(1982) 10 AHC CK 0056

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 7941 of 1980

Central India Machinery Manufacturing Co. Ltd., popularly known as ''CIMMCO'' and Others — APPELLANT

Vs

Dharam Vir Bedi and Another — RESPONDENT

Date of Decision : 22-10-1982

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 203, 482, 561A
Penal Code, 1860 (IPC) — Section 120B, 420, 463, 464, 468

Citation : (1983) 7 ACR 53

Hon'ble Judges : M. Wahajuddin, J

Bench : Single Bench

Advocate : G.S. Chaturvedi and P.C. Chaturvedi, for the Appellant; A.G.A. and Viresh Misra and Keshav Sahai, for the Respondent

Final Decision : Disposed Of

Judgement

M. Wahajuddin, J.—The applicants have been summoned by the Chief Judicial Magistrate, Dehradun under Sections 120B, 420, 469 and 471 IPC as per order dated 17-6-1980, Annexure C-1 of the petition. They have been summoned in pursuance of a private complaint dated 1-5-1980 filed by the opposite party under Sections 120B, 420, 463, 468, 471 and 109 IPC, Annexure A. The applicants preferred a revision in the court of Additional Sessions Judge Dehradun, against the afores aid order of the Magistrate which was also rejected as per order dated 24-11-1980, Annexure C-2. The applicants have prayed that the criminal proceeding in pursuance of the complaint and the aforesaid two orders may be quashed.

2. It would appear that the opposite party entered into a contract with CIMMCO acting through applicant No. 6, Sri. R.C. Sethi, Resident-cum-Erection Engineer of CIMMCO. Later a dispute developed between the parties to the contract regarding loading and unloading charges, stacking, watch and ward etc. and letters were exchanged in that connection.

3. The contention of the applicants is that the entire matter relates to a dispute regarding terms of contract and contractual liability and it is purely a dispute of civil nature and the resort to criminal prosecution by opposite party No. 2 is an abuse of the process of law, just to victimise and harass the applicants and coerce them to make payments. It is further urged that the complaint is totally vague as to when and how cheating was committed and forgery was done and in what manner and by whom.

4. The arguments on behalf of the opposite parties were commenced by Sri Kesho Sahai, Advocate and later resumed by Sri Murli Dhar, Advocate and then again concluded by Sri Kesho Sahai, Advocate. I invited arguments particularly in respect of the aforesaid matters raised by the applicants'' counsel. Sri Murli Dhar Advocate urged that in addition to the materials before the Magistrate, who passed the order summoning the accused persons, I may also look into other documents filed here in Section 482 Code of Criminal Procedure proceedings. The learned Counsel for the applicants also desired that I may look into one of the letters sent by the opposite party in reply to which the letter Annexure D3 dated 15th July, 1978 was sent by applicant No. 3. Sri Kesho Sahai who finally resumed and concluded the arguments made the stand of the opposite party No. 2 clear urging that the court may look into only those materials which were before the Magistrate when he passed the summoning order and not additional materials which may be furnished here. I am also of the view that this Court while exercising powers u/s 482 Code of Criminal Procedure is not to function as a Court of trial so it will not examine what further evidence in support of the case would be led by the complainant or what evidence in defence of the case would be led by the applicants. I may therefore confine to the perusal and scrutiny of the complaint, the statements under Sections 200 and 202 Code of Criminal Procedure as well as the documents Annexure D1 to D10 of the affidavit, as they were filed before the Magistrate also, and on their basis I may examine whether any prima facie case under the various sections under which complaint has been filed is disclosed. The law is well settled that where no prima facie case is disclosed the Court may quash the proceedings while if it is satisfied that any prima facie case is disclosed it may decline to function as a trial court and should reject the application u/s 482 Code of Criminal Procedure.

5. The complaint is Annexure A of the application. Paragraphs 1 and 2 of the complaint recite that the CIMMCO is engaged in the work of fabrication and erection of steel structures at Chilla Project, Hardwar and accused Nos. 2 to 4 and 6 are the officials of the Company engaged in the day to day working and responsible for the affairs of the Company. Paragraph 3 recites that they all entered into a conspiracy to cheat the complainant and in pursuance of the same accused No. 6, namely, R.C. Sethi, induced the complainant to undertake the work of cartage of gate parts from Jwalapur Rail Head to Chilla Power House. In para 4 it is stated that the complainant agreed to the same but work of loading and unloading, stacking etc. was not inluded in the rates. Para 5 recites that the complainant was assured that separate payment will be made for such work. The

complainant fell a prey to the fraudulent inducement. It further recites that accused persons 3 and 4 passed all the bills submitted by the complainant earlier. In paragraph 6 of the complaint it is recited that in furtherance of the conspiracy to deprive the complainant of his lawful dues and thereby to cause unlawful gains to the Company, the accued caused a huge amount accumulated and never paid inspite of reminders. In para 7 it is recited that at the time of the conspiracy the accused forged an order of June 3, 1978 with a view to cheat the complainant and misappropriate the amounts lawfully due to him though the order was never in existence at the time of original offers were made and the work started, and the complainant was for the first time informed of it when the counsel, accused No. 5 gave the notice and in consequence of the said forged and fabricated order, the, accused misappropriated a sum of Rs. 37, 697. 14 p. Paras 9 and 10 relate to another dispute concerning detention of Hoist and are not relevant to the case. In para 11 a prayer was made that the accused person be punished under Sections 120B, 420, 463, 468 and 109 IPC.

6. Annexure B1 is statement u/s 200 Code of Criminal Procedure. In paragraph 2 of the statement the complainant deposed that defraudly contract for transporting gate parts from Jwalapur Rail Head to Chilla Power House was given by the accused person through Erection Engineer Sri R.C. Sethi and the complainant fell prey to the fraud accepting Theka. In the work loading and unloading, stacking etc. were not included and the complainant made it clear on 29-5-1978. He was later asked to do that work with an assurance of separate payment. The applicant R. Swarup had certified the rates for the same. A huge amount is due to the complainant which has not been paid. The complaint further stated that a fictitious order dated 3-6-1978 was fabricated by the accused persons to misappropriate the amount due to the complainant. The counsel Sri Dharam Gopal Chaturvedi is well aware of it and the extract of aforesaid order was sent to him in the colour and disguise of the notice given by the counsel, which Sri Chaturvedi declined to withdraw. He also stated that Rs. 37.697.14 p. is due to the complainant. The complainant detained one Hoist according to the terms of the contract but the accused person got it back in an unlawful manner. Had false assurance not been given the complainant would not have fallen a prey to the fraud. It is further stated that by deceit and forgery the accused persons have cheated the complainant to the tune of Rs. 37,697.14 p. One R.N. Chaturvedi was also examined in support u/s 202 Code of Criminal Procedure vide his statement Annexure B-2. According to him on 29-5-1978 he was returning back from the office of Adishasi Abhiyanta, Civil Nirman Khand Sichai Vibhag when he saw the car of Dharam Vir Bedi, he stopped to trace him out, being desirous to accompany him in his car. He went to him inside and Sri Bedi offered him to give him lift. According to him, three more persons were with Sri Bedi and Sri Bedi introduced them, namely, Sri R.C. Sethi, Sri Keshav Dutt and Sri Sudaula. Sri Bedi was copying a letter. After completing the letter he took out a printed form with the letter and handed both of them to Sri Sethi who after going through the same signed and approved. According to him Sri Bedi then

observed that full co-operation will be extended and further told that one employee is always at the Laxmi Hotel near the Station concerned and as soon as goods arrive that man may be informed to arrange for the vehicle and Sri Sethi may arrange for labourers etc. so that time may not be wasted in loading and unloading or demmurage may not be caused and Sri Sethi then observed that he has full labour equipment and Sri Bedi will not be inconvenienced nor there would be any demmurage caused.

7. This coupled with the documents Annexures D1 to D10 were before the Magistrate when he passed the summoning order. I have laid down the contents of the complaint and the statements threadbare in substance, for scrutiny whether they disclosed prima facie offence in the various sections.

8. I may now refer the documents that were filed before the Magistrate Annexures D1 to D10. D1 is the quotation for cartage of gate parts from Jwalapur Rail Head to Chilla Power House, given by opposite party No. 1. It mentions that the rates are quoted as per negotiations and settlement with Sri R.C. Sethi. It also states that the payments shall be made on presentation of the bill subject to general terms of business. It contains an endorsement by Sri Sethi "Received and approved." Annexure D2 is the printed General Terms of business for contract work of carriage for private parties. Clause 3 recites that if loading and unloading is done through parties concerned charges, including stacking charge shall be payable and the parties concerned will also be liable for railway charges like freight, demmurage and warfage etc. and also for road expenses such as octroi, toll tax and bridge tax. Paragraph 8 recites that word and watch charges and godowning charges shall also be payable. Paragraph 12 recites that the terms are part of letter of offer and are binding on the party. Annexure D3 dated 15th July 1978 addressed by R.C. Sethi is a reply to the letter of 10th July 1978 of opposite party No. 1. It is stated that for extra charges for unloading the wagons and arranging Chaukidars a bill for reasonable amount may be sent which shall be paid. It also states that the opposite parties concerned should not feel perturbed regarding further consignment and the bill etc. which shall be done in proper manner. Annexure D4 is the registered notice dated 24th March 1979 signed by R. Swarup by way of confirmation of the telegram in reply to the telegram of opposite party No. 1. It recites that unloading, stacking charges neither mentioned in the offer of opposite party No. 1 nor in the letter of the Company hence cannot be taken as such. Annexure D5 is confirmation of another telegram addressed to opposite party No. 1 to the effect that lawful payments shall be made. Confrontation is avoided in the interest of opposite party No. 1. There is further endorsement that the detention of R.R. by opposite party No. 1 is illegal. There is agreement regarding unloading, stacking charges etc. The Company being limited company payment cannot be realised and can be made only after an agreement entered into. Annexure D6 is a letter dated 18th April, 1979 addressed by opposite party No. 1 to the Supervisor CIMMCO. It recites that on 5-4-1979 it was decided that Vishambar Dayal Sharma shall immediately come after making assignments with the Station Master, Jwalapur,

for delivery of goods detained there and receive, verify and accept all the bills pending for payment. It was also stated that assurance be given that payment of the pending bills shall be made forthwith and there shall be no problem of payment or any type of deductions. Annexure D7 is the letter addressed by R. Swarup Chief Operations Manager to the aforesaid Sri V.D. Sharma stating that as discussed at Hardwar he had to verify the uptodate bill of M/s. D.V. Bedi for further payments and as Sri Bedi informed that this could not be done needful may be done. A copy was endorsed to Sri Bedi. Annexure D9 is a letter addressed by opposite party to the Chief Operation Manager on 25th April, 1979. It insists on payment of bills. It states that a conditional offer of a discount of Rs. 1869.40 was made but to avail the document the balance amount was to be paid within a week. It then further recites that on account of non fulfilment of the commitments on behalf of the CIMMCO Sri Bedi snaps all business ties with the Company. Thereafter details are given. Annexure D10 is the letter dated May 12, 1979 in the form of notice given by applicant Dharma Gopal Chaturvedi on behalf of the Company under its instructions. Material portion of para 1 of the letter runs as follows:

That you were appointed as contractor by my client vide order No. DDE/948/78/3136 dated 3rd June, 1978 for the following work:

Unloading from wagons after getting them properly placed at Jwalapur Rail Head and loading in trucks/trailors, carrying them to site as specified near Chilla Power House by the Engineer Incharge, unloading at site and stacking in position properly as per directions of Engineer Incharge. The R Rs of the material duly endorsed shall be given to you by our representative in advance of the arrival of wagons. Any demurrage or wharfage will be paid to the Railways as per their rules, shall have to be paid by you and if paid by us shall be recovered from you. Any damage done to the material/equipment during the activities allotted to you, the rectification charges shall be debitable to you. After stacking the material finally at Chilla site you have to obtain a receipt from our representative for the material together with the condition of the same. Any damage done to the material/equipment due to your activities shall be recorded and the rectification charges as decided by the Engineer Incharge shall be final.

(i) For material/equipment weighing more than 2 M/T and upto 10 M/T at the rate of Rs. 110/- per M/T (Rupees one hundred and ten only) per M/T.

(ii) For the material/equipment upto 2 M/T at the rate of Rs. 70/- per M/T. (Rupees Seventy only) per M/T.

(iii) The payment shall be made to you within 15 days of your presenting the bill.

9. A further grievance is expressed that to make a wrongful gain and to cause a wrongful loss to the Company, opposite party concerned has withheld delivery. There is also a demand for the delivery of the Hoist from the opposite party.

10. I have referred to all the documents purposely as they will be relevant for a

clear picture. These documents if considered together would reveal that actually there is a civil dispute between the parties regarding the terms of the contract and contractual obligations. True that one of the letters, namely, D-3 aforesaid recites that extra charges for unloading and arranging for Chaukidars may be paid but that is also qualified by the further recital in the letter that a bill for reasonable amount may be sent. There is thus no unqualified acceptance of liability and as per the stand taken on behalf of the Company that quantum has to be settled either mutually or by a proper legal forum. It is noteworthy that the general terms and conditions of business Annexure D2 which though disputed by the applicants, is alleged by opposite party No. 1 to be a part of the contract itself. Vide paragraph 11 recites for arbitration by the sole Arbitrator specified therein provided for a reference jointly by the parties or by one of the parties alone. True that existence of a civil remedy in itself may not necessarily bar the jurisdiction of the Criminal courts if independently of the civil contractual liability prima facie commission of certain offences by any party are disclosed or borne out.

11. Finding the averments in the complaint to be vague and of general and sweeping nature I sought clarification in course of arguments regarding the offence of cheating as to when, how, in what manner and by which of the appplicants this offence was committed. It is noteworthy that giving a colour of conspiracy all the applicants including the lawyer, applicant No. 5 have been branded as accused persons for all the offences. It was conceded during arguments that while the opposite party No. I may have laboured under a bonafide belief that the lawyer is also guilty of all the offences as to implead him as such, the legal position is not that, and a lawyer who gives any notice under the instruction of his client and later declines to withdraw any of the averments in the notice cannot be branded as an accused for the various offences which any or more of his clients may have committed. The stand of the counsel for the opposite party is that cheating was committed on 29th of May, 1978 at the inception itself when R.C. Sethi approved the quotation of opposite party No. 1. This argument was based by Sri Kesho Sahai Advocate on submission that Sri Sethi at the inception deliberately mauverred a vagueness in the contract with the ulterior object of not paying any loading, unloading, stacking and watch and ward etc. charges, & at the same time giving false assurances. It is noteworthy that it was opposite party No. 1 who gave the tender R.C. Sethi simply approved it. If the quotations were in some way vague or there was no express stipulation of rates for loading and unloading, stacking, watch and ward charges etc. the opposite party No. 1 equally contributed to the vagueness. True that according to the stand of ,the opposite party Annexure D2 also form part of the contract and in that it was expressly stated that if that work has also to be done by the opposite party it will be separately charged for but even in that printed paper rates were not stipulated and would be a matter of mutual negotiations or fixation by a competent authority. It also cannot be urged that from the inception there was an intention to cheat and not to pay a single shell. In fact in one of the

letters to which I have referred an offer was made for payment of reasonable amount; which had to be mutually agreed. In the circumstances it cannot be said that from inception the intention was to cheat. It is noteworthy that according to the submissions of the opposite party some of his bills were also cleared and then payment was withheld. That would rather indicate a contractual dispute and not an intention from the very inception to cheat. In the case of Hari Prasad Chamaria Vs. Bishun Kumar Surekha and Others, stress was laid upon dishonest and fraudulent intention at the inception. In that case Hari Prasad the applicant was to be shown as the proprietor of the transport business and he advanced some money and while the Respondent carried transport business he was not shown as proprietor. On remonstration by the Respondent a commitment was made that on getting the transport corporation registered, Appellant''s name would be shown as proprietor and a further commitment to settle the business accounts was made but it was not done. It was held that same may create a civil liability but mere breach of contract could not give rise to criminal prosecution. It was also held that there is nothing to show that the Respondent had dishonest and fraudulent intention when the Appellant parted with money. This pronouncement may be on all force because the matter related to proceedings u/s 561A of the Code corresponding to Section 482 of the new Code of Criminal Procedure. It was held that prima facie criminal liability cannot be fastened and the order of the Patna High Court quashing the criminal proceedings was upheld. It is also noteworthy that it was R.C. Sethi who negotiated and approved the quotations. I am unable to appreciate how others came into picture at all at that time.

12. It is alleged on behalf of the company that the Company as such cannot be prosecuted for an offence punishable with substantive sentence because such sentence cannot be awarded. The learned Counsel for the Respondents relied upon the case of State of Maharashtra Vs. Syndicate Transport Co. (P) Ltd. and Others, . It is urged that while holding that a corporation body or company will not be indictable for offences which can be committed only by a human individual or for offences which must be punished with imprisonment; a company can nevertheless be prosecuted for criminal acts or omissions of its Directors, authorised agents or servants etc. There is direct authority of this Court in Criminal Misc. Case No. 1721 of 1980, connected with Criminal Misc. Case No. 1723 of 1980, M/s. Modi Industries Ltd. Modinagar, through Sri K.N. Modi v. B.C. Goel, Officer Central Circle III Meerut See 1981 AWC 350 . It is a Division Bench case of this Court. It runs counter to these submissions. The aforesaid cases were decided on 25th February 1981 holding that the prosecution against the applicant''s company cannot be validly proceeded with. It was also observed in that case that the Full Bench decision of Delhi High Court in Municipal Corporation of Delhi Vs. J.B. Bottling Company Private Limited, runs counter to the view of the Supreme Court expressed in the case of State of Maharashtra Vs. Jugamander Lal, . In that case the expression shall be punishable with imprisonment and also with fine'' was interpreted to mean that the court is

bound to sentence consisting both of imprisonment and fine. When that is the position and in view of the Division Bench case of this Court substantive sentence cannot be awarded to the Company, the Company could not be prosecuted for offences like Section 420 IPC, 468 Code of Criminal Procedure and the like nature punishable with sentence as well.

13. As there is another charge of forgery I posed a question as to when, by whom, at what place the alleged forgery has been committed. It is noteworthy that the complaint as well as the statements u/s 200 Code of Criminal Procedure and 202 Code of Criminal Procedure are deliberately vague on the point. Any general or sweeping allegations would not prima facie disclose any offence. The necessary ingredients of the offence as laid down in relevant sections of the IPC are to be disclosed, clearly alleging the omission and commission etc. by specific individual. It is not so in the present case. Forgery is defined u/s 463 IPC. The second and third clauses of Section 464 are not relied upon. First clause was relied upon. The ingredients of first clause consist of (1) dishonestly or fraudulently making, signing or execution of a document or part thereto (2) with the intention to cause it to be believed that it was so signed etc. by the authority of a person by whom or by whose authority he knows that it was not made (3) or at a time at which he knows it was not made, signed, sealed or executed. All these ingredients are to be disclosed from a factual angle in the complaint or the statements under Sections 200 or 202 Code of Criminal Procedure which is not the case. Even that document is not filed. The only part quoted in the notice given by applicant No. 5, namely, counsel contained in Annexure D10 is relied upon. In paragraph 1 of the notice an order dated 3rd June, 1978 is quoted. Annexure D10 does not disclose who was the signatory of that order relied upon or in whose writing it purports to be. There is nothing to show who prepared the document, portion of which was relied upon, and when and in what manner. It is urged that the contention of the opposite party No. 1 is that any such order did not exist when the contract was signed or before the work was started, and the opposite party came to know of it only when this notice was given. It is not stated when the work was started by the opposite party. The work may have started before 3rd of June, 1978 and then this order may have come into existence thereafter. It is noteworthy that a number of persons have been arrayed as accused for the forgery also and a prima facie case against them is not disclosed. At worst for the complainant one of them may have prepared this document but there is nothing to show that the remaining others were either a party to it or were aware of it.

14. It was argued that in any case a prima facie case u/s 471 IPC is disclosed. Section 471 IPC lays down that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document shall be punished as provided. It is the counsel who has quoted the part of the document. There is nothing to prima facie disclose that he knew or he had reason to believe that it is forged document. As to who produced any such document if at all before the counsel is again unknown. It is also unknown as to

whether that individual or individuals knew or had reason to believe that this order was a forged one. Besides the first thing to be established is that the document is forged and the complaint should have disclosed the complete particulars of the forgery.

15. As regards conspiracy also the necessary particulars as to in what manner, when, where and by which persons a conspiracy was hatched are lacking. The complaint and the statements under Sections 200 and 202 Code of Criminal Procedure do not require to disclose such particulars. Eevn from the documents that were filed before the Magistrate any such particulars cannot be ascertained for a prima facie case.

16. In fact taking the entire circumstances into consideration it is self evident that prosecution has been launched with an ulterior ends to harass the applicants and to thereby coerce them to own any contractual liability and get coerced into making payment. This will be an abuse of the process of law.

17. It was next urged that the court of revision has upheld the order of the Magistrate summoning the applicants and consequently powers u/s 482 Code of Criminal Procedure cannot be exercised. Reliance was placed upon the case of Madhu Limaye Vs. The State of Maharashtra, . Following principles have been laid down in that case:

1. That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;

2. That it should be exercised very sparingly to prevent abuse of process of any court or otherwise to secure the ends of justice.

3. That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

18. None of the principles laid down in that ruling would stand as bar to the exercise of the inherent powers. There is no express bar of law engrafted in any provision of the Code so the third principle Is not attracted. The first principle is again inapplicable inasmuch as a revision had already been preferred and rejected and the applicants had no other remedy to seek redress of their grievance except a resort to Section 482 Code of Criminal Procedure.

19. So far as second principle is concerned, it is always to be borne in mind and it cannot be disputed that powers u/s 482 are to be sparingly exercised and are to be exercised to prevent abuse of any process of any court. I have already referred to the case of Hari Prasad (supra). In that case it was held that when criminal case is not made out existence of any civil liability would in itself not be sufficient for launching a prosecution fastening any criminal liability. Inherent powers were exercised in that case. In case of Nirmaljit Singh Hoon v. State of West Bengal 1973 SCC 753 stress was laid upon the expression ''sufficiency of ground contained in Section 203 Code of Criminal Procedure and obviously one has to look into the facts of the individual cases on that aspects.

20. In the case of Vadilal Panchal Vs. Dattatraya Dulaji Ghadigaonker and Another, it has been laid down that opinion of the Magistrate regarding sufficiency must be based on the statement of the complainant and his witnesses.

21. In the case of State of Karnataka Vs. L. Muniswamy and Others, it has been held that the High Court in the exercise of the wholesome powers u/s 482 Code of Criminal Procedure is entitled to quash a proceeding if it comes to the conclusion that continuing it would be an abuse of the process of the court. It has also been held that the court is entitled to determine itself whether the order of the subordinate court is justified by the facts of the case. Learned Counsel for the opposite party relied upon the case of D.N. Bhattacharjee and Others Vs. State of West Bengal and Another, . In fact in that case also stress was laid down upon Section 203 Code of Criminal Procedure also laying down what can be the approaches. The very pronouncement laid down that where the allegations are fantastic, the Magistrate will enter into full scrutiny. In fact as disclosed earlier the complaint is purposely vague and when the recitals in the complaint and in the statements u/s 200 and 202 Code of Criminal Procedure are so lacking In particulars as to who committed the cheating and when and who forged the document and in what manner and when and which of the persons used that document, and from other documents that were filed before the Magistrate it Is further found that actually a contractual dispute regarding terms has developed. Annexure D1 which was approved being not very eloquent or clear in itself about the disputed charges, it will be sheer abuse of process of law to let the prosecution continue to the harassment of the applicants.

22. In the result the application is allowed and the criminal proceedings in Criminal case No. 484 of 1980, Dharam Vir Bedi v. Central India Machinery Co. Ltd. Bharatpur (Rajasthan) and Ors. Criminal case No. 484 of 1980pending in the court of the Chief Judicial Magistrate, Dehradun, and the order summoning the applicants and the order of the Sessions Judge in Criminal Revision No. 61 of 1981 rejecting it are all quashed.

