

rajshree

Digitally
signed by
RAJSHREE
KISHOR
MORE
Date:
2023.08.29
18:28:16
+0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.391 OF 2023

Saurabh Sunil Revdankar] .. Appellant

vs.

State of Maharashtra & Anr.] .. Respondent

Mr.A.Z. Mookhtiar with Bhushan O. for the Appellant.

Mr.Y.M. Nakkhwa, APP for the State.

Mr.Susmit Phatale for Respondent No.2.

Mr.Kalyanji Ghete, ACP, Kalyan Division, Thane City present.

CORAM : BHARATI DANGRE, J

DATE : 28th August, 2023.

P.C.

1] The Appellant is apprehending arrest in CR No. 632/2022 registered with Mahatma Phule Chowk Police Station, Kalyan, which has invoked offences punishable under Section 406, 420, 468 read with 34 of the IPC and Section 3(1)(r), 3(1)(s) and 3(1)(zc) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. 1989. .

The complaint is lodged by the informant, belonging to scheduled caste, working as a tour operator. He was associated with two other accused persons mentioned in the FIR and as per the complainant, in order to arrange the tour packages, he got the tickets booked from the present Appellant and there was a long standing association between them.

2] Since the complainant intended to organize a tour to Thailand, he fixed tour price per head which included the price for the ticket, tourist visa, site seeing and other miscellaneous expenditure. It fixed the overhead expenses as Rs.29,900/- and the tour was to cater to include 155 customers.

As per the complainant, in order to fructify the said tour, he forwarded a sum of Rs.15,00,000/- to the present Appellant through RTGS in his personal account and on a further date, he further transferred a sum of Rs.20,000/- for booking the tickets.

It was also an understanding that the amount of Rs.2,00,000/- from the earlier tour, which was lying with the present appellant, shall be appropriated towards the booking amount.

3] The accusation in the complaint is to the effect that the Appellant failed to live upto his promise to book the tickets and in fact forwarded some fictitious tickets, to the realisation of the customers, that it did not match with the PNR from the Airlines. When he confronted the Appellant, he guided them towards Chetan Patil and Ashish Dubey, as the persons through whom he was booking the tickets. He even accompanied the complainant to them and when specifically confronted as to why fake PDF of 139 tickets were forwarded, he gave evasive answers.

In any case, since there was no option, he once again booked the tickets for 139 passengers and this time the money being paid to Ashish Dubey and Chetan Patil. Even out of these persons, 57 tickets were not provided and for the remaining tickets, money was adjusted and paid in the account of Ashish Dubey and Chetan Patil. The complainant himself narrate that Ashish Dubey returned a sum of Rs.6,00,000/- since 57 tickets were not made available.

4] As far accusation against the present Appellant is concerned, Respondent No.2 himself had filed Affidavit in Reply, where a categorical statement is made, that out of the amount of Rs.17,20,000/-, an amount of Rs.15,00,000/- is refunded by the Appellant and what remains due and payable is Rs.2,20,000/-.

It is stated in the complaint that on account of the conduct of the Appellant, he has suffered a loss of Rs.25,00,000/- and huge amount towards penalty for cancellation of hotel bookings.

In any case, as far as the loss and damages which are sought to be claimed by the complainant are concerned, it is a matter of facts to be established before the competent Court since what he claims is financial loss. But the fact remains that out of the sum of Rs.17,00,000/-, sum of Rs.15,00,000/- has been refunded and an understanding was that a sum towards Shrilanka Tour shall be adjusted against Thailand Tour and ultimately this is a matter of understanding between the Appellant and Respondent No.2 and definitely do not warrant custodial interrogation.

5] As far as the accusation under Section 3(1)(r) and 3(1)(s) is concerned, the narration in the FIR do not attribute, that it is the appellant who has hurled any castiest abuses within the public view and this is a charge which is specifically attributed to Ashish Dubey and his brother Abhishek Kumar Dubey.

The learned counsel for the complainant would however assert that the offence under Section 3(1)(zc) of the Act of 1989, is made out against the present Appellant, but prima facie I failed to understand as to how the said offence is attracted.

Section 3(1)(zc) has prescribed penalty for imposing on threatening social or economic boycott on any person or family or a

group belonging to scheduled castes or scheduled tribes and such an act is made punishable for a term which shall not be less than six months but which may extend to 5 years and with fine.

The term economic boycott is defined in Section 2(bc) which reads thus :

“2(bc) “**economic boycott**” means _

- (i) a refusal to deal with, work for hire or do business with other person; or
- (ii) to deny opportunities including access to services or contractual opportunities for rendering service for consideration; or
- (iii) to refuse to do anything on the terms on which things would be commonly done in the ordinary course of business; or
- (iv) to abstain from the professional or business relations that one would maintain with other person.”

The ingredients, in order to constitute “economic boycott” are thus clearly set out and though the learned counsel would make an attempt to establish that there is refusal to do certain things on the terms on which things would have been commonly done in the ordinary course of business, the said argument failed to impress me as the complaint do not make out any such accusation to that effect.

6] The accusation faced by the Appellant is that he attempted to give an impression that he had booked the tickets and even forwarded some forged tickets, to be found that there was no booking done, but for the said purpose the Appellant has refunded a sum of Rs.15,00,000/- to the complainant.

As far as the refund of sum of Rs.2,20,000/- is concerned, it do not warrant any custodial interrogation and further as far as damages

are concerned, would definitely not fall within the purview of the Investigating Officer.

7] For the aforesaid reasons, since reading of the FIR, prima facie do not make out an offence under the Act of 1989 against the Appellant and as far as offence under IPC are concerned, since it is apparently admitted that the business transaction was shared between the Appellant and the complainant for a considerable point of time and since it is not indicated that Appellant had in future to deceive, from the inception, when the transaction was entered into and amount was entrusted for the purposes of booking of airline tickets, and in fact on several occasions in the past it was done, custodial interrogation is not necessary. Hence, the following order :

ORDER

- a] Appeal is allowed.
- b] The impugned order dated 12.01.2023 passed by the Additional Sessions Judge, Kalyan is quashed and set aside.
- c] The order dated 05.06.2023 is confirmed and the Appellant shall attend the Investigating Officer on 30.08.2023 and 31.08.2023 between 10.00 a.m. to 12.00 noon and thereafter as and when called for.

[BHARATI DANGRE, J]