SUPREME COURT OF INDIA

Maharashtra State Elect.Distrn.Col.

Vs.

Datar Switchgear Ltd.

Crl.A.No.1979 of 2010

(D.K. Jain and H.L. Dattu JJ.)

08.10.2010

JUDGEMENT

D.K. JAIN, J.:

1. Leave granted.

2. This appeal, by special leave, is directed against the judgment, dated 9th October 2007, delivered by the High Court of Bombay in Criminal Application No. 3715 of 2005, in a petition filed by the two appellants herein under Section 482 of the Code of Criminal Procedure, 1973 (in short "the Code"). By the impugned judgment, the High Court has declined to quash a criminal complaint filed by respondents No.1 to 3 in 1 this appeal against the appellants and others for offences under Sections 192 and 199 read with Section 34 of the Indian Penal Code, 1860 (for short "the IPC").

3. Shorn of unnecessary details, the facts, material for adjudication of the issue arising in this appeal

may be stated thus:

Appellant No.1, viz. Maharashtra State Electricity Distribution Co. Ltd.; constituted in terms of the provisions of the Electricity Act, 2003 is the successor in interest of Maharashtra State Electricity Board (for short "MSEB") and appellant No. 2 is its Chairman. Respondent No.1 is an incorporated company, viz. M/s Datar Switchgear Ltd. and respondents No.2 and 3, senior officials of respondent No.1, are the complainants and respondents No.4 to 7 are the co-accused.

4. Pursuant to various contracts entered into between respondent No. 1 and MSEB in the year 1993-94 for installation of "Low Tension Load Management Systems" (for short "LTLMS"), MSEB issued a work order on 27th March 1997 whereby respondent No. 1 was required to install at various locations and lease out 47,987 LTLMS to MSEB for a period of 10 years at a monthly rent of ` 825/- for the first six years, and about ` 650/- per month for the remaining four years.

5. Clause 8.1 of the said contract stipulated that respondent No.1 would send intimation to the Section-in-charge of MSEB regarding the installation of the equipment, and thereafter, a commissioning report was to be prepared in that regard, which was to be signed jointly by the representative of the complainant and the concerned Section-in-charge of the MSEB.

6. During the validity period of the contract, various disputes arose between respondent No.1 and MSEB. On 19th February 1999, respondent No.1 partially terminated the contract, conveying to MSEB that it would not install any more LTLMS, and would only maintain the installed items.

7. On 21st April 1999, respondent No.1 terminated the contract in entirety. Nevertheless, they offered to maintain the installed objects provided MSEB continued to pay rent during the duration of the work order. As the dispute arose between respondent No. 1 and MSEB vide order dated 5th May 1999, the High Court of Bombay referred the disputes to Arbitral Tribunal.

8. The arbitration proceedings commenced on 19th February 1999. The controversy in the instant case pertains to the amended written statement filed by the MSEB on 7th February 2000, the relevant extract of which reads as follows:

"9A. The Respondents submit that the Claimants are not entitled to claim any amount from the Respondents as claimed or otherwise. In fact, as stated hereinafter, the Claimants are bound to refund to the Respondents all the amounts recovered by them from the Respondents along with interest thereon. The Respondents submit that the Claimants are guilty of having practiced fraud

upon the Respondents. The Claimants have fabricated documents as also are guilty of misrepresentation of material facts in the matter of commissioning objects, installing them, taking out print outs therefrom and submitting bills in respect thereof.... ....

a) COMMISSIONING/COMMISSIONING REPORTS The provisions of Clause 8.1 of the work order provided for installation and commissioning of LTLMS systems in presence of Section in Charge of every Section. The Claimants not only did not inform the concerned/Section in Charge as required by Clauses (a) and (b) thereof, but submitted commissioning reports for the LM systems making it appear as if the objects were installed on a given date in presence of the representatives of the Section in charge as mentioned in the said reports, and thereafter submitted the same for the signature of the Sections in charge. With a view that the sub divisions, divisions and circles of the Respondents are not able to find out the same, the Claimants failed and neglected to send copies of the Commissioning reports as provided in Clause 8.0(d), thereby making it impossible for the officers mentioned in clause (e) thereof to depute representatives to inspect the commissioned objects in the circle. The Claimants thus obtained payments from the dates mentioned in the said reports fraudulently by misrepresentation of the facts...."

9. The Arbitral Tribunal passed the final award on 18th June 2004 whereby it directed MSEB to pay `185,97,86,399/- as damages to respondent No.1, and pay interest at the rate of 10% p.a. on the sum of `179,15,87,009/-. The award contained the following observations suggesting that the MSEB had introduced certain fabricated documents as evidence:

"As regards the Commissioning Reports produced by the Respondents at Exhs. C-64 and C-74, the Claimants submitted, and with considerable merit that the Respondents had indulged in tampering the commissioning reports produced on the record. The submission is correct."

10. On the basis of the said observations in the arbitral award, on 23rd June 2004 respondent Nos. 1 to 3 filed criminal complaint No. 476 of 2004 before the Judicial Magistrate, First Class, Nasik for offences under Sections 192 and 199 read with Section 34 of the IPC. The Judicial Magistrate, First Class, Nasik took cognizance of the said complaint and issued summons against all the accused named in the complaint.

11. Being aggrieved by the order of the Magistrate taking cognizance of the complaint, appellants preferred the afore-stated petition under Section 482 of the Code before the High Court of Bombay for quashing of the complaint.

12. As stated above, the High Court, vide the impugned judgment has dismissed the said petition.

The High Court has inter alia observed that a prima facie case has been made out against the accused and the complaint clearly establishes the joint action of the accused to attract vicarious liability under the IPC. Hence, the present appeal by two of the accused.

13. Mr. Vikas Singh, learned senior counsel appearing on behalf of the appellants assailed the impugned judgment on the ground that the dispute between the parties was purely civil in nature, and the criminal justice system has been set in motion only to pressurize the appellants. In order to buttress the contention that the High Court would be justified in exercising its powers under Section 482 of the Code to quash a vexatious criminal complaint to prevent an abuse of the process of the Court, learned counsel commended us to the decisions of this Court in Inder 1 (2007) 12 SCC 1 2 (2008) 4 SCC 541 3 (2008) 8 SCC 77 4 (2008) 11 SCC 670 5 (2000) 2 SCC 636 Rustom Irani & Anr.8, learned counsel contended that the IPC, save and except in some specific cases, does not contemplate vicarious liability of a person who is not directly charged for the commission of an offence, and a person cannot be made an accused merely by reason of his official position. Further, it was contended that in order to launch prosecution against the officers of a company, the complainant must make specific averments as to the role played by each of the officials accused in the complaint. In order to buttress the contention, learned counsel placed Gujarat & Ors.12.

15. Mr. Ashok Desai, learned senior counsel appearing for respondents No.1 & 2, on the other hand, while emphasizing that power under Section 482 6 (1998) 5 SCC 749 7 (2005) 8 SCC 89 8 (2009) 6 SCC 475 9 (2007) 9 SCC 481 10 (2009) 3 SCC 375 11 (2008) 5 SCC 662 12 (2008) 5 SCC 668 of the Code is to be exercised sparingly and with circumspection, argued that in the instant case, in light of the averments in the complaint, a prima facie case is made out against the appellants and, therefore, the High Court was fully justified in declining to exercise its jurisdiction under the said provision. In the written submissions filed on behalf of the respondents reliance is placed on the decisions of this Court in Sunita Karnataka14 to contend that the present case does not fall in the category of "rarest of rare" cases, warranting exercise of jurisdiction by the High Court under Section 482 of the Code. Learned counsel contended that the offence of fabrication of false evidence cannot be described as a civil act, and in any event, the existence of a civil remedy does not preclude the maintainability of criminal complaint. was next contended that it was not necessary to allege an overt act by each of the accused, and in that regard, the averments in the complaint were sufficient. Moreover, the use of the expression "whoever causes 13 (2008) 2 SCC 705 14 (2008) 3 SCC 574 15 (2001) 9 SCC 728 16 (2002) 6 SCC 670 any circumstance to exist" in Section 192 of the IPC indicates that vicarious liability is in-built within the Section, and the complaint contains specific averments to that effect.

17. Learned counsel urged that the offences under Sections 192 and 199 IPC were complete when the accused had adduced the fabricated commissioning reports in proceedings before the arbitrators, who had adversely commented on the conduct of the appellants. It was argued that the said offences would survive irrespective of the sustenance or otherwise of the arbitral award. Commending us to the decisions of this Court in In Re: Suo Moto Proceedings Against R. Karuppan, Ashok Kr. Newatia & Anr.19, learned counsel pleaded that the offences of perjury and fabrication of false evidence require stern action to be taken against persons indulging in such acts.

18. Before embarking on an evaluation of the rival submissions, it would be apposite to briefly examine the nature of the power of the High Court under Section 482 of the Code. 17 (2001) 5 SCC 289 18 (2003) 8 SCC 673 19 (2000) 2 SCC 367

19. It is well settled that though the inherent powers of the High Court under Section 482 of the Code are very wide in amplitude, yet they are not unlimited. However, it is neither feasible nor desirable to lay down an absolute rule which would govern the exercise of inherent jurisdiction of the Court. Nevertheless, it is trite that powers under the said provision have to be exercised sparingly and with caution to secure the ends of justice and to prevent the abuse of the process of the Court. Where the allegations in the first information report or the complaint taken at its face value and accepted in their entirety do not constitute the offence alleged, the High Court would be justified in invoking its powers under Section 482 of the Code to quash the criminal proceedings. (See: R.P. Pal Singh Gill & Anr.21.)

20. In Som Mittal (supra), a three judge bench of this Court, while holding that the power under Section 482 of the Code to quash criminal proceedings should be used sparingly, and with circumspection in the "rarest of rare cases", observed that:

"When the words "rarest of rare cases" are used after the words "sparingly and with circumspection" while describing the scope of Section 482, those words merely emphasise and 20 AIR 1960 SC 866 21 (1995) 6 SCC 194 reiterate what is intended to be conveyed by the words "sparingly and with circumspection". They mean that the power under Section 482 to quash proceedings should not be used mechanically or routinely, but with care and caution, only when a clear case for quashing is made out and failure to interfere would lead to a miscarriage of justice. The expression "rarest of rare cases" is not used in the sense in which it is used with reference to punishment for offences under Section 302 IPC, but to emphasise that the power under Section 482 CrPC to quash the FIR or criminal proceedings should be used sparingly and with circumspection. Judgments are not to be construed as statutes. Nor words or phrases in judgments to be interpreted like provisions of a statute. Some words used in a judgment should be read and understood contextually and are not intended to be taken literally. Many a time a judge uses a phrase or expression with the intention of emphasising a point or accentuating a principle or even by way of a flourish of writing style. Ratio decidendi of a judgment is not to be discerned from a stray word or phrase read in isolation."

21. Thus, the question for consideration is whether or not in light of the allegations in the complaint against the appellants, the High Court was correct in law in declining to exercise its jurisdiction under Section 482 of the Code? 22.In order to appreciate the rival contentions of the parties, it would be expedient to refer to the relevant portions of the complaint:

"5. In the said Arbitration proceedings it was falsely contended by the Accused at para 9(A)(a) of the Written Statement that the Complainant No. 1 had submitted false and fabricated Commissioning Reports and the equipment particularized therein was installed without the presence of the MSEBs Section-in-Charge and the Accused relied upon a copy of the Commissioning Report inter alia pertaining to Shirpur Section in Dhule Circle. The said Commissioning Report as relied upon by the Accused was tendered as Exhibit `C-64' by the witness examined on behalf of the Accused No. 1. The said Commissioning Report contained an endorsement `not installed in presence' to allege that the Commissioning of the equipment particularized in the said Commissioning Report at Exhibit `C- 64' was not done in the presence of MSEBs Section Officer. The said Commissioning Report contained the signature of the representative of the Complainant No. 1 and the said endorsement was made above the said signature of the Complainant No. 1's representative in a manner to depict as if the Complainant No. 1's representative had accepted the fact alleged in the said endorsement.

6. On the other hand, the Complainant No. 1 brought on record their copy of the Commissioning Report pertaining to Shirpur Section in Dhule Circle as Exhibit `C-74' which had no such endorsement as is found on the face of Exhibit `C-74'. It is the case of the Complainant No.1 that the Accused with common criminal intent caused the impugned endorsement "not installed in presence" to be superscribed on Exhibit `C-64' after it was duly signed by the representative of the Complainant No. 1 and the Section in charge of MSEB so as to convey the impression that the Complainant No.1's representative had accepted the fact alleged in the said endorsement. The said falsification and fabrication of the record was brought to the notice of the Ld. Arbitrators in the Arbitration proceedings and the Ld. Arbitrators observed in their award dated 18.06.2004 as under:.... ....

The Complainants say and submit that the Ld. Arbitrators have thus held that the said endorsement was fabricated and was admittedly tendered in evidence by the Accused No.1 acting under the control and management of Accused Nos. 2, 3, 4 and

5. The Accused No. 6 was particularly responsible for the conduct of the MSEBs officers in the Shirpur Section which falls under the Dondaicha Division of Dhule District. The Complainants say and submit that the Accused acted with common criminal intent to falsify and fabricate the said endorsement with the intention to support the case of the Accused No. 1 that the equipment was installed by the Complainant No. 1 without the presence of the officers of the MSEB. The Complainants say and submit that the said action was therefore clearly intended to pervert the course of justice and misled (sic) the Ld. Arbitrator into entertaining in erroneous opinion touching upon the point of material determination as to whether the Complainant No. 1 had installed the equipment without the presence of the MSEBs Section-in-charge. The Complainants say and submit that the Accused fabricated false evidence which has been tendered by them in the course of judicial proceedings before the Ld. Arbitrators and the Accused are guilty of offence u/s 192, 199 r/w Sec. 34 of the Indian Penal Code. The Complainants say and submit that the Accused acted with common criminal intention to play fraud on the Ld. Arbitral Tribunal and deny justice to the Complainant No. 1."

(Emphasis supplied by us) 23.It is manifest that the allegation against the appellants herein is that appellant No.1 had, acting under the control and management of all the accused, including appellant No. 2 and in particular accused No. 6, superscribed an endorsement on Exhibit C-64 with an intention to support its case and tendered the same in the course of judicial proceedings before the Arbitral Tribunal, thereby committing offence of fabricating false evidence in terms of Section 192 and 199 read with Section 34 IPC.

24.At this juncture, it would be apposite to refer to the relevant statutory provisions and examine the legal position.

25.Sections 192 and 199 IPC, read as follows:

"192. Fabricating false evidence.-Whoever causes any circumstance to exist or makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence"."

"199. False statement made in declaration which is by law receivable as evidence.- Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence."

26.It is plain that for constituting an offence under Section 192 IPC, the following ingredients must be satisfied:

(i) Causing any circumstance to exist, or making any false entry in any book or record or making any document containing a false statement. (ii) Doing one of the above acts with the intention that it may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant or an arbitrator.

(iii) Doing such act with the intention that it may cause any person, who in such proceeding, is to form an opinion upon the evidence to entertain an erroneous opinion touching any point State of Uttar Pradesh & Ors.22.)

27. Similarly, Section 199 IPC requires the following ingredients to be established:

"(i) Making of a declaration which a Court or a public servant is bound or authorised by law to receive in evidence.

(ii) Making of a false statement in such declaration knowing or believing it to be false.

(iii) Such false statement must be touching any point material to the object for which the declaration is made or used."

28. A bare perusal of the complaint shows that the gravamen of the allegation is that a fabricated document containing the offending endorsement was tendered in evidence before the Arbitral Tribunal on behalf of MSEB by accused No. 6, who was in-charge of Shirpur section. It is evident from the afore-extracted paragraphs of the complaint that other accused have been named in the complaint because, according to the complainant, MSEB-accused No. 1 was acting under their control and management. It bears repetition that the only averment made against appellant No. 2 is that appellant No.1, i.e. MSEB was acting under the control and management of appellant No. 2 along with other three accused. There is no denying the fact that appellant No. 2 happened to be the Chairman of 22 AIR 1964 SC 725. MSEB at the relevant time but it is a settled proposition of law that one cannot draw a presumption that a Chairman of a company is responsible for all acts committed by or on behalf of the Company. In the entire body of the complaint there is no allegation that appellant No. 2 had personally participated in the arbitration proceedings or was monitoring them in his capacity as the Chairman of MSEB and it was at his instance the subject interpolation was made in Exhibit C-64. At this stage, we may refer to the extract of a Board resolution, pressed into service by the respondents in support of their plea that appellant No. 2 was responsible for the conduct of business of appellant No. 1. The said resolution merely authorises the Chief-Engineer to file counter claim before the Arbitral Tribunal in proceedings between appellant No. 1 and respondent No. 1. It rather demonstrates that it was the Chief Engineer who was made responsible for looking after the interest of the appellant No. 1 in those proceedings. In this regard, it would be useful to advert to the observations made by a three judge bench of this Court in S.M.S. Pharmaceuticals (supra) :- "There is no universal rule that a director of a company is in charge of its everyday affairs. We have discussed about the position of a director in a company in order to illustrate the point that there is no magic as such in a particular word, be it director, manager or secretary. It all depends upon the respective roles assigned to the officers in a company. A company

may have managers or secretaries for different departments, which means, it may have more than one manager or secretary."

29. It is trite law that wherever by a legal fiction the principle of vicarious liability is attracted and a person who is otherwise not personally involved in the commission of an offence is made liable for the same, it has to be specifically provided in the statute concerned. In our opinion, neither Section 192 IPC nor Section 199 IPC, incorporate the principle of vicarious liability, and therefore, it was incumbent on the complainant to specifically aver the role of each of the accused in the complaint. It would be profitable to extract the following observations made in S.K. Alagh (supra) :- "As, admittedly, drafts were drawn in the name of the Company, even if the appellant was its Managing Director, he cannot be said to have committed an offence under Section 406 of the Penal Code. If and when a statute contemplates creation of such a legal fiction, it provides specifically therefor. In absence of any provision laid down under the statute, a Director of a Company or an employee cannot be held to be vicariously liable for any offence committed by the Company itself."

30. Therefore, we are of the view that even the Board Resolution, adduced by the complainant, does not establish that appellant No.2 was involved in the alleged fabrication of false evidence or adducing the same in evidence before the arbitral tribunal. In the absence of any such specific averment demonstrating the role of appellant No.2 in the commission of the offence, we find it difficult to hold that the complaint, even assuming it to be correct in its entirety, discloses the commission of an offence by appellant No.2 under Sections 192 and 199 of IPC.

31. However, in so far as the case of appellant No.1 company is concerned, bearing in mind the fact that Exhibit C-64 was submitted with the intention to support the averments in the written statement filed on their behalf, which could possibly influence the decision of the arbitral tribunal in relation to the conduct of the respondent No. 1 while discharging their obligations under the contract between them and appellant No. 1, we are unable to hold that prima facie, a case of offences under Sections 192 and 199 IPC is not made out against them. It is evident from the observations of the Tribunal quoted in para 9 (supra) that had the tribunal not doubted the veracity of the said document, it could have made a material difference to the result of the arbitral proceedings. 32.It was faintly argued that the arbitral award on the basis whereof the said complaint has been filed has been set aside and therefore, the complaint is liable to be quashed on this ground. The submission is untenable as the offences under Sections 192 and 199 IPC, if made out, exist independent of the final arbitral award. We are, therefore, of the opinion, that it is not a fit case for the exercise of power under Section 482 of the Code, in favour of appellant No. 1.

33. We shall now examine whether appellant No.2 could be made liable for the afore-mentioned offences by operation of Section 34 of IPC. It is trite that Section 34 IPC does not constitute a substantive offence, and is merely in the nature of a rule of evidence, and liability is fastened on a person who may have not been directly involved in the commission of the offence on the basis of a pre-arranged plan between that person and the persons who actually committed the offence. In order

to attract Section 34 IPC, the following ingredients must be established:

"(i) there was common intention in the sense of a pre-arranged plan;

(ii) the person sought to be so held liable had participated in some manner in the act constituting the offence." (See:

34. It is manifest that common intention refers to a prior concert or meeting of minds, and though, it is not necessary that the existence of a distinct 23 1998 SCC (Cri) 698 24 (2003) 10 SCC 108 25 (2000) 4 SCC 110 previous plan must be proved, as such common intention may develop at the spur of the moment, yet the meeting of minds must be prior to the commission of offence suggesting the existence of a pre-arranged plan. Therefore, in order to attract Section 34 of the IPC, the complaint must, prima facie, reflect a common prior concert or planning amongst all the accused. In our opinion, in the present case, the complaint does not indicate the existence of any pre-arranged plan whereby appellant No. 2 had, in collusion, with the other accused decided to fabricate the document in question and adduce it in evidence before the arbitral tribunal. There is not even a whisper in the complaint indicating any participation of appellant No. 2 in the acts constituting the offence, and that being the case we are convinced that Section 34 IPC is not attracted in his case.

35. In the final analysis, we are of the opinion that no prima facie case has been made out against appellant No.2 in respect of offences under Sections 192 and 199 of the IPC, even with the aid of Section 34 of the IPC. Therefore, it was a fit case where the High Court should have exercised its powers under Section 482 of the Code by quashing the complaint against appellant No. 2.

36.For the aforegoing reasons, the appeal is dismissed qua appellant No. 1; it is allowed in relation to appellant No.2; and consequently order of the Magistrate taking cognizance against appellant No. 2 in Complaint No.476 of 2004 is quashed.