IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 1911 OF 2017

Kishor Vishwanath Deshmukh ….Petitioner

Vs.

JK Helene Curtis Ltd. and another … Respondents

Mr. Chaitanya Pendse i/b Mr. S. R. Phanse
Advocate for Petitioner
Mr. Yashpal Thakur Advocate for Respondent no. 1.
Ms. Pallavi Dabholkar APP for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATED : 5th MAY , 2017.

P.C.

1) Petitioner herein, takes exception to the order dated 03/03/2017 passed by Sessions Judge, Thane upholding the order dated 30/11/2016 passed by the learned Judicial Magistrate First Class, Thane in C.C. No. 3989 of 2016, has filed present writ petition, seeking stay to the proceedings in C.C. No. 3989 of 2016.

2) The facts of the case in a nutshell as follows:

(i) Petitioner herein is the accused in C.C. No. 3989 of 2016 which is a complaint under section 138 of Negotiable Instruments Act. The present petition is filed after the plea of the accused is recorded in C.C. No. 3989 of 2016, and the matter is at the stage of recording of evidence.

(ii) The complainant had filed a complaint to Economic Offences Wing (E.O.W.) on 13/08/2015 alleging therein that present petitioner herein was working as Chief Officer in Valuation Department in J.K. Helene Curtis Limited Corporation. The responsibilities entrusted to him was supply management, vendor development, price negotiations, production and planning etc. That the petitioner herein was working in the said company for about 10-11 years. The petitioner purchased raw materials required for manufacturing of cosmetics and other body care items. The management realized that petitioner was not conducting the affairs of the company in a fair manner, and the least, in the interest of the company and therefore had initiated a detailed discreet inquiry.

(iii) It was found that he had escalated the prices of the raw materials and therefore, the manufacturing cost had increased. It had also revealed that the company had been cheated for an amount of Rs. 3 to 3.5 Crores Upon inquiry with the petitioner, he had admitted his guilt and on 04/09/2015, he had issued a cheque of Rs. 3,40,00,000/- and had agreed to pay the same within 60 days. He had issued two cheques one for an amount of Rs. 1,15,00,000/- and another for an amount of Rs. 1,00,00,000/- He had paid partial amount and by letter dated 18/12/2015, had sought extension of time to pay the amount of Rs. 1,25,00,000/- which he failed to pay even after 60 days. The report was lodged under section 154 of Code of Criminal Procedure, 1973 on 27/06/2016. On the basis of the said report, crime no. 259 of 2016 was registered at Vartaknagar Police Station on 27/06/2016 for offence punishable under section 420, 406, 120 (B) of the Indian Penal Code.

3) It is pertinent to note that investigation in crime no. 259 of 2016 is still in progress and charge-sheet is not filed.

4) Petitioner herein has filed an application before Judicial Magistrate First Class, Thane in C.C. No. 3989 of 2016 under section 210 of Code of

Criminal Procedure, 1973. It is contended by the petitioner that the allegations in complaint no. 3989 of 2016 are the same as that of allegations in crime no. 259 of 2016. That both alleged offences are triable by the same court and both are arising out of the same transaction. According to the petitioner, since the offences in both cases are covered under expression “same transaction” the trial in C.C. No. 3989 of 2016 deserves to be stayed and that the Court shall call for a report of the investigation in crime no. 259 of 2016.

5) The learned Magistrate has considered the facts on record, the submissions advanced across the Court and say of the complainant and has rightly held that complaint in C.C. No. 3989 of 2016 was filed after acceptance of liability by accused through various documents and that report under section 420 of the Indian Penal Code was filed for the act of cheating committed by accused prior to consideration of documents and the undertakings given by the accused. The learned Magistrate has also held that the ingredients of the offence under section 138 of the Negotiable Instruments Act and section 420 of the Indian Penal Code are different and that they fall under two different enactments. The learned Magistrate had also rightly

observed that the words “any offence” used in clause 2 of section 210 of Code of Criminal Procedure, 1973 do not and cannot mean an offence which is altogether different from the offence subject matter of the private complaint. Clause 1 of Section 210 of Code of Criminal Procedure, 1973 speaks of investigation by the police in relation to the offence which is subject matter of inquiry or trial of the complaint case. Clause 2 has to be read in continuation with clause 1. If so read, the term “On such report cognizance of any offence is taken” would mean taking cognizance of the same offence. The learned Magistrate has rightly held that the procedure contemplated under the law and that the facts constituting the offence or offences in the police case must include the facts constituting the offence in complaint case. The learned Magistrate has rightly rejected the application by an order dated 30/11/2016.

6) Being aggrieved by the said order, petitioner had filed criminal revision application no. 5 of 2017 before District Judge, Thane. The learned Sessions Judge has appreciated the findings and the reasoning recorded by the learned Magistrate in proper perspective and in accordance with law and has dismissed the revision on 03/03/2017.

7) As on date when the present petition is being heard, it is not that only the plea is recorded but the complainant has filed his affidavit of evidence and the matter was posted for cross-examination. The court had inquired with the learned counsel as to whether petition is filed seeking quashing of F.I.R. The answer was in the negative. Instead the petitioner has taken recourse to filing a petition seeking stay to the proceedings under section 210 of Code of Criminal Procedure, 1973.

8) Section 210 of Code of Criminal Procedure, 1973 reads as follows:

> "***210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.***
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> *(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the mater from the police officer conducting the investigation.*
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> *(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by*

the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code".

9) Upon perusal of F.I.R. in crime no. 259 of 2016, it is clear from the first half of the report that the petitioner has indulged into cheating in the company. It is only in the later part that there is an allegation that the petitioner had also admitted the offence. The court cannot be oblivious of the fact that a complaint was made to the Deputy Commissioner of Police, E.O.W. on 13/08/2015 alleging therein that petitioner Kishor Deshmukh used to prepare cost sheet with higher purchase rates cost and based on this cost sheet, purchase orders were being generated by the representatives of the company believing upon the working and cost sheet as presented and confirmed by Mr. Kishor Deshmukh and thus it was clear that Mr. Kishor Deshmukh had inflated rates while preparing cost sheet and hence, had committed offence such as breach of trust, fraud, preparation of sham

documents etc. It was clearly represented to the E.O.W. that Mr. Kishor Deshmukh in connivance with vendors such as M/s. Forever Body Care, M/s. Aditech Plastic, M/s. Anand Enterprises, M/s. Global Deals India, M/s. Vanessa Cosmetics, M/s. Suhan Aerosol etc has inflated rates and caused heavy losses to the complainant company. It is further pertinent to note that report was lodged with EOW on 13/08/2015 and the cheques issued by accused are dated 04/09/2015 and 60 days was sought by letter dated 18/12/2015 and therefore there is reference to the cheques in the F.I.R. It *prima facie* appears from the records that although, a letter was received on 13/08/2015 by the Commissioner of Police, Thane and E.O.W., they had initiated preliminary inquiry. They were of a *prima facie* opinion that offence is made out and therefore, statements of the complainant was recorded on 27/06/2017 on the basis of which offence was registered. At that time, petitioner had sought time to pay 1,25,00,000/- and therefore the said averment is found in the F.I.R. After following due procedure contemplated by Negotiable Instruments Act, complaint is filed in the Court of Judicial Magistrate First Class, Thane on 11/05/2016. Complaint was filed after following due procedure of law i.e. issuance of statutory notice. Complaint was filed on 11/05/2016 and the process was issued under section 138 of Negotiable Instruments Act. In the complaint case, offence carved out for non fulfillment of legally enforceable debt and not for cheating the company. Moreover, the complaint under section 138 of Negotiable Instruments Act is a summary triable case under section 143 of Negotiable Instruments Act and under section 139 of the Negotiable Instruments Act the presumption is always in favour of holder and the onus is upon the accused respondent to prove the contrary whereas under section 420 of Indian Penal Code is a warrant triable case where the onus is upon the State to bring the guilt of the accused. Investigation in crime no. 259 of 2016 is not yet concluded and charge-sheet is not filed. There is absolutely no reason nor ground to invoke the provisions under section 210 of Code of Criminal Procedure, 1973.

10) Hence, petition stands rejected.

11) Rule is discharged.

(SMT. SADHANA S. JADHAV, J.)

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