

(2010) 02 J&K CK 0030
In the Jammu And Kashmir High Court

Ashok Bamba

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 10-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156
Penal Code, 1860 (IPC) — Section 420, 467, 468, 471

Citation : (2010) 1 JKJ 228

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Judgement

Gh. Hasnain Massodi, J.—The petitioner and respondents 3 to 5 are Directors of a Finance Company run under name and style of

Panbakhtar Finance Ltd. at 147-C, A/D, Gandhi Nagar Jammu (Finance Company for short). The respondent No. 2 is an account holder with the

Finance Company and admittedly deposited some amount with the Finance Company expecting good returns on the investments so made. The

respondent No. 2 disappointed by failure of the Finance Company to make the payments and also inclusion of name of his son - the respondent

No. 3 herein, as one of the Directors of the Finance company, allegedly on forged and fabricated documents, rushed to Chief Judicial Magistrate

Jammu with a complaint alleging commission of offence punishable u/s 420,467, 468 read with 120-B RPC against the petitioner and respondent

No. 3 to 5. Learned CJM, in turn, forwarded the complaint to P/S Crime Branch, Jammu in terms of Section 156(3) Cr. P.C where upon case

FIR 15/2007 dated 9.4.2007 was registered at the Police Station, Crime Branch, Jammu.

2. The differences and disagreement between respondent No. 2 and the

petitioner as also the other Directors of the Finance Company, did not stay for long. The parties who seemingly enjoyed fairly good business relations prior to registration of case FIR 15/2007, seem to have buried the hatchet and entered into a compromise. It appears that the petitioner and other Directors of the Finance company who initially due to financial crises were unable to make the payments to the respondent No. 2, have now made a resolve to set right his grievances and return the deposits alongwith the interest/profit accrued thereon. The only hiccup in restoration of peace and cordial relations between the parties, is the criminal case viz FIR No. 15/2007 that was initially expected by the respondent to be serve as a tool to get his grievances redressed.

3. The petitioner invoking inherent powers of the court u/s 561A Cr. P.C prays for quashment of FIR 15/2007 P/S Crime Branch, Jammu u/s 402, 467 and Section 120-B RPC. The grounds urged in the petition are that dispute between the parties given colour of an offence, was in essence of civil nature and a personal dispute and that the parties having entered into a compromise, the criminal proceedings initiated were futile and to serve no purpose. Learned Counsel for the petitioner reiterating the stand spelt out in the petition, states that the dispute between the parties is civil in nature and giving it colour of criminal case is an abuse of process of law. It is argued that the investigation, enquiry or trial, if any, embarked upon in consequence of Fir 15/2007, is bound to be a unnecessary and avoidable burden on the police machinery and state exchequer and that having regard to the surrounding circumstances and nature of the dispute, the FIR 15/2007 was deserved to be quashed in exercise of inherent powers vested in the court. Learned Counsel for the petitioner to buttress his arguments places reliance on law laid down in (2003) 4 SCC 675, (2008) 4 SCC 582, (2008) 9 SCC 677.

4. In (2003) 4 SCC 675 where the parties intended to compromise a criminal case u/s 498-A 323 and 406 RPC and were not in a position to give shape to their intention because of the offences being non compoundable, the Supreme Court observing that the inherent powers were without limits and were to be exercised with the sole purpose to prevent abuse of process of court or otherwise to secure the ends of justice held if for the purpose of securing ends of justice, quashing of FIR becomes

necessary, Section 320 would not be a bar to exercise, power of quashing

it was further held ""that in a criminal case, the veiled object beyond a limit prosecution, very nature of which the Director of Prosecution, can justify

the High Court in quashing the proceedings in the interest of justice and the ends of justice is higher than ends of law.

5. In (2008) 4 SCC 582 the Supreme Court observed as under:

6. we need to emphasise that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the court should

ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the

prosecution is a luxury which the courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilized in deciding

more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities

of the law.

6. In (2008) 9 SCC 677 where the dispute between a company and bank, was being set at rest on the basis of compromise arrived at by them

where under the dues of the bank had been cleared by the company, leaving no further claim against the company, the Supreme Court held the

matter to be ""a fit case where technicality should not be allowed to stand in the way in quashing of the criminal proceedings,"" as in the words of

Supreme Court ""the continuance of the same after a compromise arrived at between the parties would be a futile exercise

7. The Supreme Court after said observations quashed criminal proceedings u/s 420, 467, 468 and 471 IPC.

8. Shri Rahul Pant counsel for respondent No. 2 at whom instance the FIR 15/2007 dated 9.4.2007 u/s 420, 467, 468 and Section 120-B RPC

has been registered, joins learned Counsel for the petitioner in praying that FIR 15/2007 in the light of averments made in the petition, be quashed.

9. The case squarely falls within law laid down in the aforementioned reported cases. In the present case in view of the compromise between the

parties and settlement of the dispute which is primarily and substantially civil in nature, no purpose would be served by allowing the criminal

proceedings to continue. So viewed the petition is accepted and FIR 15/2007 dated 9.4.2007 P/S Crime Branch, Jammu and the criminal

proceedings emanating from the FIR are quashed.

10. The petition is disposed of accordingly.