IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.471 OF 2019

Satnam Singh Sahi, Age 64 years,
Occ. : Business, Director of Sitara Shipping
Limited, Office at Onlooker Building,
Sir P.M.Road, Mumbai. Petitioner
versus
1. The State of Maharashtra.
2. Kapil Dev Chug, Age 68 years,
R/o.101, Bandra Arcade, National
Library Road, Bandra West,
Mumbai-400 050. Respondents

WITH
CRIMINAL APPLICATION NO.424 OF 2019
IN
CRIMINAL WRIT PETITION NO.471 OF 2019

Kapil Dev Chugh Applicant
versus
1. The State of Maharashtra
2. Satnam Singh Sahi Respondents

Mr.Manoj Khatri with Christabeele M.K. with Arnab Ghosh, Advocates for Petitioner.
Mr.K.D.Chugh, Respondent no.2 present in person.
Mr.A.R.Patil, APP, for Respondent-State.

CORAM : PRAKASH D. NAIK, J.

Date of Reserving the Order : 29th June 2022

Date of Pronouncing the Order : 7th February 2023

ORDER :

1. Petitioner is aggrieved by order dated 2nd January 2019 passed by learned Additional Sessions Judge, City Civil and Sessions Court

for Greater Bombay in Criminal Revision Application No.654 of 2018.

2. Petitioner is prosecuted in Criminal Case No.35/SW/2012 initiated by Respondent no.2 and pending before the Court of learned Additional Chief Metropolitan Magistrate, 64th Court, Esplanade, Mumbai.

3. Respondent no.2 has preferred Criminal Application No.424 of 2019 challenging order dated 28th March 2019 passed by learned Metropolitan Magistrate, 64th Court, Esplanade, Mumbai below application dated 25th October 2017 rejecting said application preferred u/s.319 of Code of Criminal Procedure.

4. The case of complainant is that accused approached him to open Letter of Credit for Rs.65 lakh and paid Rs.10 lakh by Demand Draft No.06899 dated 29th October 2002 towards margin money for depositing the same with bank against total value of letter of credit to open in the name of Planet Optical Disc Limited. Agreement on behalf of M/s.Sitara Shipping Limited headed by accused Satnam and Director of Asteral Freight Forwarders (P) Ltd was executed whereby he undertook to make payment by banker's cheque for the purchase of total imported quantity of CST Fuel Oil plus Rs.400/- per ton commission of complainant and bank charges. The complainant deposited Rs.55 lakh in bank and letter of credit of Rs.65lakh was opened. The accused had pre-planned to cheat the complainant and produced false and bogus documents to claim cargo whereas actually original documents were with Central Bank of India. The bank pressurized the complainant to release funds of Rs.65 lakh. The

cargo storage charges of the barge were of Rs.20,000/- per day, which were increasing every day and the owner of barge was pressurizing to make payments of barge charges. In the mean time, to pressurize the complainant to release the cargo, the accused filed complaint against him u/s.156(3) of Cr.P.C in which complainant was arrested. Later on by judgment dated 31st January 2007 complainant was acquitted for offences under Sections 406, 409 and 420 of Indian Penal Code. Accused had cheated the complainant by demanding Rs.5 lakh for amending I.G.M. and release orders.

5. Learned Metropolitan Magistrate directed concerned Police Station to conduct an Inquiry and submit report u/s.202 of Cr.P.C. The Senior Inspector of Police, Aazad Maidan Police Station, Mumbai submitted the report on 22nd October 2007 before the Court by stating that dispute is of civil nature.

6. Learned Additional Chief Metropolitan Magistrate, 8th Court, Esplanade, Mumbai perused the complaint, verification statement of complainant and documents placed on record and vide order dated 12th March 2012 observed that complainant has made out prima facie case against accused and issued process against accused for offence punishable u/s.420 r/w 34 of IPC.

7. Petitioner-accused no.2 preferred Criminal Revision Application No.811 of 2013 before the Court of Sessions for Greater Bombay challenging the order issuing process dated 12th March 2012. Learned Sessions Judge vide order dated 2nd April 2014 observed that impugned order does not indicate that negative report of investigating agency was considered by the Trial Court. The

matter is required to be remanded to the Trial Court to consider the question of issue of process in the light of observations made in the order. The revision application was allowed and impugned order issuing process was set aside. The matter was remanded to the Trial Court to consider afresh the question of issue of process in the light of observations made in the said order. The Trial Court was also directed to deal with the matter expeditiously.

8. The case was remanded back to the Trial Court. Process was issued against accused vide order dated 30th January 2015 for offences punishable under Sections 465, 467, 468, 471 and 420 of IPC. While issuing process the Court had observed that report u/s.202 of Cr.P.C discloses that there are commercial transactions between the complainant and accused in respect of import and export business. There are also incidents of issuing letters of credit on alleged deposits given by complainant. After initial dispute of encashment of payment through bank, the accused prepared four fake bills of laiding and withdrawn. The report further discloses about the dispute which took place between complainant and accused in various offences and which are allegedly compromised by the parties but the report is silent on four bills of lading which are alleged to be forged. If the annexures 6 and 7 copies of bills of lading are seen, it reveals that, forging document cannot be termed as civil dispute as opined by the Inquiry Officer. Besides that, statement filed on record also justifies the allegations made by the complainant. Considering the material available on record, along with evidence of complainant, the Court finds that complainant has succeeded in establishing the facts which will establish prima facie that accused has committed offences punishable under Sections 465,

467, 468, 471 of IPC and causing inducement to release goods on the basis of forged documents which attracts offence punishable u/s.420 of IPC. Hence the Court directed that process be issued against accused for offences punishable u/s.465, 467, 468, 471 and 420 of IPC.

9. Subsequently learned Magistrate considered the evidence/ material on record to decide whether complainant has placed on record requisite material to frame charge against accused. After analyzing the evidence/material on record, the learned Magistrate vide order dated 23rd May 2018 rejected oral prayer for discharging the accused and held that there is requisite material on record to frame charge against accused for the offences punishable under Sections 420, 465, 467, 468 and 471 of IPC. The case was adjourned for framing charge. Learned Magistrate had observed that while framing charge what is to be seen is whether there exists grounds to frame charge. In the present case the complainant has stated on oath that accused has cheated him with intention since beginning by forging different documents. The complainant has placed on record relevant documents in support of allegations made in the complaint. It has been stated on oath by the complainant in his evidence before charge that accused had submitted forged set of documents for availing delivery of cargo. The requisite oral evidence and documentary evidence before charge adduced by complainant is sufficient to frame charge against accused u/s.420, 465, 467, 468 and 471 of IPC.

10. Petitioner challenged the order dated 23rd May 2018 by preferring Criminal Revision Application No.654 of 2018 before the

Court of Sessions. Learned Sessions Judge vide order dated 2nd January 2019 rejected revision application and thereby confirming order dated 23rd May 2018 passed by learned Magistrate.

11. Learned advocate for Petitioner submitted that there was no material before Trial Court for framing charge against accused and prayer for discharge ought not to have been rejected by Trial Court. The dispute is clearly of a civil nature. Learned Sessions Judge has failed to appreciate that complaint does not disclose or constitute any offence. The dispute is purely of a civil nature and based on agreement and memorandum of understanding entered between the parties. The complaint is false, vexatious and filed with ulterior motive. The complainant had suppressed vital facts. The complaint and evidence on record does not make out an offence u/s.420 of IPC. Original complaint was filed for offence u/s.420 of IPC. However, the Court has opined that charge could be framed for offence of forgery. There was no evidence to support charge of forgery. Vide Memorandum of Understanding dated 7th February 2003 it was mutually agreed by the petitioner and complainant that there are no claims against M/s.Sitara Shipping Ltd, M/s.Astral Freight Forwarders (P) Ltd or Ship Empty Trust on any count whatsoever including claim by Raj Shipping and short landing of cargo. Petitioner had filed a complaint against respondent no.2 before the Court of learned Magistrate. The dispute was settled between parties. The complaint relates to the same factual aspects. Compounding application was filed by the parties on account of settlement. The complaint was disposed off vide order dated 31st January 2007 and accused was acquitted. Thereafter respondent no.2 has filed present complaint on the same facts. The report dated

22nd October 2007 submitted by Police clearly states that no offence is committed by petitioner. There was no *mens rea* on the part of petitioner. The order passed by learned Magistrate and learned Sessions Judge is contrary to the evidence on record and provisions of law. Learned Magistrate failed to consider documents on record. The application preferred by respondent no.2 u/s.319 of Cr.P.C is misconceived. The Trial Court has rightly rejected the application to add additional accused. The order passed by learned Magistrate refusing to discharge petitioner and directing framing of charge and order passed by Sessions Court dismissing the revision application, be quashed and set aside and petitioner be discharged from the proceedings.

12. Respondent no.2 has appeared in person and submitted that the petition is frivolous and filed with ulterior motive to harass respondent no.2 and to delay the case. The contention of respondent no.2 is that the petition is not maintainable on facts or in law and does not disclose any cause of action to invoke jurisdiction of this Court. The petition is silent on the process issued against accused u/s.420 r/w 34 of IPC by order dated 12th March 2012 and process issued by learned Chief Additional Metropolitan Magistrate, 37th Court, Esplanade, Mumbai u/s.465, 467, 468, 471 r/w 420 of IPC. The Trial Court has rejected the prayer for discharge made by petitioner and learned Sessions Judge has dismissed the revision application preferred by Petitioner. It is settled principle of law that unless and until finding recorded by Lower Court appears to be perverse or per se illegal, the jurisdiction of this Court cannot be exercised since it is to be exercised sparingly when there is glaring defect or procedure or manifest error on the point of law which

results in miscarriage of justice. Petitioner has not pointed out any such defect on the findings recorded by Lower Court. The petition is devoid of merits. The accused has pre-planned the fraud. The facts narrated in the complaint and supported by documents clearly makes out offences against accused. The evidence before charge was considered by Trial Court while rejecting prayer for discharge and opining that charge has to be framed against accused for the offences stated hereinabove. The accused were involved in fabrication of documents and therefore charge of forgery is supported by evidence on record. The accused had intention to deceive the complainant right from inception which constitutes the offence u/s.420 of IPC. This is not the stage to drop the proceedings against accused. Respondent no.2 was acquitted by Trial Court on merits. The accused entered into Memorandum of Understanding dated 7th February 2003 on behalf of M/s.Sitara Shipping Ltd and M/s.Astral Freight Forwarders (P) Ltd. That they will withdraw case pending before the Court as per clause-4 of the Memorandum of Understanding. As per clause-5 of MOU, NOC would be issued for amendment to I.G.M and about issue of delivery order. The accused induced the respondent no.2 to part with Rs.5 lakh for amendment of I.G.M and for relinquishing his claim on cargo. The accused cheated respondent no.2 in this regard. Various other accused have connived with the petitioner. There is evidence to implead them by invoking Section 319 of Cr.P.C. The Trial Court has committed an error in rejecting application to add accused u/s.319 of CrP.C. There is evidence to show that they have played role in commission of crime. Prima facie case is made out to frame charge against accused and hence petition may be dismissed.

13. Learned Magistrate directed an inquiry and report in accordance with Section 202 of Cr.P.C in respect of complaint filed by Petitioner. The Senior Inspector of Police, Aazad Maidan Police Station, Mumbai submitted report dated 22nd October 2007. The report indeed indicate that dispute is of civil nature. Learned Magistrate is empowered to take contrary view on the basis of material on record. Learned Magistrate issued process vide order dated 12th March 2012. The order issuing process was set aside by learned Sessions Judge vide order dated 2nd April 2011 primarily on the ground that order issuing process does not indicate that negative report of investigating agency was considered by the Trial Court. The case was remanded to Trial Court for fresh consideration. Pursuant to the said order, learned Magistrate had dealt with report submitted by Police u/s.202 of Cr.P.C. Vide order dated 30th January 2015 the Court issued process for offences under Sections 465, 467, 468, 471 and 420 of IPC. While issuing process learned Magistrate had taken into consideration documents on record and also referred to the report submitted by police. It was observed that report is silent about four bills of lading which are alleged to be forged. The forgery cannot be termed as civil dispute as opined by Inquiry Officer. On the basis of material available on record process was issued. Subsequently evidence before charge was recorded. The accused made oral prayer for discharge. Learned Magistrate has rightly rejected prayer for discharge and held that there is requisite material on record to frame charge against accused for the offences under Sections 420, 465, 467, 468 and 471 of IPC. The grievance of Petitioner is that complaint was filed for the offence u/s.420 of IPC and thus process could not have been issued for the offences relating to forgery. It is pertinent to note that learned Magistrate vide order

dated 30th January 2015 had issued process for the offences of cheating as well as offences relating to forgery. Learned Magistrate vide order dated 23rd May 2018 has referred to the evidence of complainant and documents on record and formed an opinion that oral evidence and documentary evidence is sufficient to frame charge against accused. The Court also noted that while framing charge what is to be seen is whether there exists ground to frame charge. I do not find any infirmity in the finding of Trial Court in that regard. Prima facie case was made out for framing charge. Oral evidence of complainant and documentary evidence on record was sufficient to proceed with framing of charge. One of the contention of Petitioner is that previous proceedings initiated against respondent no.2 were settled. The parties had executed MOU. The application for compounding was filed. Respondent no.2 was acquitted in the said case as the parties had settled the dispute. The order dated 31st January 2007 acquitting respondent no.2 in CC No.476/PW/2005 is on record. The order enumerates that application for compounding of offences was filed before Court. However, prosecution has objected the prayer for compounding on the ground that offence is non compoundable. From the tenor of the said order it is apparent that accused was acquitted on merits. The order also mentions the fact that case was listed for judgment and at that point of time the accused himself submitted an application seeking further cross-examination of complainant. However, accused was advised by advocate not to press the said application as the matter was kept for judgment. Although application for compounding was filed at the earlier point of time, the accused is having some grievance against complainant and therefore he filed application. Learned Magistrate in paragraph 11 of the said decision has observed that prosecution has failed to prove the case u/s.406, 409 and 420 of IPC and hence accused deserves to get benefit of doubt. Even otherwise, in the present case, evidence of complainant was recorded before charge. Oral evidence and documentary evidence was on record. The Trial Court has formed an opinion. On the basis of such evidence that case is made out for framing charge against accused. Hence the submission that previous proceedings were settled and/or compounded, is devoid of merits. Learned Additional Sessions Judge has dealt with grounds urged by the Petitioner challenging order dated 23rd May 2018 in much details and rejected Revision Application No.654 of 2018. Learned Judge has assigned reasons for rejecting the application. Learned Judge has appreciated the material on record. In paragraph 10 of the said decision it is observed that perusal of evidence of complainant and documentary evidence it is prima facie clear that complainant has alleged that accused was having intention since beginning to deceive the complainant and accordingly he had induced the complainant to open letters of credit for Rs.65 lakh and pay Rs.10 lakh by demand draft dated 29th October 2002. The complainant has specifically pleaded and deposed that accused did not sign High Seas Agreement or did not issue banker's cheque as per terms and conditions of agreement. The complainant has contended that accused has produced false and bogus documents to claim cargo whereas original documents were lying with Central Bank of India. It is alleged that accused had committed fraud by getting cargo (16M) in the name of M/s.Sitara Shipping Ltd in stead of M/s.Panchratna Marketing Pvt. Ltd. With the intention that the accused can clear the cargo against the forged documents without the consent of complainant. According to the complainant, as per the terms and conditions of agreement, Import General Manifesto was to be filled with Customs by shipping agent and Captain of Shipping in the name of M/s.Panchratna Marketing Pvt.Ltd. However, the accused had forged the documents and the I.G.M was not submitted in the name of M/s.Panchratna Marketing Pvt.Ltd So far as compromise effected between the complainant an the accused is concerned, the complainant has come with contention that the accused had demanded Rs.5 lakh for amending the I.G.M and releasing the delivery orders for the fraud committed by M/sAsteral Freight Forwarders (P) Ltd on arrival of the ship. The complainant has alleged that the accused has exploited the situation of the barge charges of Rs.20,000/- per day and Rs.5 lakhs for correcting the I.G.M. The complainant has placed on record documentary evidence which gives corroboration to the contention of complainant. Learned Sessions Judge thus confirmed the order dated 23rd May 2018 passed by learned Magistrate. This is not the stage to discard the evidence of complainant recorded by Trial Court before charge. Evidence on record substantiates and supports the findings of learned Magistrate recorded in order dated 23rd May 2018. Thus, no interference is called for in order dated 23rd May 2018 passed by learned Magistrate and the order dated 2nd January 2019 passed by learned Sessions Judge rejecting Criminal Revision Application No.654 of 2018.

14. The complainant/respondent no.2 has filed Criminal Application No.424 of 2019. In the said application the complainant has challenged order dated 28th March 2019 passed by learned Metropolitan Magistrate, 64th Court, Esplanade, Mumbai, rejecting application preferred by respondent no.2 under Section 319 of Cr.P.C. Said order was passed in the application dated 18th September 2017

seeking addition of several other persons as accused in the proceedings in exercise of powers u/s.319 of Cr.P.C. The challenge to order dated 28th March 2019 is an independent order with independent cause of action. However, respondent no.2 has preferred the application in Criminal Writ Petition No.471 of 2019. Be that as it may, I do not find any infirmity in the order dated 28th March 2019 passed by learned Magistrate. While rejecting said application learned Magistrate had observed that keeping in mind the scope of Section 319 of Cr.P.C and considering the fact that process was issued against concerned accused, the application no where discloses role of the accused against whom complaint will have to be proceeded and that averments of the application no where reflect any complaint and report filed u/s.202 of Cr.P.C, that any other persons have played a role in commission of offence. It was further observed that if required during the course of trial such provision can be applied. However, at this moment the application is devoid of merits and liable to be rejected. No case is made out to interfere and set aside the order dated 28th March 2019.

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

ORDER

(i) Criminal Writ Petition No.471 of 2019 is rejected;

(ii) Criminal Application No.424 of 2019 is rejected;

(iii) Trial is expedited;

(iv) The Trial Court is requested to conclude the trial as expeditiously as possible and within a period of six months from the date of receipt of this order.

(**PRAKASH D. NAIK, J.**)

MST