
(2007) 03 AHC CK 0213
In the Allahabad High Court

Ashok Kumar, Rakesh Kumar and Shambhu Dayal APPELLANT
Vs

Shiv Mangal Singh Vijari Bahadur Commission Agents and RESPONDENT
The State of U.P.

Date of Decision : 16-03-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 420

Citation : (2007) 03 AHC CK 0213

Hon'ble Judges : Barkat Ali Zaidi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Barkat Ali Zaidi, J.—Opp. Party No. 2-complainant is an Etawah based firm dealing In food grains while M/S Bhagwati Udyog is Manpuri based firm with its partners accused Ashok and Ramesh.

2. They alongwith one Shambhu Dayal. have come to this Court u/s 482 Cr.P.C. for termination of Criminal Proceedings in Criminal Complaint case No. 1055 of 1986 filed by Opposite party No. 1 in which they alongwith two others Prem Narayan and Ram Swaroop of Calcutta were summoned by Additional Munsif Magistrate, Etawah u/s 420 I.P.C.

3. The allegation against applicants Ashok and Rakesh was that they purchased food grains for their firm for a sum of Rs. 36069.90 on six different dates ranging from 9.10.82 to 13.10.82 and gave a Hundi towards the aforementioned transaction amounting to Rs. 25,000/- on 29.10.82, which was to be honoured by accused Prem Narain and Ram Swaroop of Kolkata for Mainpuri firm, but was not honoured. The grouse of the complainant is that they were deceived and cheated for that amount of Rs. 25,000/-.

4. I have heard Sri S.V. Goswami, Advocate for the applicants and Sri A. K. Tiwari for Opposite Party No. 1.

5. The contention of counsel for the applicants is that the complaint mentions numerous commercial and financial transactions In between the parties and the case is of civil nature. As against it, the Contention of the complainant counsel is that the Opp. Party No. 2 complainant has been cheated because the Hundi issued by the accused Mainpuri firm was dishonoured by accused Prem Narain and Ram Swaroop of Kolkata and accused Ashok by filing a bond stood a guarantor and on the pretext that original Hundi was lost obtained the delivery of goods which was subject matter of the Hundi without making any payment.

6. The aforesaid facts clearly carve out that the dispute between the parties la essentially of a civil nature. there were various commercial transactions between the parties and the payments made and unmade and the entire gamut of sequence of the transaction clearly demonstrates that the case of criminal cheating is made out.

7. There is a growing tendency these days to bring civil cases in the criminal arena with a view to exert pressure on the party concerned so that it may come to terms, and Courts have, therefore, to be vary in accepting such cases on the criminal side. The Supreme Court in the case of Indian Oil Corporation Vs. NEPC India Ltd. and Others, has itself noted this tendency and has cautioned the Courts to be watchful so that Civil Cases are not brought into the Criminal Courts. The mere fact that the averments have been made which may carve out a criminal case and the requisite ingredients of the offence have been enumerated should not be considered sufficient to conclude that a criminal offence has really boon made out. The entire conspectus of facts and circumstances surrounding the dispute has to be visualized as a whole. It may also be noted that Civil Suit about these transactions between the parties is already pending in the Civil Court. Looking into the transactions and the events as they have transpired the conclusion is inescapable that the dispute in essentially of a civil nature. The application u/s 482 Cr.P.C. is, therefore, allowed and the proceedings against the applicants shall stand terminated.