

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.440 OF 2011

M/S. SENTINI CERMICA P. LTD. . . . APPELLANT(S)

VERSUS

KUNCHI KRISHNA MOHAN & ORS. . . .RESPONDENT(S)

O R D E R

Heard learned senior counsel for the parties.

This appeal is directed against the order dated 04.03.2009 passed in Criminal Petition No. 3322 of 2014, which was taken up for hearing after the order of remand passed by this Court on 27.04.2007 in Special Leave Petition (Criminal) No. 4403 of 2006 with a direction to the High Court to re-hear the matter after affording opportunity to both the parties.

Mr. R. Basanth, learned senior counsel appearing for the appellant submitted that the order impugned is

passed without hearing the counsel for the appellant and, therefore, the same is liable to be set aside. The second ground urged is that the learned Judge of the High Court has not examined the allegations made in the complaint, sworn statements of the complainant along with other witnesses in a private complaint proceedings initiated by the appellant with regard to the occurrence on 30.07.2003 with the aid of search warrant dated 24.07.2003, issued by the learned IV Metropolitan Magistrate, City Criminal Courts, Hyderabad in complaint proceedings initiated by respondent Nos. 1 to 5. He further submitted that the learned magistrate, after applying his mind to the averments made in the complaint and satisfying sworn statements of the complainant and the witnesses, who were examined prior to issuance of the summons to accused nos. 8 to 11 and 15, the same has been interfered with the order of issuing summons passed by the learned Magistrate vide order dated 05.12.2003 without adverting to the allegations made at Paragraphs 13, 14, 15 and 16 against the aforesaid accused persons, to whom the summons were ordered in the complaint proceedings initiated by the appellant herein. On this ground also, according to learned senior counsel, the impugned order is liable to be set aside. He next submitted that the learned magistrate after applying his mind to the averments made in the

complaint and the sworn statements of the witnesses was prima facie satisfied that the case requires trial. Therefore, the summons were issued to the above mentioned accused. The High Court has erroneously exercised its inherent jurisdiction under Section 482 of the Code of Criminal Procedure, for short 'Cr.P.C.' holding that the trial court should have applied its mind to the facts of the case particularly having regard to the nature of the allegations made against the above mentioned accused in the private complaint and issued summons to them for initiating further proceedings. Therefore, the High court should not have quashed the proceedings before the learned magistrate as there is a prima facie case made out by the appellant to proceed against the above mentioned accused.

Mr. P. Vishwanathan Shetty, learned senior counsel appearing for the respondents sought to justify the correctness of the impugned judgment and order passed by the High Court by placing strong reliance upon the search warrant issued by IV Metropolitan Magistrate, City Criminal Courts, Hyderabad, against the appellant company for search of files, project reports and certain other documents clearly mentioned in the search warrant and further placed reliance on Section 94(1)(a) of Cr.P.C., which empowers the learned magistrate to

authorise any police officer above the rank of a constable to enter into a premises with such assistance which may be required to search such place suspected to contain stolen property, forged documents etc. He submitted that the submission made by learned senior counsel for the appellant that under the guise of said authorisation, the alleged assistance has been taken to ransack the office and factory premises of the appellant and committed the offences under section 448 and 341 of the Indian Penal Code, for short 'the Code', is not correct and, therefore, the allegations contained in the complaint warrant trial. Thus, there is no error in exercising the inherent jurisdiction of the court to interfere with the issuance of summons order and quashing the proceedings. The said contention is seriously countered by learned senior counsel for the appellant contending that the police officer, who has been authorised to conduct search in the premises of the appellant under the guise of the aforesaid search warrant and the above criminal offences are committed by the above mentioned officers. Therefore the allegation contained in Paragraphs 13, 14, 15 and 16 of the complaint filed under Section 200 of Cr.P.C. certainly do not attract any one of the offence as alleged for continuing the proceedings against the above mentioned accused. Therefore, the learned High Court has rightly adverted to the relevant

facts and recorded a finding of fact at paragraphs 8 and 9 and held that respondent nos. 1 to 5 entered the premises along with Station House Officer, who has been authorised by the learned magistrate by issuing search warrant to take necessary assistance for executing the warrant. Hence, it cannot be said that the above accused trespassed the premises of the appellant company and further allegation with regard to the fact that either the complainant or any officer of it was wrongly restrained so as to attract the commission of the alleged offence under Section 341 of the Indian Penal Code. Therefore, learned senior counsel submits that the impugned judgment does not warrant interference by this Court in exercise of its appellate jurisdiction.

It is an undisputed fact that at the instance of respondent nos. 1 to 5, the learned IV Metropolitan Magistrate, City Criminal Courts at Hyderabad in the criminal proceedings initiated in exercise of power under Section 91(1)(a) of Cr.P.C., the authorisation by issuing search warrant was given to the police officer to enter into the premises of the complainant with the assistance of respondent nos. 1 to 5, as required under Cr.P.C. for the purpose of search and seizure of certain files, documents etc. as mentioned in the search warrant and seize the same and take possession.

The same was executed by the police officer by taking the assistance of respondents and accused nos. 8 to 11 and 15, who are the ex-employees of the company, at whose instance the authorisation was issued by the learned magistrate under Section 91(1) of Cr.P.C.

The High Court after remand order, heard the appeal by giving sufficient opportunity to the appellant and the counsel for the appellant was not present at the time of hearing the criminal petition despite granting opportunity. Therefore, we do not find any substance in the contention that the impugned judgment and order was passed by the High Court without giving sufficient opportunity to the appellant. In fact, learned counsel for the appellant has not availed the opportunity before the High Court. Therefore, the above contention must fail.

On merits, having regard to the facts and circumstances of the case, the material available on record particularly having regard to the allegations contained at paragraphs 13, 14, 15 and 16 of the complaint and the rival legal submissions, we come to the conclusion that the ground of criminal trespass and wrongful restraint were rightly not accepted by the High Court as the search and seizure of the premises and seizure of the documents was pursuant to the

authorisation given by the learned magistrate to the police officer under Section 94(1)(a) of Cr.P.C.

Further, it is also necessary for us to make an observation that the alleged occurrence has taken place on 30.07.2003 and the private complaint was filed on 08.09.2003 i.e. after six weeks of the alleged occurrence. The same appears to us an afterthought. The appellant-complainant has not even brought to the notice of the learned magistrate, who has issued the search warrant in favour of the police officer, about the alleged offence said to have committed by the respondents, to show the bona fides on the part of the appellant-complainant. In our considered view, the High Court has applied its mind and rightly exercised its inherent jurisdiction under Section 482 of Cr.P.C. and quashed the proceedings and summoning order, which does not call for our interference. We are in respectful agreement with the view taken by the High Court as the same is based on material available on record by assigning valid and cogent reasons. Since the conclusions arrived at by the High Court are in conformity with the principles of law laid down by this Court in catena of cases, we do not find any good reason to interfere with the impugned judgment and order passed by the High Court and we are satisfied that it is not a fit case for our interference in

exercise of our appellate jurisdiction.

Accordingly, the appeal is dismissed.

.....J.
(V. GOPALA GOWDA)

.....J.
(C. NAGAPPAN)

NEW DELHI,
FEBRUARY 24, 2015

ITEM NO.3

COURT NO.11

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 440/2011

M/S SENTINI CERMICA P.LTD.

Appellant(s)

VERSUS

KUNCHI KRISHNA MOHAN & ORS.

Respondent(s)

Date : 24/02/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V. GOPALA GOWDA

HON'BLE MR. JUSTICE C. NAGAPPAN

For Appellant(s) Mr. R.Basanth, Sr. Adv.
Ms. Meenakshi Arora, Sr. Adv.
Mr. Rahul Narayan, Adv.
Mr. Mohit Singh, Adv.

For Respondent(s) Mr. P. Vishwanathan Shetty, Sr. Adv.
Mr. Gireesh Kumar, Adv.
Mr. Ankur S. Kulkarni, Adv.
Mr. Sriram P., Adv.
Mr. Vijay Kumar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

(VINOD KR.JHA)
COURT MASTER(MALA KUMARI SHARMA)
COURT MASTER

(Signed order is placed on the file)