

(2020) 01 RAJ CK 0398

In the Rajasthan High Court

Case No : Criminal Miscellaneous (Petition) No. 1253 Of 2019

Capt. Amit K. Agarwal Director And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 17-01-2020

Acts Referred:

Indian Penal Code, 1860 — Section 406, 420

Code Of Criminal Procedure, 1973 — Section 320, 482

Citation : (2020) 01 RAJ CK 0398

Hon'ble Judges : Sanjeev Prakash Sharma, J

Bench : Single Bench

Advocate : Peush Nag, Arvind Bhadu, Mudit Singhvi, Vineet Mehta

Final Decision : Allowed

Judgement

1. The matter comes on an application moved for vacation of the stay order dated 25/02/2019 passed by this Court whereby further proceedings

arising out of FIR were stayed.

2. The case of the petitioners before this Court is that they are Directors of one Supreme Airlines which had operated its business of flight operations

in the State of Rajasthan during the period from October, 2016 to August, 2018 for which approval was granted by the competent authority. It is

submitted that an FIR has been lodged by the complainant-respondent no.2 who is engaged in the travel business and ticketing. It was mentioned in

the FIR that the complainant-respondent no.2 is registered with IATA and for booking the tickets for the flights of the Supreme Airlines, the

complainant approached the petitioners whereafter the complainant became the authorized agent of the said Supreme Airlines and started booking

flights for the Supreme Airlines. However, after July, 2018, without any prior

information the Supreme Airlines stopped its flights but the said aspect was not informed to the complainant who continued to book tickets. Resultantly, the complainant had to suffer loss and had to return back the amount which had taken by way of booking tickets. He also stated that he had deposited Rs.50,000/- with the Supreme Airlines but the same was not returned. It was stated that an assurance was given by the petitioners to return the amount of Rs.57667/- but the same was fraudulently not returned and he was cheated. Accordingly, an FIR under Section 420 and 406 IPC was lodged by him.

3. Learned counsel for the petitioners submitted that the dispute between the petitioners and the respondent-complainant is of civil nature and is in relation to the outstanding amount. As per the books of accounts, the petitioners are required to repay a sum of Rs.26283/- to the complainant-respondent which they are ready and willing to pay. It was further stated that originally the approval was only given for operating flights upto August, 2018 but due to poor turn out, the company-Supreme Airlines stopped its operations in the State of Rajasthan and did not renew its approval. The Company being a commercial venture, no one can force the Company to continue its venture and cannot force the petitioners to business in the State of Rajasthan. It was further submitted that a certain amount was received by the Company from the respondent-complainant as security which was a non-refundable amount and the only amount of Rs.26,283.65 was required to be returned. In this regard, the Company had sent a letter to the complainant who refused to accept it. The criminal proceedings could not have been taken up in this regard.

4. In reply to the criminal misc. petition, the respondent-complainant submitted that he had deposited the amount with Company with assurance that the Company will continue to operate in the State of Rajasthan. However, the Company has totally ceased with its flights for Rajasthan from month of July, 2018 which has resulted in causing loss and mental agony to the respondent-complainant.

5. Heard learned counsel for the parties.

6. In *Prabatbhai Aahir @ Parbhatbhai Bhimsinghbhai Karmur & ors. Vs. State of Gujarat & anr.*:2017(9) SCC 641, the three Judges Bench of the Supreme Court has laid down following broad principles with regard to the

powers of this Court under Section 482 Cr.PC. which read as under:-

15. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:

(i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The

provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement

has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence.

While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The

power to quash Under Section 482 is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction Under Section 482, the High

Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent

an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the

dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In the exercise of the power Under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due

regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity

cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in

nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public

interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They

stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil

flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a

conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-

being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in

declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act

complained of upon the financial or economic system will weigh in the balance.

7. In *Managing Director, Castrol India Limited Vs. State of Karnataka & anr.*: (2018) 17 SCC 275, the Apex Court has held as under:-

7. In the present complaint petition, there is no averment or statement whatsoever that the appellant as the Managing Director of the Company was

responsible or incharge of the conduct of the business of the Company in respect of which the offence in question has been alleged to have been

committed. Neither there is any averment to the effect that the appellant is otherwise connected or responsible for commission of any of the acts on

the basis of which the offence(s) is alleged to have been committed.

8. It will not be necessary to burden this order by a detailed reference to numerous pronouncements of this Court interpreting similar provisions of

other statutes holding that a clear and categorical statement to the above effect is required to be made in the complaint petition to proceed against an

officer of the Company so as to determine his vicarious liability for the offence committed by the company. In the present case the Company is not

even arrayed as an accused.

8. Keeping in view the aforesaid principles and the contents of the FIR, this Court finds that a Company, which operates in a particular field of

business, cannot be forced to continue its operations in spite of it finding that the commercial activity is not viable. The criminal proceedings cannot be

put into operation for forcing for such activity. If on account of closure of the commercial activity, any particular person, who is associated with such

commercial venture, suffers loss, the same would not amount to commit an offence by the Company under Section 420 or 406 IPC.

9. In the present case, keeping in view the aforesaid facts, this Court is satisfied that the power of the Court is at all to secure ends of justice to

prevent such abuse of the process of the Court and the criminal proceedings cannot be allowed to continue as against the petitioners who are

Directors of the Company- Supreme Airlines which was carrying on its activities.

10. Accordingly, the interim order dated 25/02/2019 passed by this Court is made absolute. The FIR No.0007/2019 registered against the petitioners at

Police Station Vidhayakpuri, Jaipur City (South), Jaipur for offence under Section 420 and 406 IPC is quashed and set aside. The complainant-

respondent no.2 would, however, be free to take up all proceedings permissible under law for recovery of any amount which he claims to be

outstanding as against the Company-Supreme Airlines and its Directors.

11. The instant Criminal Misc. Petition is accordingly allowed.