
(2004) 10 AHC CK 0075

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 15937 of 1992

Chaman Lal

APPELLANT

Vs

State of Uttar Pradesh and Shushil Kumar Jain

RESPONDENT

Date of Decision : 12-10-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 120B, 403, 406, 420, 506

Citation : (2004) 10 AHC CK 0075

Hon'ble Judges : Amar Saran, J

Bench : Single Bench

Advocate : V.M. Zaidi, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Amar Saran, J.—Heard learned counsel for the applicant and the learned AGA.

2. This application u/s 482 Cr.P.C. has been filed for quashing criminal proceedings arising out of Complaint Case No. 1976/9 of 1991 under Sections 420 and 506 IPC pending in the court of CJM, Muzaffarnagar.

3. The allegations in the case were that the applicant had made an agreement with the complainant to supply him stones, which he had no intention to pay for and, consequently, the applicant had given them a cheque of Rs. 50,000/- while only a balance of Rs. 300/- was there in his account, which showed the applicant's dishonest intention. The said cheque had bounced and, thus, the applicant was said to have committed offence u/s 138 Negotiable Instruments Act and also under Sections 420 and 506 IPC. The complaint was filed on 20.6.1991. The CJM, Muzaffarnagar passed an order on 30.7.1991, summoning the applicant under Sections 420, 506 IPC and 138 Negotiable Instruments Act (for short, NI Act). This order was challenged in a criminal revision No. 115 of 1992, in which an order was passed by the learned III Addl. Sessions Judge, Muzaffarnagar on 20.12.1992, holding that no offence u/s 138, NI Act, was

disclosed. However, the applicant was to stand trial under Sections 420 and 506 IPC. Against the aforesaid orders, the applicant had preferred the present application u/s 482 Cr.P.C. in which the proceedings were stayed by this court on 8.12.1992.

4. The grounds for challenging the trial under Sections 420 and 506 IPC are that essentially it was only a civil dispute between the parties and as a matter of the fact the applicant had stopped payment because of failure of opposite party No. 2 to supply him with the stones which had caused economic loss to him. In my view, such a claim of the applicant, that he had stopped the payment because of non-supply of stones and other objections to this effect, are questions of fact which can only be decided by the trial court and it cannot be considered in an application u/s 482 Cr.P.C. in which jurisdiction this court is not required to look to the possible defence that could be taken up by an accused. It was further contended by the learned counsel for the applicant that in any case the dispute between the parties was of civil nature for which no mens rea could have been assigned to him. In my view, the applicant has given a cheque of Rs. 50,000/- when only Rs 300/- was present in his bank account, and the cheque bounced, as it was likely to do so. Therefore, it is quite apparent that from the very beginning the applicant had the intention of cheating the complainant, at least, this conclusion can prima facie be drawn on the facts of the case, and there is no law stating that only because a civil suit can be filed requiring a party to make payment, no criminal case is maintainable even if the goods or other material are taken dishonestly by an accused who does not have the intention to make the payments. Learned counsel has relied on two decisions of the Hon"ble Supreme Court in this connection. The first case is Ajay Mitra Vs. State of M.P. and Others, The facts of this case were that M/s. Cadbury Schweppes Beverages Company had awarded certain bottling contract to the complainant, Sanjiva Bottling company. It had also required the bottling company to indulge in certain investments including making improvements in their manufacturing plant. However, subsequently the agreement had been terminated. The appellants Coca Cola (India) and Atlantic Industries, in whose favour agreement was later on executed, approached the Hon"ble Supreme Court. So far as the appellants were concerned, they had made representation to the complainant for incurring expenditure for improving the bottling plant and they were not even in the picture at this stage. Hence the apex Court that it could not be said that as a result of misrepresentation practiced by the appellants, the complainant had been forced to do an activity which had caused wrongful loss to him. Certainly, there is no proposition in this case that if the complainant can seek remedy against an accused in a civil court, he is barred from filing a criminal complaint even if the facts prima facie disclose a criminal offence. Likewise, in the case of U. Dhar and Another Vs. The State of Jharkhand and Another, , the accused were facing trial under Sections 403, 406, 420 and 120B of IPC. Essentially in this case the criminal complaint had been quashed on the ground that the allegations in the complaint were that certain money had been paid by principal employer to

the contractor, The sub-contractor, complainant, claimed that the said money had been misappropriated by a contractor. The court held that the contract of the principal employer was completely separate from the contract between the sub-contractor and the contractor, and the money paid to the principal employer to the contractor could never be considered to be the money of Immovable property of the complainant's sub-contractor and, thus, the contractor could not be said to have misappropriated any money. It had described this dispute for recovery of money to be a purely civil dispute.

5. In the case of Trisuns Chemical Industry Vs. Rajesh Agarwal and others, , where the complainant had supplied toasted Soybean extractions for a price higher than the market price, but the goods actually supplied by the accused were of inferior and substandard quality which resulted in complainant's suffering a loss of Rs. 17,00,000/-, the apex court set aside the order of the High Court quashing the proceedings of the complaint case, holding that "merely because an act has a civil profile is not sufficient to denude it of its criminal outfit." The provisions incorporated in the agreement for referring the dispute to the arbitration is not an effective substitute for a criminal prosecution when the disputed act is an offence. Similarly, in M/s. Medchl Chemicals and Pharma P. Ltd. Vs. M/s. Biological E. Ltd. and Others, , where the accused had promised to maintain continuous supply of the raw material for manufacturing a certain chemical, but the accused had failed to stand by his agreement, resulting in loss of a substantial amount of money to the complainant-manufacturer, the apex court held that there was a specific case of misrepresentation on the part of the accused persons when they had knowledge about the true facts that the complainant would suffer great loss if the supply were not effected, and on this ground the order quashing the criminal complaint by the High Court was set aside, holding that in such a situation both" criminal offence as well as civil action for breach of contract would lie.

6. The next contention raised by the learned counsel for the complaint was that as the original court had not allowed the proceedings u/s 138 of the NI Act to proceed, which was the main offence, the criminal case under Sections 420 and 506 IPC should also not have been allowed to proceed. The proceedings u/s 138, NI Act, had not been allowed to proceed by the revisional court on account of the fact that the notice had not been given within 15 days of the return of the cheque by the bank and, in view of the non-fulfillment of that condition, the trial of the applicant u/s 138 of the NI Act had not been allowed to proceed. Thus, here, no ground for quashing the proceedings under Sections 420 and 506 IPC has been made out as the revisional court had rightly observed that if the accused issued a cheque of Rs. 50,000/- while he had only a balance of Rs. 300/- in his bank account, it could safely be assumed that he had the intention of cheating the complainant from the very beginning, as prima facie in such circumstances he would have no intention to make the payment of the cheque. Of course, it will be open to the accused to raise any defence that may appeal to him at the trial of the case for arguing that indeed he had the intention to pay

and was unable to pay owing to certain eventualities and conditions. As the eventualities and conditions cannot be examined by this court in proceedings u/s 482 Cr.P.C., the case of G. Sagar Suri and Another Vs. State of U.P. and Others, is also clearly distinguishable on facts. It was a case in which a complaint under Sections 406 IPC and 138, NI Act, was filed. At the same time another FIR was filed under Sections 406 and 420 IPC. The appellants before the Hon'ble Supreme Court were the contractors of the appellant-company. It was held by the apex court that the transaction in question was a commercial one, for which an action u/s 138 N(sic) Act has already been filed and thereafter lodging of an FIR under Sections 406 and 420 was an abuse of the process of the court as there was nothing to show "as to what were those misrepresentations and how the complainant-company was duped."

7. Certainly this case is no authority for the proposition that if a complaint is lodged under Sections 406 and 420 IPC, and for some technical reasons, the complaint u/s 138 NI Act cannot proceed, the criminal case under sections 406 and 420 IPC or other provisions must also automatically be quashed even if there are specific allegations of misrepresentations and a party suffering a wrongful loss by altering his position to his detriment and taking steps in consequence of the misrepresentations practised by the accused. It is of no consequence that the complainant has not put in appearance in the High Court or filed any counter affidavit in this case, because it is for the applicant to first show that the criminal case must be quashed. On a bare perusal of the complaint, summoning order and the revisional court's order, refusing to quash the criminal proceedings against the applicants under Sections 406 and 506 IPC, I am satisfied that no ground is made out for quashing the criminal proceedings against the applicant.

8. Accordingly, this application u/s 482 Cr.P.C. has no force and is dismissed. The stay order granted on 8.10.1992 by this court is vacated. The trial court is directed to conclude the trial of the case within 4 months, if possible; as a great delay has already taken place due to proceedings of this case being stayed by this court. If the applicant has not obtained bail as yet, and he appears within 3 weeks and applies for bail, the same shall be disposed of expeditiously by the courts below.