
(2011) 09 SHI CK 0167
In the High Court Of Himachal Pradesh
Case No : Criminal Revision No. 118 of 2011

Birbal Singh Bharmoria

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 16-09-2011

Acts Referred:

Constitution of India, 1950 — Article 136, 142

Criminal Procedure Code, 1973 (CrPC) — Section 227, 239, 320, 321, 482

Penal Code, 1860 (IPC) — Section 120B, 419, 420, 467, 468

Citation : (2011) 09 SHI CK 0167

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kuldeep Singh, J.—The order dated 30.5.2011 passed by the learned Judicial Magistrate 1st Class, Joginder Nagar, District Mandi in P.C. No. 185-I/04 rejecting the application of the Petitioner under Sections 227, 239 Code of Criminal Procedure. has been assailed in the revision.

2. It has been stated that as per prosecution story complainant Basant Ram alongwith his sisters Smt. Shanti and Smt. Chhatanki Devi did not execute General Power of Attorney dated 11.3.1996 in favour of Prakash Chand accused, who is son- in-law of Basant Ram, complainant. It has been alleged that Prakash Chand got the fictitious General Power of Attorney prepared and registered in his name and mortgaged the land of the complainant and his sisters with H.P. Agriculture and Rural Development Bank, Joginder Nagar for obtaining loan of Rs. 40,000/-, which was disbursed vide draft dated 14.3.1996 for Rs. .24,000/- and another draft dated 30.3.1996 for Rs. 16,000/- payable to Prakash Chand. It has been alleged that FIR No. 34 of 2001 dated 28.2. 2001 was got registered by the complainant at Police Station, Joginder Nagar against Prakash Chand. It has been found during investigation that Petitioner has committed an offence punishable under Sections 419, 420, 467, 468, 471 and 120-B Indian Penal Code

for identifying the complainant and his sisters in the General Power of Attorney which according to the complainant was fraudulently prepared by Prakash Chand main beneficiary of the transaction.

3. On completion of investigation challan was filed before the trial Court and the Court took cognizance by issuing process to all accused including the Petitioner. The Petitioner had preferred Cr.MMO No. 52 of 2005 u/s 482 Code of Criminal Procedure. in this Court for quashing criminal proceedings against the Petitioner which was dismissed on 19.7.2005. The Petitioner preferred petition under Article 136 of the Constitution of India before the Supreme Court against the order dated 19.7.2005 which was dismissed by the Supreme Court on 6.8.2010 with the observation that it was prerogative of the Public Prosecutor u/s 321 Code of Criminal Procedure. to decide whether to continue or to discontinue with the criminal proceedings against the Petitioner. The Petitioner filed review petition before the Supreme Court against the order dated 6.8.2010 which was also dismissed.

4. It has been alleged that the complainant himself acknowledged the sanction of loan by repaying the amount which indicates that the factum of loan was within the knowledge of the complainant. The Petitioner had no malafide intention, he never conspired in any manner with Prakash Chand to receive any benefit from fraudulent General Power of Attorney prepared by Prakash Chand. The complainant moved an application before the Tehsildar to vacate the charge on land which was mortgaged as security.

5. The complainant also moved an application before the District Magistrate. Mandi for permission to withdraw FIR No. 34 of 2001 on the ground that the matter has been compromised between the complainant and the accused. The FIR was lodged by complainant against Prakash Chand due to some misunderstanding. The District Magistrate vide order dated 6.2.2007 has disallowed the application of the complainant for withdrawal of FIR No. 34 of 2001.

6. The Petitioner lastly filed an application under Sections 227 and 239 Code of Criminal Procedure. before the learned trial Magistrate for discharging the Petitioner which has been rejected by the learned trial Magistrate on 30.5.2011. It has been alleged that the learned trial Magistrate has passed the impugned order without due application of mind. The complainant has compromised the matter with his son-in-law Prakash Chand in order to maintain cordial relations in the family, the further continuation of the proceedings is not in the interest of any party.

7. The compromise between the complainant and his son-in-law Prakash Chand accused indicates that the Petitioner is innocent. There is no specific allegation against the Petitioner except alleged identification of the complainant and his sisters.

8. The learned trial Court has acted in a mechanical manner. The conclusion of

the trial Court that there is sufficient documentary and oral evidence on record against the Petitioner is not correct, the impugned order is liable to be set-aside. The learned trial Magistrate has not considered the case law relied by the Petitioner at the time of addressing of arguments. The Petitioner is not a beneficiary of the loan nor there is evidence of conspiracy of Petitioner with Prakash Chand for commission of offence.

9. I have heard the Learned Counsel for the parties and have also perused the record. The Learned Counsel for the Petitioner has relied B.S. Joshi and Others Vs. State of Haryana and Another, and Nikhil Merchant v. Central Bureau of Investigation and Anr. (2008) 3 Crimes 377 (SC) . He has submitted that Section 320 Code of Criminal Procedure. does not limit the inherent power of the High Court u/s 482 Code of Criminal Procedure. to quash criminal proceedings or FIR or complaint pertaining to non-compoundable offence. He has submitted that in order to keep cordial relations between the complainant and his son-in-law and his family the continuation of the criminal proceedings even if it involves non-compoundable offence is not in the interest of any one and in the peculiar facts and circumstances of the case this Court has power to quash the proceedings. The complainant himself took the steps for closing the matter, he requested for withdrawal of FIR but his request was not accepted. The Learned Counsel for the Petitioner has prayed for setting-aside the impugned order and discharging the Petitioner.

10. The learned Additional Advocate General has submitted that the learned trial Magistrate has recorded a finding that there are sufficient grounds to proceed against all accused persons under Sections 419, 420, 467, 468, 471 and 120B Indian Penal Code and no fault can be found with the impugned order. She has prayed for dismissal of the petition.

11. The complainant has submitted a written complaint addressed to SHO, Police Station, Joginder Nagar against Prakash Chand stating therein that Prakash Chand is his son-in-law, who was in need of money. He prepared forged power of attorney of complainant, Smt. Shanti and Smt. Chhatanki Devi sisters of the complainant and got it registered before the Sub Registrar, Joginder Nagar on 11.3.1996 and on that basis obtained loan from the bank by mortgaging the shares of complainant, Smt. Shanti and Smt. Chhatanki Devi in the land and took loan of Rs. 40,000/-. The prosecution case against the Petitioner is that the power of attorney was got prepared in connivance with the Petitioner. It is also the case of the prosecution that Prakash Chand, Petitioner, Kashmir Singh, Roop Chand produced fictitious persons and identified them as complainant, Smt. Shanti and Smt. Chhatanki Devi and got the land mortgaged for Rs. .40,000/-.

12. The learned Magistrate summoned the accused on 1.10.2004. It has been stated in the petition that Petitioner earlier filed Cr.MMO No. 52 of 2005 for quashing the criminal proceeding which was dismissed on 19.7.2005. The matter was carried further in Supreme Court and the Supreme Court dismissed the same on 6.8.2010, review petition filed in the Supreme Court has also been

dismissed. The copy of order dated 6.8.2010 of the Supreme Court is available on the record of the lower Court file which is as follows:

In this SLP the Petitioner has questioned the order of the High Court of Himachal Pradesh dated 19th July, 2005, rejecting the Petitioner's application u/s 482 Code of Criminal Procedure. for quashing of the pending criminal proceedings.

In this Special Leave Petition, the Petitioner has prayed for leave to withdraw the complaint case and the compounding thereof. Since leave to withdraw is concerned, it is the public prosecutor under the provisions of Section 321 Code of Criminal Procedure. who is entitled to take a decision on that score, particularly, when charges have already been framed. Apart from the above, the offences complained of are also not compoundable u/s 320 of the Code.

In such circumstances, we are unable to grant any relief to the Petitioner in the Special Leave Petition. However, this will not prevent the public prosecutor from examining the matter in view of the facts involved and the relationship of the parties.

The SLP is dismissed.

13. The earlier petition of the Petitioner for quashing of the proceedings was dismissed by this Court on 19.7.2005 and the Supreme Court vide order dated 6.8.2010 did not grant any relief to the Petitioner for quashing the proceedings. The Petitioner has stated that even his review petition against the order dated 6.8.2010 has been dismissed by the Supreme Court. In these circumstances, the question of quashing of proceedings against the Petitioner cannot be re-opened.

14. The allegations against the Petitioner are preparation of forged document in connivance with Prakash Chand etc. for obtaining loan by Prakash chand from bank after mortgaging the shares of complainant and his two sisters Smt. Shanti and Smt. Chhatanki Devi. It has been alleged that Prakash Chand even received the amount of loan by way of drafts total amounting to Rs. 40,000/-. The contention of the Petitioner that there is no allegation that Petitioner also received some amount from Prakash Chand is not relevant in view of allegation of conspiracy in between Prakash Chand and the Petitioner etc. for preparing forged document for obtaining loan and preparation of forged document by Petitioner. The learned Magistrate has recorded a finding that there is enough material on record to proceed against the Petitioner.

15. The Learned Counsel for the Petitioner has strenuously argued that in view of subsequent stand of the complainant no purpose will be served in continuing the criminal proceeding against the Petitioner. In B.S. Joshi (supra) the Supreme Court has held that in exercise of its inherent powers High Court can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers u/s 482 of the Code. The question of quashing of the proceedings cannot be re-opened in view of order dated 19.7.2005 passed by this Court in Cr.MMO No. 52 of 2005 and the judgment dated 6.8.2010 of the

Supreme Court.

16. In *Nikhil Merchant* (supra), one of the contentions raised by the Additional Solicitor General before the Supreme Court was that power under Article 142 is to be exercised sparingly and only in rare and exceptional cases. The Supreme Court in para 20 of the report has observed technically there is force in the submissions made by the learned Additional Solicitor General, the facts of the case warrant interference in the proceedings. The Supreme Court in para 23 of the report has further observed the question which is required to be answered is whether the power which independently lies with the said Court to quash the criminal proceedings pursuant to the compromise arrived at, should at all be exercised. The Supreme Court ultimately held that on an overall view of the facts, this is a fit case where technicality should not be allowed to stand in the way in the quashing of the criminal proceedings, since, continuance of the same after the compromise arrived at between the parties would be a futile exercise.

17. The powers under Article 142 of the Constitution of India are special powers of the Supreme Court and not of any other Court. The accused were summoned on 1.10.2004. The Petitioner filed application under Sections 227, 239 Code of Criminal Procedure. for discharging him from the case. The learned trial Magistrate has recorded a finding that there is material on record against the Petitioner for proceeding under Sections 419, 420, 467, 468, 471 and 120B Indian Penal Code. The view taken by learned Magistrate emerges from the material on record. On behalf of the Petitioner discharge has been prayed on the basis of subsequent events, such as, settlement of dispute in between the complainant and Prakash Chand.

18. In view of above discussion, there is no merit in the petition which is liable to be dismissed and the same is dismissed. The pending application, if any, also stands disposed of. The parties through their counsel are directed to appear before the trial Court on 14.10.2011. The record of the trial Court be sent back immediately so as to reach before the date fixed.