IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3888 OF 2016

Jainuddin Jamaluddin Khan … Petitioner

vs.

M/s. Shriram Transport Finance & ors. … Respondents

Mr. Wasim Ansari, Advocate for the petitioner.
Mr. Aabad Ponda a/w Abhey Jadeja, Vaibhav singh and V. Satiya i/by M/s. Crawford Bayley & Co., Advocate for respondents no.1, 2 & 6.
Mr. V. V. Gangurde, A.P.P. for the State/respondent no.5.

Coram : Smt. R. P. SondurBaldota, J.
Date : 25th January, 2017.

P.C. :

1. The petitioner, who is the complainant in CC No.167/SW/2011 filed the present petition to challenge the order dated 16th July, 2015 passed by the trial Court dismissing his application under Section 319 of Criminal Procedure Code ('Cr.P.C.', for short) for impleading respondents no.6 and 7 herein as the accused to the complaint and the order dated 24th June, 2016 passed by the Sessions Court dismissing the petitioner's Criminal Revision Application No.1215 of 2015.

2. The brief factual background of the petition is that the petitioner is the owner of motor vehicle i.e. Tata Truck bearing registration No. MH-04-DD-5971 (old registration

No.AP-04-U-6319). According to the petitioner he had purchased the vehicle from one Venkata Ramanamma S., resident of Andhra Pradesh. After purchase of the vehicle he decided to avail loan on the vehicle. Respondent no.4 who is one of the accused was an acquaintance of the petitioner and was a broker with respondent no.1 Finance Company. Respondent no.4 had assured the petitioner that he would facilitate sanction of the loan from respondent no.1 for the commission of Rs.15,000/-. He collected all the relevant documents pertaining to the vehicle. After due verification and satisfaction the petitioner was called at the Sewree office of respondent no.1 by respondents no.2 and 3 and was assured that loan in the sum of Rs.6,50,000/- would sanctioned to him. They made the petitioner sign various blank agreements/ documents. Respondents no.2 and 3 retained custody of the original documents concerning the vehicle. In the month of March-2007 they obtained a blank cheque from the petitioner. On 11th September,2007 a Hypothecation Agreement was executed between the petitioner and respondent no.1. Thereafter respondents no.2 and 3 asked the petitioner to send the vehicle to the yard of respondent no.1 for the purpose of physical verification by the technical and mechanical staff. Accordingly the possession of the vehicle was handed over to respondent no.1. Thereafter when the petitioner visited respondents no.2 and 3 to collect the loan amount as well as the custody of the vehicle, he was informed that his application for loan was rejected. They also refused to release the custody of the vehicle to him. When the petitioner insisted for the vehicle, respondents no.2 to 4 demanded a sum of

Rs.1,00,000/- from him stating that on receipt of that payment they would get loan sanctioned and also release the vehicle.

3. On the basis of the above facts, the petitioner filed written complaint dtd. 1st October, 2007 with Wadala Police Station. Respondents no.1 to 4 were thereupon called to the police station. There respondent no.1 informed the police that the vehicle was owned by respondent no.4 and produced some documents. In view of those documents no action has taken by police against respondents no.1 to 4. Therefore the petitioner sent legal notice dated 18th October, 2007 and thereafter filed application under Section 156(3) of Cr.P.C. in the Court of Metropolitan Magistrate, 62nd Court, Dadar. Upon completion of enquiry the police filed 'C' summary report. The petitioner then filed protest petition and then the trial Court issued process against respondents no.1 to 4 in the year 2011. Three years thereafter i.e. in the year 2014 the petitioner filed application under Section 319 of Cr.P.C. for impleading some of the Directors of respondent no.1 to the complaint. The trial Court by it's order dated 16th July, 2015 dismissed the application. Being aggrieved by the order, the petitioner had preferred Revision Application No. 1215 of 2015 to the Sessions Court. This also was dismissed by the order dated 24th June, 2016. Before the Sessions Court the petitioner had deleted original respondents no.8 to 11 from the revision application and limited the revision only to respondent nos.6 and 7 herein. The reason for deletion was inability on the part of the petitioner to serve notice upon. This reason speaks for itself.

4. The reason for the dismissal of the application given by the trial Court is that the petitioner did not assign any overt act to respondents no.6 and 7 in commission of the alleged offences. It observed that these respondents cannot be added to the array of the accused, "merely because there is faint whisper in evidence about involvement of higher officers of the company". It has also observed that there is no sufficient material to add these persons as accused. The Sessions Court while confirming the order of the trial Court has gone through the evidence before charge of the petitioner to note that the petitioner has not stated anything about these accused persons in his evidence.

5. Mr. Ansari, the learned advocate for the petitioner submits that there is material on record to include respondents no.6 and 7 to the array of the accused. The second argument is that in the reply dated 26th November, 2007 filed by respondent no.1 to the legal notice sent by the petitioner and in the Memorandum of Understanding (MOU) dated 20th February, 2007 executed between respondent no.1 and respondent no.4, it is falsely stated that the vehicle is owned by respondent no.4. And the third argument is that respondents no.6 and 7 must take responsibility for commission of offence by their employees i.e. respondents no.2 & 3 because they have not disowned erring employees even after getting the knowledge of commission of offence by them.

6. As regards contents of reply, it's perusal shows that all that has been stated therein is that on the complaint filed by the petitioner, the Sr. Inspector of Wadala Police Station had called upon the representatives of respondent no.1 to file written statement, on the basis of which the police were satisfied with the explanation that the original owner had at the behest of respondent no.1, sold the vehicle to the petitioner. This statement can hardly be said to be material against respondents no.6 and 7 for impleading them to the offence in question. As regards the MOU it's recital states that respondent no.4 had represented to respondent no.1, he is the registered owner of the vehicle in question and that he would be selling the same to the petitioner, who desires to obtain loan from respondent no.1. The execution of the MOU by respondent no.1, which is on the basis of the representation made by respondent no.4, cannot form material against respondents no.6 and 7. As regards the argument that respondents no.6 and 7 as the Directors of respondent no.1 ought to have disowned respondents no.2 and 3, needs to be only stated to be rejected.

7. The impugned orders correctly hold that there is no material whatsoever against respondents no.6 and 7 to add them to the array of the accused. Hence, the petition is dismissed.

[Smt. R. P. SondurBaldota, J.]