
(2011) 12 AHC CK 0476
In the Allahabad High Court
Case No : Application No. 35375 of 2008

Arun Goyal and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 08-12-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 244, 313, 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 120B, 406, 420, 460

Citation : (2012) 3 BC 210

Hon'ble Judges : Naheed Ara Moonis, J

Bench : Single Bench

Advocate : Gaurav Kakkar, for the Appellant; Amit, Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Naheed Ara Moonis, J.—Heard learned Counsel for the applicant and learned A.G.A. The present application u/s 482, Cr.P.C. has been filed on behalf of the applicants with a prayer to quash the entire proceeding of Complaint Case No. 33 /2004, u/s 138, Negotiable Instruments Act, which shall in brevity hereinafter be referred to as the Act, Police Station Nazibabad, District Bijnore pending in the Court of Additional Civil Judge (Jr. Division) and also the orders dated 1.12.2007 and 19.3.2008 passed by the Additional Civil Judge (Jr. Division)/ Judicial Magistrate, Bijnore in the aforesaid case.

2. The brief genesis of the facts giving rise to the present case is that the opposite party No. 2 filed a complaint on 23.6.119999 against the applicants namely Arun Goyal, Pramod Kumar Goyal and Bali Ram and one Ramesh Chandra (now dead) who are Executive Director, Chairman and Managing Director, Director of Rama Paper Mills Ltd. and one other namely Ramesh Chandra (now deceased) u/s 138, N.I. Act and Sections 406, 420, 120B, IPC with the allegation that the opposite party No, 2 had deposited Rs. 1,50,000 lacs under the scheme

of fixed deposit. On the date of its maturity, the applicants had issued cheque No. 0579229 for Rs. 1,50,000/- payable at Bank of Baroda Branch, Nazibabad. Another cheque No. 0579306 for a sum of Rs. 5,625/- dated 20.5.1999 payable at Bank of Baroda was issued by the applicant No. 1 (Arun Kumar Goyal) in relation to interest during the period from 20.2.1999 to 20.5.1999. Both the cheques were accepted by the complainant on the assurance of the applicants that those cheques would be encashed immediately. The complainant deposited both the cheques in Co-operative Bank, Branch Nazibabad. On 21.5.119999, both the cheques were returned to the complainant with the endorsement that there was insufficient money in the account of the said Company. The complainant approached applicants' company intimating that the cheques were bounced on account of insufficient amount in the account of the company but applicants did not pay any heed on the grievance of the complainant and the grievance of the complainant remained unhealed. In the pressing situation, the complainant sent legal notice to the company on 25.5.1999 which was responded by the applicant No. 1, that the applicants accepted liability of payment and requested to extend the time for payment of money till 31.12.1999, but all the efforts of the complainant went in vain as no amount was paid by the company, thus the amount to the tune of Rs. 1,55,625/- remained unpaid. The complainant was not paid the amount on account of some conspiracy amongst the applicants who were responsible for the payment of money, as such the applicants have deliberately and knowingly committed cheating and fraud with the complainant holding themselves liable to be prosecuted u/s 138, NI Act read with Sections 460/420/120B, IPC as prima facie cognizable offence is made out against the applicants. On the basis of aforesaid complaint after recording the statement of the complainant u/s 200, Cr.P.C. and going through the receipts of the cheques and the copy of the registered notice, the Court below prima facie found that cognizable offence is made out against the applicants and other accused persons and the Chief Judicial Magistrate summoned the applicants and other accused persons u/s 138, Negotiable Instruments Act and Sections 406/120B, IPC vide order dated 1.12.2007. The Trial Court proceeded with aforesaid case. The applicants filed objection against the summoning order. The Court below arrived at the conclusion that no offence was made out against the applicant Nos. 2, 3, and 4, hence the proceedings were quashed against Bali Ram, Pramod Goel and Ramesh Jain. The case was proceeded against the applicant No. 1 alone. The said order was passed on 4.7.2002. During the pendency of the trial, one Ramesh died thus the proceedings against Ramesh stood abated. Charges were framed against other accused persons u/s 138, N.I. Act and other sections. The prosecution had examined the opposite party No. 2 complainant as P.W. 1 and the other two witnesses namely Ganesh and Sunil were examined as P.Ws. 2 and 3 respectively. The applicants were examined u/s 313, Cr.P.C. but they did not produce any evidence in defence. The Court below after threadbare analysis, found that prima facie offence is made out u/s 138, N.I. Act, hence convicted all the accused applicants u/s 138, N.I. Act with fine of Rs. 25,000/-. In default of payment of fine, they had to undergo six months further imprisonment. Out of

the amount of fine, the complainant was entitled to get Rs. 25,000/- while Rs. 5,000/- were deposited in favour of State. The aforesaid order was passed on 8.3.2006.

3. Against the said order, the accused applicants preferred appeal before the Court of Sessions Judge, Bijnore being Appeal No. 8 of 2006. The Sessions Judge allowed the appeal vide order dated 29.10.2007 and remanded the case to the trial Court for fresh trial.

4. The instant application has been filed by the applicants challenging various orders passed by the Judicial Magistrate dated 1.12.2007, and 19.3.2008 wherein compliance of the order of Appellate Court, notices were issued to the applicants to appear by order dated 1.12.2007.

5. The applicants have further challenged the order dated 5.3.2008 whereby the Chief Judicial Magistrate, Nazibabad had allowed the application of the son of the complainant Dr. Atul Kumar to grant permission to prosecute applicants in place of his deceased father late Sri Krishna Gupta, who had initially filed the complaint against the applicants. While allowing the aforesaid application, the Chief Judicial Magistrate passed the order for recording the evidence u/s 244, Cr.P.C. The applicants had further challenged the order dated 12.3.2008 whereby the statement of P.W. 2 u/s 244, Cr.P.C. was recorded and further date was fixed on 19.3.2008 for recording rest of the evidence. The applicants have further challenged the order dated 11.4.2008 where the Judicial Magistrate had allowed the application of the applicants for exemption of attendance but the prayer for staying the proceeding was rejected. The applicants have further challenged the orders dated 12.5.2008 whereby the application moved by the applicants for exemption and also to stay the proceedings was rejected. The prayer for exemption and to stay the proceeding was not considered as there was specific direction of this Court to decide the matter expeditiously. Since the accused applicants were given several occasions to cross-examine, hence the opportunity to cross-examination was closed and the case was fixed for recording statement u/s 313, Cr.P.C. fixing 22.5.2008.

6. Learned Counsel for the applicants argued that once the proceedings against the applicant Nos. 2, 3 and 4 were quashed as no offence was made out against them, then initiation of proceedings against the same applicants amount to an abuse of process of law, therefore, the proceedings initiated against the applicants are not tenable in the eyes of law. The learned Counsel for the applicants laid stress that entire proceedings were initiated against the applicants in a very arbitrary and malicious manner ignoring the provisions of law, therefore, the same may be quashed at the threshold.

7. Per contra, learned Counsel for the complainant controverted the submission of learned Counsel for the applicants and contended that the accused applicants had earlier challenged the summoning order before another Bench of this Court by means of Criminal Misc. Application No. 6749 of 119999 (Arun Goyal v. State

of U.P. and Others). The Hon''ble Single Judge passed detailed order dated 15.5.2000 dismissing the four petitions on merits. Another Criminal Misc. Application No. 1225 of 2001 was filed by Bali Ram before another Bench of this Court. The Hon''ble Single Judge was pleased to pass the order dated 11.4.2001 directing the applicants to make payment of dishonoured cheques but the same was not complied with till date. The applicants approached the Hon''ble Supreme Court by means of Transfer Petition (Crl) No. 472 of 2008 (Sri Krishna Gupa and Others v. State of U.P. and Others). The Hon''ble Apex Court was pleased to dismiss the transfer petition with the direction that the Court below shall consider and decide the matter expeditiously preferably within a period of three months from the date of communication of the order. Instead of appearing before the Court below, the applicants have now challenged the orders passed by the Court below and in the garb of that, further made a prayer to quash the entire proceedings. When the Hon''ble Apex Court specifically directed the Trial Court on 14.11.2008 to decide the aforesaid matter expeditiously, there was no valid justification now accrued to the applicants who had adopted stalling and dilatory tactics so as to protract the proceedings even without complying with the order of this Court as well as of the Hon''ble Apex Court. The applicants are misleading the Court by making false statement before the Court below that they are ready to make payment of dishonoured cheques, hence the instant application filed by the applicants is totally misconceived and may be dismissed with special costs.

8. From the context of the case, it transpires that the Apex Court vide order dated 14.11.2008 directed the Court below to consider and decide the matter expeditiously preferably within a period of three months from the date of communication of the order and the applicants were directed to appear before the Court below. The matter is seized with the Court below since 1.12.2007 whereby summons were issued to the applicants to appear in the case u/s 138, N.I. Act in pursuance of the order dated 12.10.1999 whereby all of them had been summoned but the same was illegally modified by the same Court below by an order dated 4.7.2002 rejecting the prosecution u/s 138, N.I. Act against all the applicants except the accused Arun Goel. Once the summoning order was passed by the Court below against all the accused applicants, the said order could not have been reviewed as the Court below lacks inherent power or power to review its own order. The applicants are trying to elongate the proceedings by adopting unfair/foul means even without complying with the order of the Hon''ble Apex Court. This Court does not find any justifiable grounds to quash the orders dated 1.12.2007, and 19.3.2008 challenged by means of present application, therefore, the prayer for quashing the proceedings and the aforesaid orders passed in the aforesaid case is refused. The summoning order passed against the accused person was already challenged by them before this Court by moving application u/s 482, Cr.P.C. and this Court did not find any illegality in the summoning order and the same were dismissed by order dated 15.5.2000. This Court cannot again enter into the merits of the case which would amount to scuttle down or throttling of trial though the applicants have succeeded in their

attempt in obtaining an ex parte interim order dated 16.12.2008 by concealing the direction of the Hon"ble Apex Court to decide the matter within three months. At this stage, this Court is not expected to examine and assess in detail the material placed on record. Since the trial is pending and any observation on merit would effect their respective case. The Apex Court has also laid down the guidelines in the case State of Haryana v. Bhajanlal, I (2006) CCR 209 (SC)=1999 SCC (Cri) 426, where the criminal proceedings could be interfered and quashed in exercise of its power envisaged u/s 482, Cr.P.C. but the same is inapplicable in the present set of facts and circumstances. Resultantly, this application fails and is accordingly dismissed. The Court below is directed to proceed with the matter expeditiously without being influenced by the observations made by this Court. Office is directed to send a copy of this order to the Court below within fortnight.