

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 1009 OF 2012****WITH****MISC. APPLICATION NO. 251 OF 2012**

1. Satish Panchariya, age-42 years,
9 J.VPD., 10th Road,
JVPD Scheme, Mumbai – 400 049.
2. Arun Panchariya, age- 37 years,
9 J.VPD., 10th Road,
JVPD Scheme, Mumbai – 400 049.
3. Sanjay Tripathi, age-39 years,
9 J.VPD., 10th Road,
JVPD Scheme, Mumbai – 400 049. .. Petitioners

Vs.

1. The State of Maharashtra
2. K SERA SERA LIMITED
4th Floor, Mohid Heights,
R.T.O. Lane, Four Bungalows,
Andheri West, Mumbai – 400 053.
3. Mr. Sanjay Lai, age- 50 years,
C/704, Dheeraj Pooja,
Chincholi Bunder Road,
Malad West, Mumbai – 400 064
4. Pavithran Rajesh, age- 38 years,
202, Bliss Bldg, 2nd Floor,

B-Wing, LBS Marg, Mulund (w),
Mumbai – 400 080

.. Respondents

Mr. Ashutosh Kumbhakoni, Senior Advocate, i/b. Manoj Badgujar, S. A.
Pathak & Lalit Joshi, for the Petitioners.
Ms. Anamika Malhotra, APP, for the Respondent No.1-State.

**CORAM: A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 4th NOVEMBER, 2023.

JUDGMENT [Per:- A. S. GADKARI, J]:-

- 1) The Petitioners have invoked jurisdiction of this Court under Article 226 of Constitution of India read with Section 482 of the Criminal Procedure Code [for short “**Cr.PC.**”] for quashing of M.E.C.R. No. 2 of 2012, registered with Malad Police Station, Mumbai, in furtherance of Order dated 9th January, 2012 passed by the learned Additional Chief Metropolitan Magistrate, 24th Court, Borivali, Mumbai in C.C. No.04/SW/2012.
- 2) Heard Mr. Kumbhakoni, learned Senior Counsel for the Petitioners and Ms. Anamika Malhotra, learned APP for Respondent No.1-State. Perused entire record produced before us.
- 3) The record indicates that, Advocate Ms. Shabnam Latiwala has caused her appearance on behalf of Respondent No.2, the contesting Respondent. As far as Respondent Nos. 3 & 4 are concerned, they had claimed that, they were authorized to represent Respondent-2, Company.

Their said claim has been adjudicated by this Court and by an Order dated 7th May, 2012, it has been held that, the Respondent Nos. 3 and 4 have no authority to represent Respondent No.2 and it is Advocate Ms. Shabnam Latiwala, authorized to represent Respondent No.2. The said Order dated 7th May, 2012 holds the field and there is no deviation in the adjudication effected by this Court on the claim of Respondent Nos. 3 and 4, for their authority to represent Respondent No.2.

3.1) In the present Petition Rule and interim relief was granted by an Order dated 30th August, 2012.

4) Record reveals that, the complaint in question was allegedly filed by the Respondent Nos. 3 and 4 on behalf of Respondent No.2, Company. In para 2 of the complaint, it is averred as under:

“2. Complainant no.2 is presently made dummy Managing Director of the complainant no. 1. Complainant nos. 3 were ex-Managing Directors of the complainant no.1 and complainant no. 3 is the present Chief Executive Officer of the complainant no.1.”

5) The learned Magistrate by its impugned Order dated 9th January, 2012, while directing the Police to conduct investigation under Section 156(3) of Cr.PC., has himself admitted that without applying judicious mind to the case, he has passed the said Order by relying on the decision of the Hon’ble Supreme Court in the case of *Shrinivas Gundluri and*

Ors v/s. SEPCO Electric Power Constructions Corporation & Ors, reported in MANU/SC/0539/2010.

5.1) It is the settled position of law and as has been enunciated by this Court in the case of *Sayed Anwar Ahmed & Anr. vs. The State of Maharashtra & Anr., reported in 2017 SCC OnLine Bom 3972*, while dealing with the complaint seeking an action under Sub-Section (3) of Section 156 of Cr.PC., the learned Magistrate cannot act mechanically. He is required to apply his mind to the contents of the complaint and the documents produced along with the complaint. That, an Order passed on the said complaint must record reasons in brief which should indicate application of mind by the Magistrate. However, it is not necessary to record detailed reasons. Other necessary legal parameters for issuance of directions under Section 156(3) of Cr.PC. have been enunciated in the said decision by this Court.

5.2) As noted above, the learned Magistrate while issuing the direction under Section 156(3) of Cr. P.C. has himself admitted that, without applying judicious mind he has passed the Order impugned herein.

This ground alone is sufficient to set aside the impugned Order dated 9th January, 2012 and the further proceedings arisen thereof, including the registration of crime in question.

6) There is another facet to the present Petition. As noted above, in the complaint the Respondent Nos. 3 and 4 have represented themselves to be the authorized representatives of the Respondent No.2, Company for filing the said complaint and persuading the learned Magistrate in passing the impugned Order dated 9th January, 2012. The Authorised Representative/Director of Respondent No.2, Company, namely Retired Wing Commander Ajai Sharma has filed an Affidavit on behalf of Respondent No.2 dated 3rd April, 2012, duly affirmed before the Assistant Registrar of this Court. In para No. A(I) he has stated that, the Respondent No.2 has not filed any complaint against any person and has also not authorised any person to file any complaint. That, the complaint bearing C.C. No. 04/SW/2012 filed before the learned Additional Chief Metropolitan Magistrate, 24th Court, Borivali, Mumbai, is without the knowledge of the Company and the Board of Respondent No.2 never passed any resolution to file any complaint or authorized Respondent No.3 to file any such complaint. That, the said complaint is filed without any authorization and without knowledge, consent or assent of the Board of Directors. That, the Respondent No.2, Company does not ascribe to the contents of the complaint and is in noway connected with the said complaint. It is further stated that, the Respondent No.2 has no complaints about any alleged misuse of funds and the accounts of the Company are in order. That, the

Petitioner No.2 was a merchant banker and instrumental in processing the funds for the Company and the Petitioner No.1 is the brother of Petitioner No.2. Petitioner No.3 was appointed by the Petitioner No.3 himself to carry out miscellaneous jobs and authorized by Respondent No.3 to handle transactions on behalf of Respondent No.3. It is further stated that, the Respondent Nos. 3 and 4 with a view to avoid prosecution for their fraudulent activities and to intimidate the witnesses has filed the said complaint and obtained Orders on it by suppression of material facts and grabbed an Order which they are otherwise not entitled in law. It is stated that, the Respondent No.4 resigned from the services of the Company from 28th February, 2008. A photocopy of Form No.32 filed with the Registrar of Companies in respect of the resignation of Respondent No.4 is placed on record. In view of the averments made by the Authorised Representative and Directors of the Respondent No.2, Company, complaint in question itself is not maintainable in the eyes of law.

7) A priori of the above is that, it is apparent that the Respondent Nos.3 and 4, in the name of Respondent No.2 has filed the said complaint without having any lawful authority. According to us, it is the sheer abuse of process of law adopted by Respondent Nos. 3 and 4 in the name of Respondent No.2 and as continuation of the said proceedings, would cause undue harassment and agony to the Petitioners for no illegal act committed

by them. We also do not appreciate the mode and manner in which the impugned Order dated 9th January, 2012 is mechanically passed by the learned Magistrate, which is in utter disregard to the settled principles of law.

8) A cumulative effect of the aforestated deliberation is that, the impugned Order dated 9th January, 2012, deserves to be quashed and set aside along with further proceedings initiated in furtherance thereof.

8.1) We accordingly quash and set aside the Order dated 9th January, 2012 passed by the trial Court below Exhibit 1 in C.C. No.04/SW/2012. As a consequence thereof, M.E.C.R. No. 2 of 2012, registered with Malad Police Station, Mumbai is also quashed and set aside.

8.2) Petition is allowed in terms of prayer clauses (a) and (b).

8.3) Rule is made absolute in the aforestated terms.

9) In view of the disposal of the Writ Petition, Miscellaneous Application No. 251 of 2012 filed therein, does not survive and is accordingly disposed off.

Digitally
signed by
GANESH
SUBHASH
LOKHANDE
Date:
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(SHYAM C. CHANDAK, J.)

(A. S. GADKARI, J.)