
(2010) 01 AHC CK 0163

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 13908 of 2005

Arun Kumar Parikh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-01-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 482
Penal Code, 1860 (IPC) — Section 120B, 406, 419, 420

Citation : (2010) 01 AHC CK 0163

Hon'ble Judges : Ram Autar Singh, J

Final Decision : Allowed

Judgement

Ram Autar Singh, J.

I have heard learned counsel for the applicant, Sri Manish Tiwary, learned counsel for O.P. No. 2 and learned AGA for O.P. No. 1 on this application moved under section 482 Cr.P.C. and gone through the affidavit of Sri Hari Shankar Pandey, counter affidavit of Sri Asharfi Lal Sharma and rejoinder affidavit of Sri Hari Shankar Pandey, Senior Manager (Administrative), Bank of Baroda, Regional Office, Varanasi filed in support of their respective contentions. This judgment was reserved which I proceed to deliver by means of the present judgment.

This application has been moved on behalf of appellant Arun Kumar Parikh, Deputy Regional Manager, Bank of Baroda, Mumbai, under section 482 Cr.P.C. with prayer to quash proceedings of criminal complaint case no. 3948 of 2004 (M/s. Prashant Glass Works Vs. Bank of Baroda), under section 420 IPC, pending in the court of Judicial Magistrate, II, Varanasi.

The brief facts as mentioned in the complaint are that complainant M/s. Prashant Glass Works Private Limited, Motiwala Industrial Estate, Varanasi used to carry on its business in import and sale of chemicals and raw silk and maintain its account in Bank of Baroda, I.B.B. Branch Nadesar, Varanasi, which granted credit facility upto Rs. 30 lacs to the complainant, which was further extended upto Rs. 130 lacs. The above bank issued bank guarantee for sum of Rs. 47 lacs at the

instance of the complainant in favour of the Handicrafts and Handloom Export corporation of India Limited, New Delhi (HHEC) in the year 1999 and it was returned back on 23.4.2002. In Civil Suit No. 755 of 2000 (Prashant Glass Works Vs. HHEC), Civil Judge (JD), City Varanasi released the bank guarantee in favour of complainant vide order dated 3.2.2003. The account of complainant being maintained in Bank of Baroda Branch, Nadesar, Varanasi used to be operated on the direction of Divisional Office of above bank at Lucknow and Shri A.S. Kasliwal posted on some senior post at Lucknow used to interfere in the transaction of complainant firm in improper manner, as a result of which the complainant got his account transferred from Nadesar Branch Varanasi to Parliament Street, New Delhi vide his letter dated 22.11.2001. Subsequently, Shri A.S. Kasliwal also got himself transferred from Varanasi to the said branch at New Delhi and started to interfere in the transaction of complainant firm, in respect of which complainant made a complaint to the Chairman, Bank of Baroda, Central Office Bombay on 25.8.2002, which annoyed Shri Kasliwal, who hatching out criminal conspiracy closed cash transaction and cash credit facility of complainant firm and got the other accounts of complainant firm in the Hangkong and Shanghai Banking Corporation Limited, New Delhi seized by furnishing wrong information about Rs. 6 lacs. The complainant firm got the information about the same from the said bank on 13.11.2003. Thus the Bank of Baroda in hatching out criminal conspiracy, stopped bank guarantee and cash credit facility for Rs. 123 lacs.

The complainant M/s. Prashant Glass Works Private Limited instituted a complaint case bearing no. 657 of 2003 against Bank of Baroda, Varanasi through Chief General manager, Sri Arun Kumar Parikh, Sri A.S. Kasliwal, General Manager, Bank of Baroda, New Delhi, Sri B.K. Sinha, Assistant General Manager, Bank of Baroda, New Delhi, Sri Akhilesh Chandra Rastogi, Senior Manager, Honkong and Shanghai Banking Corporation Limited, New Delhi and Sri Nirmal Sinha, Deputy General Manager, Handicrafts and Handloom Export corporation of India Limited, NOIDA, under sections 406, 419, 420, 120B IPC. The Court below recorded the statement of complainant under section 200 Cr.P.C. and statements of witnesses namely Santosh Kumar Srivastava, Kamla Kant Shukla, under section 202 Cr.P.C. and some documentary evidence was also filed by complainant. The learned Vth Additional Chief Judicial Magistrate, Varanasi taking cognizance summoned Sri Arun Kumar Parikh and Sri A.S. Kasliwal to face trial under section 420 IPC vide its order dated 16.6.2003 and ultimately issued nonbailable warrants against them.

Applicant Sri A.K. Parikh moved this application under section 482 Cr.P.C. and filed his affidavit alleging that the complainant had himself got his cash credit facility transferred from IBB Branch Nadesar, Varanasi of Bank of Baroda to Parliament Street Branch at New Delhi by his letter dated 22.11.2001 and availed the facilities granted by Bank of Baroda, but the complainant/opposite party no. 2 M/s Prashant Glass Works Private Limited failed to maintain the satisfactory account and did not adhere to financial discipline and ultimately the bank issued a legal notice dated 1/11/2002 through his counsel to the O.P. No. 2, guarantors

and his Directors to repay the outstanding amounts in all the said accounts since the O.P. No. 2 was very irregular in repayment and the account of O.P. No. 2 became very sticky in operation. The Bank of Baroda was forced to file the application under section 19 of the Recovery of Debt Due to Bank and Financial Institution Act, 1993 before the Debt Recovery Tribunal, Allahabad, which was registered as Original Application No. 2 of 2003 with prayer to pass an order issuing recovery certificate for recovery of Rs.79,82,586=86 Paise against them along with pendente lite and future interest, to seize and sale of all hypothecated stocks, book debts and plant and machinery of the complainant for recovery of dues. The complainant/O.P. No. 2 as a counter blast against the ongoing recovery proceedings pending against O.P. No. 2 before Debt Recovery Tribunal, Allahabad filed a frivolous and false complaint through one Sri Asharfi Lal Sharma against Bank of Baroda and its officers etc., while it was not mentioned as to who was Asharfi Lal Sharma and under what capacity, he filed this complaint. The Vth Additional Chief Judicial Magistrate without applying his mind issued process against the applicant and another and took cognizance of the matter, while no offence under section 420 IPC was made out on the basis of allegations made in the complaint. The Bank of Baroda, Parliament Street, New Delhi released 100% margin (Rs. 47 lacs) kept against the issuance of bank guarantee in the form of FDR in March 2003 to the credit of C.C. Account of the O.P. No. 2 after HHEC released the guarantee bonds and proceeds of FDR aggregating Rs. 47,63,528/ on 31.3.2003. In view of guide lines of Reserve Bank Circular dated 15.5.2004, scheduled commercial banks should insist for a declaration from account holder to this effect, that he was not enjoying any credit facility with any other bank, and obtain a declaration giving particulars of the facilities enjoyed. No current account should be opened without obtaining No Objection Certificate from lending bank. The O.P. No. 2 had filed an undertaking to this effect on 18.8.1999 to the Bank of Baroda, IBB Branch, Varanasi, but he opened his current account with HSBC Bank, New Delhi without informing or taking any No Objection Certificate from Bank of Baroda, although huge amount was due against O.P. No. 2 in the account of Bank of Baroda. The Bank of Baroda, Parliament Street, New Delhi sent a letter dated 9.8.2002 to HSBC, Bank advising them that captioned company also availed credit facilities with Bank of Baroda and requested HSBC not to allow operation in the amount of O.P. No. 2. The Bank of Baroda received a letter dated 22.11.2002 from HSBC Bank to this effect that O.P. No. 2 at the time of opening account with that bank had also given a declaration that he did not enjoy any credit facility with any other bank. Thus the accounts of O.P. No. 2 with HSBC Bank were freezed. The O.P. No. 2 on his own vide letter dated 5.6.2005 enclosed the demand draft no. 29910 dated 25.5.2005 amounting to Rs. 6,10,226.31 Paise issued by HSBC in favour of Bank of Baroda and the said amount was credited in the account of O.P. No. 2. The allegations made in the complaint were totally baseless and false. O.P. No. 2 was availing his cash credit facility wherein drawing power was permitted against stocks hypothecated and those stocks continued to be in possession of the O.P. No. 2. O.P. No. 2 declared that it had incurred a total expenditure of Rs. 122.61

lacs towards import clearance of such chemicals imported while the Bank of Baroda had considered the said amount spent towards import clearance as part of the cost of the stocks hypothecated to Bank of Baroda and accordingly allowed the permissible drawing power on 30.6.2002. Thus the entire complaint does not disclose any offence committed by the applicant and all transactions with regard to operation of account of O.P. No. 2 relate to Bank of Baroda, Parliament Street, New Delhi subsequent to the year 2001, when the account of O.P. No. 2 was transferred to New Delhi From Varanasi, while the applicant was already transferred from Varanasi to Greater Mumbai in May, 2002, but the learned court below without applying his mind issued process against him.

It has further been contended that the present dispute is not only a case of accounting or of a civil nature but under the threat of immediate action of nonbailable warrants issued against the applicant and another, the complainant has intended to get the proceedings of recovery issued by DRT, Allahabad, haulted. There is no allegation against the applicant and yet he has been called upon to travel from Bombay to Varanasi at the cost of public interest and it amounts to abuse of process of the court and the complainant is liable to be prosecuted for making false allegations and instituting a false, frivolous, misconceived and vexatious complaint.

The learned counsel for the applicant has relied on M/s. Pepsi Food Limited and another Vs. Special Judicial Magistrate and others reported in AIR 1998 SC 128 in which no material was shown that accused and appellant were either manufacturer or holding license for manufacture of offending beverage. The complaint and preliminary evidence did not make out any case against applicant, the Hon"ble Apex Court quashed the complaint and laid down following principle:

28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

29. No doubt the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under section 482 of the Code or Article 226 of the Constitution to have the proceeding quashed against him when the

complaint does not make out any case against him and still he must undergo the agony of a criminal trial.

Reliance has also been placed on State of Haryana and others Vs. Chaudhary Bhajan Lal and others reported in AIR 1992 SC 604, wherein Hon''ble Apex Court has issued certain guidelines in such cases, which are reproduced as below:

"108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report 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 a case against the accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
4. Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
7. Where a criminal proceeding is manifestly attended with mala fide an/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private

and personal grudge."

The learned counsel for the applicant has further relied on Punjab National Bank and others Versus Surendra Prasad Sinha reported in AIR (1992) SC 1815, in which the principle debtor did not repay the debt. The bank as creditor adjusted at maturity of the FDR, the outstanding debt due to the bank in terms of the contract and the balance sum was credited to the Saving Banks Account of the respondent. The Hon''ble Apex Court has held in para 4 of judgment that rules of limitation are not meant to destroy the rights of the parties. Section 3 of the Limitation Act only bars the remedy, but does not destroy the right which the remedy relates to. The right to the debt continues to exist notwithstanding the remedy is barred by the limitation. Only exception in which the remedy also becomes barred by limitation if the right is destroyed. Though the right to enforce the debt by judicial process is barred under Section 3 read with the relevant Article in the Schedule, the right to debt remains. The time barred debt does not cease to exist by reason of Section 3. That right can be exercised in any other manner than by means of a suit. The debt is not extinguished, but the remedy to enforce the liability is destroyed.

The learned counsel for the applicant has further relied on Inder Mohan Goswami and another Versus State of Uttaranchal and others reported in AIR (2008) SC 251, wherein the full Bench of Hon''ble Apex Court has observed that dispute about the cancellation of agreement to sell property is civil dispute. Exception of criminal proceedings under section 420, 120B, 467 IPC against vendor is an abuse of process of court. The court himself ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurize accused. Refusal to quash criminal proceedings is improper.

Reliance has further been placed on Ashok Chaturvedi and others Versus Shitul H. Chanchani and another reported in AIR 1998 SCC (Criminal) 1704, wherein the Hon''ble Apex Court has observed that in case the allegations made in the complaint and the statement of the complainant and his witnesses are taken in their face value, no offence is made out, the complaint should not only be quashed against the appellants but also against those two accused who did not prefer any appeal.

The learned counsel for the applicant has further contended that in similar case, this Court in Criminal Misc. Application No. 26766 of 2007 (Pradeep Kumar Bhatnagar Vs. State of U.P. and another) has quashed the chargesheet and criminal proceedings filed by the police vide order dated 9.7.2008.

In the present case no offence under section 420 IPC is made out against the applicant Sri A.K. Parikh and Sri A.K. Kasliwal even if all the allegations made in the complaint are accepted, because there is nothing on record to suggest that they have committed the offence of cheating or they have dishonestly induced the complainant/O.P. No. 2 to deliver any property or making alteration or

destruction of illegal security. Section 420 of Indian Penal Code provides:

"Cheating and dishonestly inducing delivery of property Whoever cheats and thereby dishonestly induces the persons deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine."

In the present case the complainant/O.P. No. 2 himself got his cash credit facilities transferred from IBB Branch, Nadesar, Varanasi of Bank of Baroda to its Parliamentary Street Branch New Delhi through his letter dated 22.11.2001. The O.P. No. 2 availed the facilities of cash credit granted by the Bank of Baroda but he failed to maintain financial discipline and satisfactory account and ultimately the bank was compelled to issue a notice dated 1.11.2002 through his counsel to the O.P. No. 2, guarantors and his Directors to repay the outstanding amounts. The Bank of Baroda was compelled to file an application under section 19 of the Recovery of Debt Due to Bank and Financial Institution Act, 1993 before the Debt Recovery Tribunal, Allahabad, which was registered as Original Application No. 2 of 2003 with prayer to pass an order issuing recovery certificate for recovery of Rs.79,82,586=86 Paise against them. The O.P. No. 2 could not mention even a single word in the complaint as to how and in what manner, the applicant etc committed the offence of cheating. Mere initiation of the proceedings of recovery of due amount does not fall within the definition of cheating. It has also not been clarified as to how and in what manner the applicant and others hatched conspiracy against the O.P. No.2.

The evidence recorded under Section 200 and 202 Cr.P.C. as well as the documents filed in support of the allegations made in the complaint do not indicate that the applicant and others committed any offence in the course of transaction or sequence of the events, which took place in the present case. It appears from the record that the court below did not apply his mind to the allegations made in the complaint which did not constitute any offence against the accused persons. The court below took cognizance of the matter and issued the summons against the applicant and others to face trial U/S 420 I.P.C., while the said offence of cheating was not made out against them on the basis of the allegations made in the complaint.

It is also evident from the record that there were two Bank guarantees for Rs. 47 lacs under the said facility in favour of Handicrafts and Handloom Export corporation of India Limited, New Delhi (HHEC) invoked the same and first O.P. No.2 obtained a stay order from competent court of Varanasi against said invocation the Bank of Baroda released 100 per cent margin (Rs. 47 lacs) kept against the issuance of bank guarantee in the form of FDR only on March, 2003 to the credit of C.C. Account on 31.3.2003. Thus the complainant could not level the charge of cheating against Bank of Baroda or its employees to the aforesaid

amount of Rs. 47 lacs or Rs. 6 lacs.

In view of the guidelines issued on 15.5.2004 by Reserve Bank of India, the O.P. No. 2 submitted a declaration/undertaking on 18.8.1999 to the effect that it would not avail any cash credit limit from any other bank and no current account would be opened without obtaining no objection certificate from Bank of Baroda, but in the present case the O.P. No. 2 opened his current account with HSBC Bank, New Delhi without informing or taking any No Objection Certificate from the Bank of Baroda while huge amount was due against O.P. No. 2 in the accounts of Bank of Baroda. The Bank of Baroda, Parliament Street, New Delhi wrote a letter dated 9.8.2002 to HSBC, Bank advising them that captioned company availed credit facilities with Bank of Baroda and requested HSBC not to allow operation in the amount of O.P. No. 2. The Bank of Baroda received a letter dated 22.11.2002 from HSBC Bank to this effect that O.P. No. 2 at the time of opening C.C. Account with that bank had given a declaration that he did not enjoy any credit facility with any other bank. Thus the accounts of O.P. No. 2 with HSBC Bank were freezed. The O.P. No. 2 on his own vide letter dated 5.6.2005 enclosed the demand draft no. 29910 dated 25.5.2005 amounting to Rs. 6,10,226.31 Paise issued by HSBC in favour of Bank of Baroda, New Delhi.

It transpires from the record available before this Court that the O.P. No. 2 has not adhered to the financial discipline and committed breach of undertaking submitted in the Bank of Baroda and when O.P. No. 2 failed to repay the amount, an application was moved before D.R.T. Allahabad for recovery of due amount and thus Bank of Baroda and its employees did not commit the offence of cheating punishable under section 420 IPC. Consequently, the learned court below did not apply his mind in taking cognizance of the matter and issuing process against the applicant and others.

In Criminal Misc. Application No. 26766 of 2007 (Pradeep Kumar Bhatnagar Vs. State of U.P. and another) decided by this Court on 9.7.2008 an FIR was lodged on the ground of fraud allegedly committed by the accused persons to this effect that the said fraud had been committed by the proprietor of M/s. DastAl Exports and the loan had been obtained by making forged signatures of the O.P. No. 2 on the documents. In the present case no allegation relating to fraud or forged signatures was levelled by O.P. No. 2 against the Bank of Baroda or its employees. Thus this case is on far better footing as compared to the facts of the case of Pradeep Kumar Bhatnagar. In Pradeep Kumar Bhatnagar's case allegations were that the documents and agreement were forged by Sajida Hussain and her brothers in connivance with the applicant Chief Manager of the Branch, sufficient ground was found in that case for proceeding against the applicant.

The complaint lodged by O.P. No. 2 in the present case does not disclose any offence or make out any case against the applicant and others and thus the case would fall in first and third category of Bhajan Lal's case for quashing the summoning order and proceedings of the case as set out in R.P. Kapoor's case.

This contention raised on behalf of the applicant cannot be denied that the O.P. No. 2 filed the said complaint with mala fide intention and thus this case would also be covered under the seventh criteria set out in Bhajan Lal's case. The learned counsel for the applicant has rightly argued that in order to stall the recovery and auction proceedings pending before D.R.T. Allahabad, the O.P. No. 2 maliciously instituted false complaint relating to alleged conspiracy while no conspiracy has been found to be established on the basis of allegations made therein.

In Punjab National Bank and others Versus Surendra Prasad Sinha reported in AIR (1992) SC 1815, complainant Surendra Prasad Sinha committed defaulted in repaying the loan to the Bank and the recovery suit for the debt had been barred by limitation, however the bank thereafter adjusted the loan against the FDR deposited by a guarantor within the bank. The complaint filed against the Chairman and Managing Director of the Bank under sections 109, 114 and 409 IPC was quashed by the Apex Court in it was observed that the complaint had been filed in a mala fide manner and that the "judicial process should not be an instrument of oppression and needless harassment".

The Hon'ble Apex Court deciding the case of Inder Mohan Goswami and another Versus State of Uttaranchal and others, AIR 2008 SC 251 has noted that the increased tendency of perjury these days and referring to the decisions in Chandrapal Singh Vs. Maharaj Singh, Madhavrao Jiwajirao Scindia and others Vs. Sambhajirao Chandraojirao Angre and others and some other cases come down heavily on frustrated litigants who give vent to their frustration cheaply by invoking the jurisdiction of the criminal court. The paragraphs 29, 30 and 31 of Inder Mohan Goswami's Case are reproduced as below:

"29. In Chandrapal Singh and others Vs. Maharaj Singh and another (1982) 1 SCC 466, in a landlord and tenant matter where criminal proceedings had been initiated, this Court observed in Para at page 467 as under:

"A frustrated landlord after having met his Waterloo in the hierarchy of civil courts, has further enmeshed the tenant in a frivolous criminal prosecution which prima facie appears to be an abuse of the process of law. The facts when stated are so telling that the further discussion may appear to be superfluous".

30. The court noticed that the tendency of perjury is very much on the increase. Unless the courts come down heavily upon such persons, the whole judicial process would come to ridicule. The court also observed that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court.

31. This Court in Madhavrao Jiwajirao Scindia and others Vs. Sambhajirao Chandraojirao Angre and others (1998) 1 SCC 692, observed in para 7 as under:

"7 The legal position is well settled that when a prosecution at the initial stage is asked to be quashed the test to be applied by the court is as to whether the

uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

In view of above discussions permitting criminal proceedings to continue against the applicant and others in Criminal Case No. 3948 of 2004 (M/s. Prashant Glass Works Vs. Bank of Baroda), under section 420 IPC pending in the court of Judicial Magistrate, II, Varanasi and summoning order dated 16.6.2003 would amount to gross abuse of the process of Court and in the interest of justice the same should be quashed as no offence is made out on the basis of allegations made in the complaint instituted by O.P. No. 2 even if these allegations are accepted true.

This application moved under section 482 Cr.P.C. is hereby allowed and the criminal proceedings against the applicant and others in Criminal Case No. 3948 of 2004 (M/s. Prashant Glass Works Vs. Bank of Baroda), under section 420 IPC pending in the court of Judicial Magistrate, II, Varanasi are quashed.