(i) Criminal Application No.164 of 2017 is allowed;

(ii) The order dated 21st July 1992 of Metropolitan Magistrate, 10th Court, Andheri, Mumbai in Case No.435/N of 1992 prohibiting Respondent nos.1 to 3 therein from allowing the benefits likely to be accrued in respect of shares of M/s.Bharat Forge Ltd. to Respondent no.4 Sanjay Agarwal or any other transferee/transferees of the aforesaid shares, and the order dated 20th January 2017 passed by Metropolitan Magistrate, 10th Court, Andheri, Mumbai in Notice No.552/N/2016, are quashed and set aside;

(iii) The Respondent no.2 M/s.Bharat Forge Limited is directed that all the dividends, rights, bonus or any other accrued benefits concerning 2,250 shares of M/s.Bharat Forge Limited, which were subject matter of Case No.435/N/1992, are directed to be issued in favour of applicant herein, with effect from 28th February 1991, subject to complying with required formalities;

(iv) No order as to costs.

(PRAKASH D. NAIK, J.)

MST