

Rajeev Sawhney S/O.Late W.N.Sawhney vs The Inspector Of Police Cyber Crime Wing on 25 April, 2014

Author: P.Devadass

Bench: P.Devadass

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 25.04.2014

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THE HONOURABLE MR.JUSTICE P.DEVADASS

Crl.O.P.No.8859 of 2014

RAJEEV SAWHNEY S/O.LATE W.N.SAWHNEY, C-64 DIAMOND DISTRICT, AIRPORT ROAD, BANGALORE.

Vs

THE INSPECTOR OF POLICE CYBER CRIME WING, CENTRAL CRIME BRACH, CRIME NO.191 OF 2008, EG

For Petitioner : N.MANOKARAN

For Respondents : PUBLIC PROSECUTOR

Crl.O.P.No.8859 of 2014
P.DEVADASS, J.

Petition for anticipatory bail.

2. Offences alleged are under Sections 465, 468, 469 and 471 of IPC.

3. Petitioner is A-1.

4. According to Mr.B.Kumar, learned Senior Counsel appearing for Mr.N.Manokaran, for petitioner/A1, as between the petitioner and the defacto complainant's company difference arose in executing a share purchase agreement executed with respect to petitioner's company. Strained relationship arose between both sides. It is a business dispute. It is also a money dispute.

5. The learned Senior Counsel appearing for the petitioner also submitted that in connection with this matter, petitioner had already filed a complaint against the defacto complainant and his

ex-associate Pawankumar and another in a Magistrate's Court in Mumbai. The complaint was taken on file. The defacto complainant carried the matter upto the Hon'ble Apex Court. However, the complaint was ordered to be maintained. (See HELIOS & MATHESON INFORMATION TECHNOLOGY LTD AND ORS Vs. RAJEEV SAWHNEY AND ANR 2012 (1) SCC 699.)

6. The learned Senior Counsel appearing for the petitioner submitted that even taking the allegations as such in the complaint lodged by the defacto complainant, the offences alleged are not warranted. In the business world, it is not uncommon to make comment on the business performance/failures of other businessmen. It would be a fair comment. It would be a warning to the men at large in the business world. Even for an argument sake if the allegations are taken as true, it would be exercise of petitioner's right to freedom of speech and expression guaranteed under Article 19(i)(a) of the Constitution of India. In fact, Suchetra Dalal, a financial critic, in a financial journal, (See 'LIFE', issue dated 10.4.2008) made critical analysis of the share purchase deal as between the defato complainant and the petitioner and came heavily on the defacto complainant. This also demonstrates right of the people to pass comments on persons in the business field based on ground reality.

7. The learned Senior Counsel appearing for the petitioner also submitted that based on the present complaint of defacto complainant, during May, 2008, at the Bangalore Airport, Chennai police took the petitioner into custody. His house was raided. His blackberry cell phone, hard disc, passport and several items were seized. As many as 100 questions were posed to him and he answered them. Whatever the prosecution wanted has been revealed and given by the petitioner.

8. The learned Senior Counsel appearing for the petitioner further contended that the petitioner had moved this Court under Section 482 Cr.P.C. filing CrI.O.P.No.16983 of 2008 to quash the FIR. Stay of investigation was also granted by the Court. On 27.3.2014, CrI.O.P. was dismissed. So far petitioner has not been arrested. Petitioner is ready to cooperate with the investigation agency. In the facts and circumstances, his arrest is not necessary.

9. The learned Senior Counsel appearing for the petitioner further contended that once a cognizable offence is registered, it is not that invariably in all cases police should arrest the accused. Indiscriminate arresting of persons simply because they were involved in a criminal case has been decried by the Hon'ble Apex Court. The trend of the judiciary from JOGINDER KUMAR Vs. STATE OF U.P. AND OTHERS [1994(4) SCC 260] is to safeguard the human rights of the individual and prevent their humiliation by unnecessarily arresting them. The current trend of the law is that when an offence is punishable up to seven years, every effort should be taken and observed by the Investigation Officer to avoid arrest and give fullest opportunity to the accused to explain his view point and arresting them only as a last resort and that too when it is necessary and that too there is no other go.

10. In this respect, the learned Senior Counsel appearing for the petitioner also cited SIDDHARAM SATLINGAPPA MHETRE Vs. STATE OF MAHARASHTRA AND ORS [2011(1) SCC 694], SHAUKIN HASINUDDIN Vs. STATE OF U.P AND ORS [2012 (1) ALJ 537], KM.HEMA MISHRA Vs. STATE OF U.P. AND ORS [2014(1)MLJ(CrL)450(SC)].

11. The learned Senior Counsel appearing for the petitioner would submit that in the facts and circumstances the petitioner need protection, thus he may be granted anticipatory bail.

12. On the other hand, the learned Government Advocate(Crl. Side) would submit that the petitioner had tampered with RBI's confidential report concerning defacto complainant. Petitioner intended to bring down the name and fame of the defacto complainant in the business world, so that it would suffer incalculable damage. He interpolated the R.B.I. report and uploaded it in the name of A-2, his driver, in a website. Ultimately, the I.P. address was traced to petitioner's e-mail address. Now that the petitioner's quash petition Crl.O.P.No.16983 of 2008 has been dismissed by this Court and the order of stay of investigation has also gone now no impediment to continue the investigation. In the facts and circumstances, custodial interrogation of the petitioner is needed.

13. Mr.P.Raman, the learned Senior Counsel appearing for Mr. Nithyaesh Natraj, learned counsel for the intervenor/defacto complainant reiterated the submissions of the learned Government Advocate(Crl. side).

14. Further, the learned Senior Counsel appearing for the intervenor would submit that the Hon'ble Apex Court decision in 2012(1) SCC 699 is not relevant to the present complaint on the point of time of the alleged occurrence complained of in the reported decision and in the present complaint. It is nothing but an attempt of the petitioner to twist the actual events to suit his convenience.

15. The learned Senior Counsel appearing for the intervenor also contended that there are voluminous materials showing that A-2, the driver of the petitioner is a mask of the petitioner. The real culprit is petitioner himself. In order to coerce and corner a huge amount in connection with the share purchase agreement, petitioner had indulged in a vilification campaign, extortion and tarnishing the image of the defacto complainant by his doctored version of RBI's confidential report on the defacto complainant concerning its certain financial dealings. It would not be a fair comment or criticism. It is out and out actuated by the petitioner's malice towards the defacto complainant.

16. The learned Senior Counsel appearing for the defacto complainant further contended that successfully the petitioner has stalled the investigation from 2008 up to now. Now, only after the disposal of his quash petition in Crl.O.P.No.16983 of 2008, there is no obstacle for the investigation officer to take up further investigation. Petitioner is an NRI. If he is let out on bail, he will run away from the country.

17. The learned Senior Counsel appearing for the defacto complainant further contended that the decisions cited are intended to provide, assure and safeguard the human rights of arrested persons. But, that cannot be extended to persons like the petitioner.

18. The learned Senior Counsel appearing for the defacto complainant would submit that in the facts and circumstances of the case, custodial interrogation of the petitioner is eminently necessary.

19. I have anxiously considered the submissions of the learned Senior Counsels, learned Government Advocate (Crl. Side), perused the averments in the anticipatory bail petition,

intervenor's petition and the entire case- diary.

20. The defacto complainant is Helios and Matheson Information Technology Ltd., It is a Chennai based Software Company. One Pawankumar was Chairman/Chief Executive Officer (CEO) of V Moksha Technologies Pvt. Ltd., It is also a Software Company. Petitioner/A-1 is business associate of Pawankumar. It is stated that both the companies are giants in the software world and they employs large number of persons and have huge investments and good turn outs.

21. On 11.5.2005, Pawankumar entered into a Share Purchase Agreement with defacto complainant for the sale of shares of V Moksha. It embodied many terms and conditions. Petitioner also confirmed this agreement. But, the deal did not fructify.

22. According to the defacto complainant, petitioner informed the defacto complainant that he has taken complete control of V. Moksha from Pawan Kumar and he is not approving the said Share Purchase Agreement and he wants more money.

23. In this backdrop of the matter, in a website, distorted version of certain confidential report of RBI concerning certain financial aspect of defacto complainant was published. They were in the nature of bringing down the reputation of the defacto complainant, calculated to cause havoc on the company and to bring down the share value of the company in the share market and there is untenable allegation that there was malpractice as between the defacto complainant and the State Bank of India, Mauritius at Port Luio.

24. The defacto complainant lodged complaint against the petitioner alleging that the said vilification exercise was at the behest of the petitioner and it is the hand work of the petitioner. Based on this complaint, the Chennai City Police registered a case in Crime No.191 of 2008 for offences under Sections 465, 468, 469 and 471 of IPC.

25. Initially, the Chennai Central Crime Branch investigated the case. Subsequently, its Cyber Crime Cell took up the task of investigation. In the course of investigation, it came to light that A-2, driver of A1 purchased a small fraction of share from defacto complainant and as a share holder, he obtained a copy of R.B.I's report concerning certain alleged financial irregularity committed by the defacto complainant and the report was doctored, interpolated, fabricated and uploaded in a website so as to bring down the name and fame of the defacto complainant and to show a bad picture about the defacto complainant in the financial world and the I.P address of the Website was traced to petitioner and the actual person behind this vilification campaign was found to be the petitioner and A-2 was his mouth piece. A-2 was just an arrow, shot by the petitioner.

26. The contention of the learned Senior Counsel appearing for the petitioner based on the comments on the share purchase deal between the defacto complainant and V. Moksha made by Suchetra Dalal in a financial journal will not glorify the vilification campaign unleashed by the petitioner through a website using his driver as a stooge.

27. One's fundamental right to freedom of speech and expression is not absolute. It is not extended to the extent of causing harm to the interest of others and bring down others name and fame. One can swing his umbrella freely as he likes but it comes to an end when it touches other man's nose. Thus, in the facts and circumstances of the case, the arguments based on Article 19(i)(a) of the Constitution of India made by the learned Senior Counsel for the petitioner is not acceptable to us.

28. The observation and disposal of the case by the Mumbai High Court and the Hon'ble Supreme Court relates to a complaint filed by the petitioner before a Metropolitan Magistrate in Mumbai were made in 2011, based on a Board resolution of V Moksha. But, the offences complained of in the present case relates to February, 2008. The present complaint and the decision reported in 2012(1)SCC 699 based on the Bombay complaint are independent. Therefore, the attempt of the petitioner to take umbrage under the Apex decision in 2012(1)SCC 699 also fails.

29. In 2008, in this Court, petitioner filed CrI.O.P.No.16983 of 2008 under Section 482 Cr.P.C. to quash the FIR registered in crime No.191 of 2008. Pending disposal of the said CrI.O.P., this Court stayed the investigation. Ultimately, on 27.3.2004, a learned Single Judge of this Court rejecting the several contentions raised by the petitioner dismissed the CrI.O.P. Consequently, the stay granted also gone away. Now, there is no bar for the police to pursue the investigation.

30. Now, the stand of the learned Government Advocate is that in the facts and circumstances of the case, custodial interrogation of the petitioner is needed. The learned Senior Counsel appearing for the intervenor also seconded it.

31. However, the learned Senior Counsel appearing for the petitioner denounced their wish for custodial interrogation as an attempt to harass the petitioner and it is unnecessary because already major part of the investigation was over and the petitioner is also ready to cooperate with the investigation agency. And merely because a person has been accused of having committed an offence, he cannot be subjected to inhuman treatment and made to face ignominy.

32. 'Investigation' is collection of evidence, oral, documentary and material objects. (See Section 2(h) Cr.P.C.). The process of investigation consists of several steps.(See Section 156 and 157 Cr.P.C.). 'Arrest' is a form/part/step in investigation.(See Section 41 Cr.P.C.). Like many other tools, 'arrest' is a tool in the hands of an Investigation Officer. ' Arrest is anti-thesis of civil liberty/human right/human dignity.'

33. It is not that simply because a person has been accused of having committed an offence invariably he should be arrested. It is also fortified by the Legislature having consciously, cautiously and carefully employed the word 'may' in Section 41(1) Cr.P.C., which empowers a police officer to arrest a person without a warrant.

34. JOGINDER KUMAR Vs. STATE OF U.P. AND ORS[1994(4) SCC 260], D.K.BASU Vs. STATE OF WEST BENGAL [AIR 1997 SC 610], SIDDHARAM SATLINGAPPA MHETRE Vs. STATE OF MAHARASHTRA AND ORS [2011(1) SCC 694], SHAIKIN HASINUDDIN Vs. STATE OF U.P AND ORS [2012 (1) ALJ 537], and KM.HEMA MISHRA Vs. STATE OF U.P. AND ORS

[2014(1)MLJ(CrL)450(SC)] acknowledges 'freedom of the individual', 'personal right of the individual', 'presumption of innocence of the individual' and a person's human right not to be violated, abridged by making unnecessary arrest and to preserve the constitutionally guaranteed civil liberties of citizens and others. (See Article 20, 21, 22 and also Article 19, 14, Constitution of India). Now, the newly added Section 41-A to 41-D Cr.P.C., are all intended to protect the personal freedom of the individual.

35. But, at the same time, the decisions seen above and the statutory provisions stated above are not to the point that individual rights alone should be taken care of and interest of the State should be abandoned. It is the responsibility of the State to protect the human right of the individual. It is equally responsibility of the State to ably investigate and bring the offenders to justice. There must be harmonious construction of personal freedom of the individual and the interest of the State to bring the offender to justice. A delicate balance is required to be drawn as between these two extremes. It depends on the facts and circumstances of each case.

36. The question would be whether there is any compelling reason/necessity that the accused should be arrested. Whether really his custody is needed to interrogate him. If it is necessary, then it is a case for the State to protect the interest of the citizens including arrest. If it is unnecessary, then it is a case for protecting the individual from unnecessary harrasment and humiliation. They all flows from certain fundamental notions of justice and fair play and the need and the responsibility of the State to protect the members of the society from the onslaught of criminal activity/behavior of other members of the society.

37. Now, in this backdrop of the matter, we will revert to the view and counter view projected by both sides with regard to the question whether in the facts and circumstances of the case, custodial interrogation of the petitioner is needed or not needed.

38. Already there is simmering discordance as between the petitioner and the defacto complainant. It is because of non fructification of a business deal Share Purchase Agreement. Now each is poised against the other. There is no love last between both sides. Practically, they have become business rivals Enemies. Already the petitioner had lodged a complaint against the defacto complainant and his ex-partner Pawankumar in a Court in Mumbai and the defacto complainant has presented the present complaint in Chennai against the petitioner. Though the complaints were presented at different places, they have close connection with one aspect, namely, the matter concerning Share Purchase Agreement. It is pertinent to note that in pursuance of an 'arbitration clause' in the said agreement, an Arbitral Tribunal was also formed. There is no concrete information from either as to the further development with regard to the said arbitration. But, it is a fact that they have invoked the arbitration clause and certain high judicial personalities were appointed as Arbitrators.

39. The present complaint has been lodged by Mr.Ramanan, General Manager(Administration)of the defacto complainant with the Central Crime Branch, Chennai on 31.3.2008. Based on that, on 4.4.2008, the present FIR has been registered. Initially, the investigation was pursued by the Central Crime Branch. Subsequently, the Cyber Crime Cell also has been involved.

40. In 2008, the investigation officer presented a requisition to the concerned authority and based on that a Look Out Circular (LOC) also has been issued as against the petitioner. On 10.5.2008, at the Bangalore Airport, petitioner was detained by the Airport Authorities. The Investigation Officer took him into his custody. His Bangalore residence and the office premises were raided. The blackberry cell phone, computer hard disk and various other items were seized by the investigation officer. Several staff of the petitioner were interrogated and their statement were also recorded. More than 67 questions were framed by the Investigation Officer. On those questions, petitioner was interrogated. And he has answered them. His passport was also seized. Thereafter, he was let out. Thereafter, the petitioner had engaged in a long drawn legal battle in this Court, filed several petitions seeking return of the seized items.

41. Further, as already seen above, petitioner has also challenged this prosecution by filing Crl.O.P.No.16983 of 2008 under Section 482 Cr.P.C. Of course, recently it was dismissed. The investigation officer also written to Google to find out the origin of the E.mail ID and user I.P. address with regard to the E.mail I.D. rajeevshalender@gmail.com. Further, certain seized items were sent to Tamilnadu Forensic Science Lab and the Analyst's report also has been received. Now, after the dismissal of Crl.O.P., the stay of investigation granted by the Court had gone away. Now, police can continue their investigation. Police has collected lot of materials. Further, only a report has to be received from Google. Thus, major part of investigation is over. The petitioner is also ready to cooperate with the Investigation Officer. In the circumstances, his custodial interrogation sought for by the police and supported by the intervener/defacto complainant is unnecessary. It would be an attempt to harass him. Police can investigate in their own way. But, it must be without harassing the petitioner.

42. It has been submitted by the learned Senior Counsel appearing for the intervener that the petitioner is an NRI, if granted bail, he will run away from the country. However, it has been replied to by the learned Senior Counsel appearing for the petitioner that it is not so, he will face the case and he will not run away.

43. Petitioner is a businessman. Well qualified. Runs some business enterprises. He has several employees. His office and residence are in Bangalore and also in Chennai. His wife is in London. He is afford to maintain them in London. He is holder of an Indian Passport. His passport was seized by the police. Attempt was made to impound his passport. Through Court, he obtained his passport to visit certain foreign countries. He has visited and returned India. He has engaged lawyers including top ranking lawyers in Mumbai, Bangalore, Delhi and Chennai to defend himself. He has lodged complaint against the defacto complainant and others in Bombay and Bangalore and he has conducted the case up to the Hon'ble Supreme Court. Now, he is deprived of his passport. In the facts and circumstances, it is quite unlikely that he will go into oblivion, flee away from justice.

44. Considering the nature of the allegations made, type of the case, steps already undertaken by the police towards investigation, I am inclined to grant him anticipatory bail.

45. (i) Anticipatory bail granted to the petitioner.

(ii) Petitioner shall surrender before the learned Chief Metropolitan Magistrate, Egmore, Chennai-8, within 15 days of receipt of a copy of this order;

(iii) Petitioner shall execute a bond for Rs.1,00,000/- (Rupees one lakh only) with two sureties each for a like sum to the satisfaction of the said Magistrate;

(iv) Petitioner shall deposit his passport to the said Magistrate, if already not deposited.

(v) Petitioner shall report before the respondent police on every Monday and Friday at 10.30 a.m., until further orders.

25.04.2014

Index : Yes/No

Internet : Yes/No

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Note:

Issue order copy today.

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Pre-Delivery order in

Dated: 25.04.2014

