

(1992) 07 DEL CK 0039

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 2737 of 1992

Bhim Raj Sharma

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 21-07-1992

Acts Referred:

Citation : (1992) CriLJ 3977 : (1992) 23 DRJ 515 : (1992) RLR 386

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : Neelam Grover, Ashok Bhan and Javed Hashmi, for the Appellant;

Judgement

Usha Mehra, J.

(1) MAJ. Bhim Raj Sharma by this petition had sought the dropping of the investigation conducted thereon and quashing of the Fir No. 134/91 u/s 420/468/471 Indian Penal Code . of Police Station, Malviya ngar New Delhi. During the pendency of the proceedings, Ms. Neclam Grover appearing for the petitioner brought on record the p73 fact that the parties in the civil suit have entered into a compromise and on account of thai settlement between the parties the suit was dismissed as withdrawn on 24th March, "992. According to her this criminal case has arisen out of

(2) In order to appreciate the position as emerges from the above contention of the parties, it will be relevant to note in short the facts giving rise to the present complaint.

(3) In nutshell the case which gave rise to the lodging of this Fir is that Jag Ram Arya, father of respondent No.2 had executed a pronote and a receipt for Rs.60,000.00 in favor of one Shri Jagdish Chander Sharma. This receipt was executed somewhere in May, 1985. Jag Ram Arya was murdered on 4th July, 1985 and thus the loan remained unpaid. Jagdeesh Chand Sharma filed a suit for recovery and in that imp leded the legal heirs of late Jag* Ram Arya as defendants. After the service of the summons in the said suit, the respondent

No.2 son of the deceased Jag Ram Arya, filed a complaint before Acmm alleging therein that the said documents were forged. His father's signatures have been forged on the print as well as on the receipt and that his signatures as well as the signatures of respondent No.3 had also been fabricated. Therefore, he wanted that a case u/s 420/468/471/197/198 read with Section 120-B be initialed against Jagdeesh Chand Sharma. The magistrate took the cognizance on the said complaint and sent the same to S.H.O. Police Station, Malviya Nagar for registration of a case and investigation u/s 156(3), Cr.P.C. On receipt of that complaint, F.I.R., No.134/91 was registered and investigation commenced. It was at this stage that the present petition was filed. But as pointed out above now in the civil suit, the parties have settled their dispute and on account of the compromise the suit has been dismissed as withdrawn.

(4) The suit was filed by Shri Bhim Raj Sharma and was listed as Suit No-157/87. The suit was filed by the present petitioner as plaintiff and was decreed on 5th September, 1988. The execution of the same was filed which was listed as Execution No. 100/90. A compromise was arrived at between the parties pursuant to which the decree holder made a statement before the Court and withdrew the execution on account of the compromise arrived at with the judgment debtor which was recorded on 24th March, 1992. The Court accordingly dismissed the execution application.

(5) Ms. Neelam Grover appearing for the petitioner contends that the F.I.R. is liable to be quashed because of the compromise and even otherwise the present F.I.R. No. 134/91 pertained to the same dispute regarding the repayment of loan based on the promissory note as well as on the receipt which was the matter to be tried by Civil Court. The lodging of the F.I.R. on the basis of the complaint made by defendant No.2 amounted to over reach the jurisdiction of the Civil Court through intervention of the police machinery. So far as the argument of Ms. Neelam Grover that the complainant tried to over reach the jurisdiction of the Civil Court, I find force in this submission of Ms. Grover.

(6) On account of the pendency of the civil suit No. 157/87 filed before the District Judge, Delhi inter parties, I would only say that the respondent No.2 Balraj Arya has tried to over reach the jurisdiction of the civil court through intervention of the police machinery and that there could not be still bigger case of abuse of criminal process warranting quashing of First Information Report No. 134/91.

(7) That apart, now in view of the subsequent events which have arisen after the filing of this petition that is the compromise having been arrived at, I see no reason why the Fir be not quashed. In the circumstances of this case I am of the view that even though the complaint which was filed and on the basis of which the present Fir has been registered is a non compoundable, but the interest of Justice requires that it need not proceed any further. In a case of this nature, the interest of justice, will be served better by ensuring that the parties may not be forced unnecessarily to go on litigating before a criminal court nor any useful

purpose will be served by going ahead with the prosecution. It is in such a situation that Section 482 Cr.P.C. can be invoked as it has conferred enough inherent powers on this Court to do justice notwithstanding anything in the Code of Criminal Procedure.

(8) The observations made by P.B. Gajendragadkar, J.(as his Lordship then was) in the case of R.P. Kapur Vs. The State of Punjab, , needs to be mentioned for supporting the conclusion aforesaid. Gajendragadkar, J. who spoke for the Court in Kapur's case observed in his judgment that it was not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of the High Court's inherent jurisdiction. The three instances cited in the judgment as to when the High Court would be justified in exercising its inherent jurisdiction are only illustrative and can in the very nature of things not be regarded as exhaustive. Considerations justifying the exercise of inherent powers for securing the ends of justice naturally vary from case to case and a jurisdiction as wholesome as the one conferred by S.482 ought not to be encased within the strait-jacket of a rigid formula.

(9) The material on which the police proposes to rely against the petitioner on the asking of respondent No.2, Balraj Arya does not survive in view of the fact that in the civil case the parties have already entered into compromise. To my mind, it is not reasonably possible to sustain the charge and conviction because of the intervening circumstances. Although the offence is non compoundable but learned counsel for parties submitted that they have reconciled their differences. Hence in order to preserve amity and good relations no useful purpose will be served to allow continuation of this criminal proceedings.

(10) Taking an overall view of the facts and circumstances, I allow the petition and the First Information Report No.134/91 dated 27.3.1991 registered against the petitioner in Police Station, Malviya Nagar, New Delhi is -hereby quashed and all proceedings pending before learned Metropolitan Magistrate stood quashed.