

(2009) 10 DEL CK 0310

In the Delhi High Court

Case No : Criminal M.C. 3914 of 2008 and Criminal M.A. No. 14592 of 2008

Adrash Gupta

APPELLANT

Vs

State (NCT of Delhi) and Another

RESPONDENT

Date of Decision : 26-10-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 34, 385, 415, 420

Citation : (2010) CriLJ 3405

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : B.S. Rana and Raj Singh, for the Appellant; R.N. Vats, Addl. PP and R.D. Sharma, for R-2, for the Respondent

Judgement

V.K. Jain, J.—This is a petition u/s 482 of the Code of Criminal Procedure for quashing Complaint Case No. 619/2003 titled Shyam Sunder Bansal v. Adrash Gupta and Ors., pending before learned Metropolitan Magistrate, Delhi. It has been stated in the petition that even if the allegations made and evidence available on record is considered, no offence as alleged is made out against the petitioner.

2. Admittedly, an agreement was executed between Sadashiv Enterprises and Liberty Group, Karnal, on 27th February, 2002 and was signed by Sh. Shyam Sunder Bansal on behalf of Sadashiv Enterprises and by Mr. P.D. Gupta on behalf of Liberty Group. Under the Agreement, Liberty Group was to supply Hawaii Chappals of second grade for sale in Delhi. A complaint for cheating, criminal intimidation, extortion and criminal conspiracy was filed by respondent No. 2, Shyam Sunder Bansal, proprietor of Sadashiv Enterprises, against three persons including petitioner Adrash Gupta. It was alleged in the petition that at the behest of accused No. 1 (Adrash Gupta), accused No. 2, Sh. Vivek Gupta had contacted the complainant to become distributor of products of accused No. 1 and several false promises were made and lucrative incentives were offered by

them to the complainant, vide agreement which was annexed as Annexure-A to the complaint. It was further alleged that accused No. 1 added the words "second grade" so as to save his skin from impending orders of a court of Law and the accused were successful in selling their unsalable held up stock of second grade spurious products worth over Rs. 1 Crore, whereas the price charged by them was regular full price and not the usual 50% price of second grade items and, thus, they cheated the complainant to the extent of Rs. 1 Crore by compelling him to re-sell the stock at a huge loss. It was also alleged that accused No. 1 and 2 did not increase the M.R.P. printed on their box and started billing the complainant on a hiked purchase price. They also charged 2% Branch Charges from the complainant. Allegations of criminal intimidation and threat were also made in the complaint.

3. The learned Metropolitan Magistrate vide order dated 9th January, 2008 took the view that ingredients of Section 503 and 385 of IPC were not made out. He, however, summoned accused No. 1 and 2, i.e. the petitioner and one Mr. Vivek Gupta for the offence u/s 420/34 IPC.

4. During the course of arguments, the learned Counsel for respondent No. 2 was specifically asked as to how offence of cheating is made out against the petitioner, from the averments made in the complaint. It was contended by the learned Counsel that the petitioner supplied second quality goods to the complainant/respondent No. 2, while charging the price of first quality goods and, therefore, cheating is made out against him.

5. A perusal of the agreement executed between Sadashiv Enterprises and Liberty Group, a copy of which has been filed with the petition and contents whereof have not been disputed by respondent No. 2, would show that the agreement between Sadashiv Enterprises and Liberty Group was for supply of second grade goods and not for first grade goods. If the agreement between the parties itself envisaged supply of second grade goods, there can be no cheating in supplying goods of that very grade and not supplying the goods of first grade. Had the petitioner sold second grade goods, mis- representing them to be first grade goods then of course offence of cheating would have been made out against them. But, when the agreement itself envisaged supply of second grade goods, there is no cheating in supplying goods of that very quality. If the petitioner claimed price of first grade goods from the complainant/ respondent No. 2 while supplying second grade goods to him and if that was against the terms and conditions of the agreement between the parties, the complainant could have rejected those goods.

6. Admittedly, the complainant has not made entire payment as demanded by the seller of the goods and a civil suit filed by Liberty Shoes Limited for recovery of Rs. 1589384 against him is pending in civil court. The complainant/respondent No. 2 has also filed a suit against Liberty Shoes Limited for recovery of Rs. 2823561 and that suit is also pending in this court. A perusal of the plaint of the civil suit filed by the complainant against Liberty Shoes Limited which show that

the plea taken by him in the civil suit is that the defendant had all of a sudden changed the discount structure retrospectively with effect from 1st April, 2003, contrary to the terms and conditions of the agreement dated 27th July, 2002, as a result of which he started suffering heavy losses. It was further alleged that the plaintiff was assured that due to introduction of VAT, the price of Chappal were high but the M.R.P. would remain unchanged. He, however, later came to know that VAT was not implemented but the defendant, Liberty Shoes Limited had reduced his margin of profit from 48% to 32.5% and had also decreased the M.R.P. of Chappals as a result of which he suffered net loss of 7.5%. The complainant claimed that he was entitled to average profit of 14.96% and the amount of profit calculated at that percentage came to Rs. 2358829.67. He further claimed Rs. 144729/- on account of reduction in M.R.P. He disputed a debit note of Rs. 81414/- towards service charges and claimed two other amounts, one of Rs. 31758/- and the other of Rs. 1422/- besides security deposit of Rs. 1 lakh.

7. Thus, the dispute between the parties is purely civil in nature. Since the agreement dated 27th February, 2009 which is an admitted document envisage supply of second quality goods to the complainant, there was no cheating if goods of second quality were supplied. It would be pertinent to notice here that in the civil suit filed by the complainant, he did not claim that his agreement with Liberty Shoes Limited envisaged supply of first quality goods. I fail to appreciate how cheating is made out against the petitioners when the agreement envisaged supply of second quality goods and the goods of that very quality were admittedly supplied to the complainant. In State of Haryana and others Vs. Ch. Bhajan Lal and others, the Hon"ble Supreme Court held that where the allegations made in the FIR or the complaint even if they are taken at their face value and accepted in their entirety do not, prima facie, constitute any offence or make out any case against the accused, the court would be justified in quashing the criminal proceedings in exercise of powers u/s 482 of Code of Criminal Procedure.

8. If the allegations disclose a civil dispute but also constitute an offence, that by itself cannot be a ground to hold that the criminal proceedings should not be allowed to continue, but, where the allegations made in the complaint, even if taken on their face value do not disclose commission of any offence, the court would be justified in taking recourse of taking provisions of Section 482 of the Code of Criminal Procedure.

9. The learned Counsel for the complainant has referred to the decision of the Hon"ble High Court in R. Kalyani Vs. Janak C. Mehta and Others, There can be no quarrel with the proposition of law enunciated in the case of R. Kalyani v. Janak to the effect that if the allegations made in an FIR or in a complaint discloses a civil dispute that by itself cannot be a ground to hold that criminal proceedings should not continue. But, this would be a case only if the allegations also disclose commission of an offence. This case would have no application where the

allegations even if taken as correct do not constitute commission of an offence. The learned Counsel has drawn my attention to para 14 of the judgment where the Hon''ble Supreme Court observed that while exercising jurisdiction u/s 482 of Cr.P.C., it is not permissible for court to act as if it was a trial court and even when charge is framed, the court has to only prima-facie be satisfied about existence of sufficient grounds for proceedings against the accused. The proposition of law enunciated in above referred para is undisputable, but would not be attracted to a case where the allegations do not disclose commission of any offence at all and a crude attempt is made to project a dispute which is essentially civil in nature as a criminal offence. Even if it is presumed that the petitioner did not honour all its obligations under the agreement and thereby committed its breach that by itself would give no justification to initiate criminal proceedings against him unless the acts attributed to him also amount to an offence. In fact, in para 18 of the judgment, the Hon''ble Supreme Court observed that a matter which essentially involves dispute of a civil nature should not be allowed to be the subject matter of a criminal offence.

10. In *All Carogo Movers (I) Pvt. Ltd. v. Dhanesh Badarmal Jain and Anr.* (2007) 12 Scale 39, the Hon''ble Supreme Court observed as under:

For the said purpose, allegations in the complaint petition must disclose the necessary ingredients therefore .Where a civil suit is pending and the complaint petition has been filed one year after filing of the civil suit, we may for the purpose of finding out as to whether the said allegations are prima facie cannot notice the correspondences exchanged by the parties and other admitted documents. It is one thing to say that the Court at this juncture would not consider the defence of the accused but it is another thing to say that for exercising the inherent jurisdiction of this Court, it is impermissible also to look to the admitted documents. Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the Court, Superior Courts, while exercising this power should also strive to serve the ends of justice.

11. In *V.Y. Jose and Anr. v. State of Gujarat and Anr.* 2009 I AD (Cr.) (S.C.) 567, the Hon''ble Supreme Court has observed as under:

There exists a distinction between pure contractual dispute of civil nature and an offence of cheating. Although breach of contract per se would not come in the way of initiation of a criminal proceeding, there cannot be any doubt whatsoever that in absence of the averments made in the complaint petition wherefrom the ingredients of an offence can be found out, the court should not hesitate to exercise its jurisdiction u/s 482 of the Code of Criminal Procedure.

We may reiterate that one of the ingredients of cheating as defined in Section 415 of the Indian Penal Code is existence of an intention of making initial promise of existence thereof from the very beginning of formation of contract.

Section 482 of the Code of Criminal Procedure, saves the inherent power of the

court. It serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years although no case has been made out against him. It is one thing to say that a case has been made out for trial and as such the criminal proceedings should not be quashed but it is another thing to say that a person should undergo a criminal trial despite the fact that no case has been made out at all.

12. In *Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others*, a chargesheet was filed against the appellant pursuant to an FIR registered u/s 420, 467 and 120B of IPC. The appellant before the Hon''ble Supreme Court were office bearers of a charitable society. A General Power of Attorney was executed by the society in favour of respondent No. 4 in respect of some land belonging to the society and an Agreement to Sell was also executed for sale of the remaining land. Certain payments were also received by the society from him. The case of the appellants was that since balance payment was not made to the society, it cancelled the General Power of Attorney executed by the society in favour of the respondent No. 4, by executing a registered cancellation deed. The appellants then sold that part of the land for which the agreement with the complainants/respondents was terminated and earnest money paid by them was forfeited. The Hon''ble Supreme Court quashed all the proceedings emanating from the FIR. During the course of the judgment, the Hon''ble Court, inter alia, observed as under:

The Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused.

It was noted that the veracity of the facts alleged by the appellant and the respondents could only be ascertained on the basis of the evidence and documents by a civil court of competent jurisdiction and the dispute in question was purely of civil nature and respondent No. 3 had already instituted a civil suit in the Court and in the facts and circumstances of the case, initiating criminal proceedings was clearly an abuse of process of the Court.

In *Indian Oil Corporation Vs. NEPC India Ltd. and Others*, the Hon''ble Supreme Court cautioned against a growing tendency in business circles to convert purely civil disputes into criminal cases. The Hon''ble Court observed that:

Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.

The present case appears to be an attempt to solve a purely civil dispute, by putting pressure on the petitioner ,by initiating criminal proceedings against him, as I find that the petitioner was not even a signatory to the agreement dated 27th February, 2002 which was signed by one P.D. Gupta on behalf of Liberty Group. For the reasons given above, the Criminal Complaint No. 619/2003 titled *Shyam Sunder Bansal v. Adrash Gupta and Ors.* pending in the court of

Metropolitan Magistrate, Delhi and the proceedings arising therefrom are hereby quashed.