(2009) 12 AHC CK 0022

In the Allahabad High Court

Case No : Criminal M. Case No. 2241 of 2009

Daminder Singh Batra APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 02-12-2009

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 161, 482, 483
Penal Code, 1860 (IPC) — Section 120B, 415, 420, 471

Citation : (2010) 2 ACR 1810

Hon'ble Judges : Kant Tripathi, J

Bench : Single Bench

Advocate : H.G.S. Parihar and Akhilesh Kalra, for the Appellant; G.A. and Bireshwar Nath, for the Respondent

Judgement

Shri Kant Tripathi, J.—By the instant petition u/s 482, Code of Criminal Procedure the Petitioner Daminder Singh Batra has prayed for quashing the proceedings of the Criminal Case No. 13 of 2008, State v. Daminder Singh Batra and ors. u/s 120B read with Sections 420 and 471, I.P.C. arising out of R.C. BD 1/2007/ E/0004 of C.B.I./B.S. and F.C./New Delhi, pending in the Court of Special Judicial Magistrate (C.B.I.), Lucknow.

2. Counter - affidavit and rejoinder-affidavits have been exchanged.

3. I have heard Mr. R.K. Anand, the learned senior Counsel assisted by Sri. Akhilesh Kalra for the Petitioner, Sri. Vireshwar Nath, the learned Counsel for the C.B.I. and Sri. Rajendra Kumar Dwivedi, the learned A.G.A. on behalf of the State of U.P. and perused the record.

4. The first submission of Mr. R.K. Anand, the learned senior Counsel appearing for the Petitioner was that the charge-sheet, statements of the witnesses recorded, and documents collected, during the investigation do not make out any offence against the Petitioner. The whole transaction of lease financing was of a civil nature and there was no criminal intent. The charge-sheet filed by the C.B.I.

had not been annexed with the statements of the witnesses recorded u/s 161, Code of Criminal Procedure

5. The learned senior Counsel further submitted that there is no evidence to show that the Petitioner and other accused had any dishonest or fraudulent intention at the inception of the transaction. If, due to any changed situation, the payment could not be made, the transaction will not be of criminal nature. It was also submitted that a part payment has been made and as such no criminal charge is made out. In this connection Mr. Anand placed reliance on G. Sagar Suri and Another Vs. State of U.P. and Others, In that case, the Apex Court held that if a matter, which is essentially of a civil nature, has been given a cloak of criminal nature, the criminal proceedings should not be allowed to continue.

6. The learned senior Counsel for the Petitioner further placed reliance on V.Y. Jose and Another Vs. State of Gujarat and Another, in which the Apex Court has held that for the purpose of constituting an offence of cheating the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise, no offence u/s 420, I.P.C. can be said to have been made out. In paras 21 and 28 the Apex Court further observed:

21. There exists a distinction between pure contractual dispute of a civil nature and an offence of cheating. Although breach of contract per se would not come in the way of initiation of a criminal proceeding, there cannot be any doubt whatsoever that in the absence of the averments made in the complaint petition wherefrom the ingredients of an offence can be found out, the Court should not hesitate to exercise its jurisdiction u/s 482 of the Code of Criminal Procedure.

28. A matter which essentially involves dispute of a civil nature should not be allowed to be the subject-matter of a criminal offence, the latter being not a short-cut of executing a decree which is non-existent. The superior Courts, with a view to maintain purity in the administration of justice, should not allow abuse of the process of Court. It has a duty in terms of Section 483 of the Code of Criminal Procedure to supervise the functionings of the trial Courts.

7. The learned senior Counsel for the Petitioner further submitted that the aforesaid principles have been reiterated in S.V.L. Murthy Vs. State Rep. by CBI, Hyderabad, In that case the Apex Court has held that one of the ingredients of cheating, as defined in Section 415, I.P.C. is existence of an intention to cheat at the time of making initial promise or existence thereof from the very beginning of formation of contract. Mr. Anand, the learned senior Counsel for the Petitioner further relied on Alpic Finance Ltd. Vs. P. Sadasivan and Another, In that case the Apex Court has held that when somebody suffers injury to his person, property or reputation, he has remedies both in civil and criminal law. The injury alleged may form the basis of civil claim and may also constitute the ingredients of some

crime punishable under criminal law. It was further held that in order to show existence of a criminal charge it must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence.

8. In regard to the inherent power of the High Court u/s 482, Code of Criminal Procedure Mr. Anand submitted that despite that the Petitioner has a remedy to claim his discharge in the trial Court, his petition u/s 482, Code of Criminal Procedure is maintainable in the High Court. In this connection Mr. Anand placed reliance on Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, In that case the Apex Court has held as follows:

No doubt the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court u/s 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial.

9. Mr. Vireshwar Nath, the learned Counsel for C.B.I., on the other hand, submitted that the copies of the charge-sheet as well as statements of witnesses recorded u/s 161, Code of Criminal Procedure are available on the record of this case, which prima facie make out a case u/s 120B read with Sections 420 and 471, I.P.C. against the Petitioner. Any part payment has no legal consequence in view of the fact that the lease financing transaction was based on fraudulent and dishonest intention of the Petitioner and other accused at the beginning of the transaction. Making of forged documents, and transfer of money from one company to another clearly indicate that the intention was fraudulent and dishonest from the very beginning specially when no work was done on the spot.

10. In order to appreciate the submissions of the learned Counsel for the parties, it is necessary and expedient to give due consideration to the facts of the case, which may be stated as under:

(a) In Company Petition No. 44 of 1998, in the matter of M/s. Rajinder Steels Ltd., Hon''ble Sunil Ambwani, J., noticed certain financial irregularities committed by the Petitioner, who was Managing Director of M/s. Rajinder Steels Ltd. and directed the C.B.I. to investigate the matter. Accordingly the C.B.I. registered the case for a preliminary enquiry and after the preliminary enquiry registered as many as ten cases for investigation and on completion of the investigation submitted four charge-sheet in Lucknow Court, four charge-sheet in Mumbai Court and one charge-sheet in Delhi Court against the Petitioner and others. The instant case relates to the Case Crime No. RC, BD 1/2007/E/2004.

(b) The Petitioner D.S. Batra formed the company M/s. Rajinder Tubes Private Ltd. and got the same incorporated under the Companies Act on 11.9.1984. The name of the company was changed to M/s. Rajindra Steels Ltd. on 6.6.1992. The company was engaged in manufacturing steel pipes and tubes, CR products and CR coils at its Kanpur plant and Petitioner was the Managing Director of the company.

(c) The Petitioner D.S. Batra had also floated a number of companies by making his employees directors of such formed companies while retaining the power of effective control on him.

(d) The instant case relates to the lease finances given by M/s. Apeejay Finance Group Ltd. A lease finance of Rs. 74,79,312.50 was provided by M/s. Apeejay Finance Group Ltd. to M/s. Rajinder Steels Ltd. on 11.9.1995 for leasing the slitting line equipment. The Petitioner D.S. Batra and co-accused Ram Krishan Agrahari, had entered into the lease agreement on behalf of M/s. Rajinder Steels Ltd. It was agreed by them to lease out one slitting line equipment to M/s. Rajinder Steels Ltd. on certain terms and conditions mentioned therein. The Petitioner D.S. Batra had also executed a personal guarantee for the aforesaid lease agreement.

(e) In pursuance of the criminal conspiracy, co-accused Ram Krishan Agrahari had induced the company M/s. Apeejay Finance Group Ltd. to place an order on M/s. Industrial Enterprises which was also under the control of the Petitioner D.S. Batra vide his letter No. R.S.L./Lease 037/C, dated 30.9.1995. Co-accused Ram Krishan Agrahari had also given a false certificate vide letter dated 30.9.1995 that the equipment slitting line supplied by M/s. Industrial Enterprises was installed and put to use on 21.9.1995 in the factory premises of M/s. Rajinder Steels Ltd. at Kanpur.

(f) Co-accused-Ram Krishan Agrahari had vide letter dated 30.9.1995 dishonestly provided forged invoice, forged delivery challan, false installation and put to use certificate and stamped receipt to M/s. Appeejay Finance Group Ltd. as proof of purchase of the machinery slitting line. Co-accused-Ram Krishan Agrahari had also provided the fire insurance policy of aforesaid equipment alongwith other documents. The aforesaid invoice and challan were alleged to have been issued by M/s. Industrial Enterprises.

(g) In fact no such machinery was supplied by M/s. Industrial Enterprises to M/s. Rajinder Steels Ltd. Fake invoice No. IE/95/96 /822/ dated 11.7.1995 and fake challan No. 116 dated 14.9.1995 were got prepared by the Petitioner D.S. Batra and was submitted before M/s. Apeejay Finance Group Ltd. by co-accused-Ram Krishan Agrahari as a proof of supply of the aforesaid machinery, Sri. K.R. Mohanan, an employee of Petitioner had signed the challan as authorised signatory, whereas Sri. Umesh D. Shirke, also an employee of the Petitioner had signed under token of "checked by". It could not be ascertained as to who had signed and prepared the aforesaid invoice. However, it was used by co-accused-Ram Krishan Agrahari as a proof of alleged supply of slitting line by M/s. Industrial Enterprises to M/s. Rajinder Steels Ltd.

(h) M/s. Rajinder Steels Ltd. did not make the payment of the lease rental as provided in the said agreement inspite of several demand made by the company and they initiated a legal proceeding before this Court (C.A. No. 29 of 1999, Apeejay Finance Group Ltd. v. Official Liquidator, U.P. and Ors.).

(i) M/s. Industrial Enterprises was not a manufacturing unit but a work shop for repair work of M/s. Rajinder Steels Ltd. and M/s. Rajinder Pipes Ltd. at Kanpur. Sri. Mahesh Pandey (since expired) and Smt. Kamla Pandey (since expired) were shown as two partners of the aforesaid firm, but the Petitioner D.S. Batra had control over the activities of the aforesaid firm.

(j) On the basis of false documents/informations, the Petitioner and other accused induced M/s. Apeejay Finance Group Ltd. to issue draft No. 185346 dated 9.9.1995 favouring Industrial Enterprises for an amount of Rs. 74,79,312.50 drawn on Allahabad Bank, Kanpur. The money payable by the said demand draft was credited on 14.9.1995 in the account No. 1067 of the Industrial Enterprises maintained at Federal Bank, Kanpur Branch. Immediately, after credit of the said amount in the account of the Industrial Enterprises, the Petitioner and other accused persons dishonestly got issued a demand draft for Rs. 74,75,000 in favour of Parikshit Trading Pvt. Ltd. payable at Mumbai, which was also controlled by the Petitioner D.S. Batra. Thus, the fund was siphoned off by the Petitioner D.S. Batra from the account of the Industrial Enterprises for his other purposes.

(k) The aforesaid fraudulent acts of the Petitioner D.S. Batra and co-accused R.K. Agrahari and other accused caused wrongful loss to the above mentioned financial institutions and corres-ponding wrongful pecuniary gain for themselves. The funds were diverted and utilised by them for illegal gains.

11. It is well-settled that the inherent power should be exercised sparingly, carefully and with caution only when the exercise is necessary, firstly, to give effect to an order under the Code, secondly, to prevent abuse of the process of the Court and thirdly, to otherwise secure the ends of justice. It is also well-settled that the inherent power u/s 482, Code of Criminal Procedure has no limits, but it is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the Courts exist and should not be exercised to stifle a legitimate prosecution. It is also well-settled that the High Court, in exercise of the inherent power, should normally refrain from giving a prima facie decision in a case where the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without proper trial. Ultimately, the acceptability of the materials to fasten culpability on the accused persons is a matter of trial. In exercising jurisdiction u/s 482, Code of Criminal Procedure it is not open to the High Court to embark upon an enquiry as to the reliability or genuineness of the allegations made in the F.I.R. or the complaint and the evidence collected during the investigation. If the facts and materials collected during the investigation are taken at their face value and accepted in their entirety do not prima facie constitute any offence, then and then alone, the proceedings of the criminal case should be quashed so that abuse of the process of the Court may be prevented and the ends of justice may be secured.

12. The facts of the case as disclosed by the charge-sheet and other materials have made out a prima facie case against the Petitioner u/s 120B, I.P.C. read with Sections 420 and 471, I.P.C. The summoning order. which is based on the charge-sheet and other materials, cannot be said to be perverse or against the evidence collected during the investigation. This Court cannot sit over the finding of the learned Magistrate as a Court of appeal while exercising the inherent power u/s 482, Code of Criminal Procedure So far as the contention that the facts disclosed in the F.I.R. and the statements of witnesses merely make out a case of a civil nature is concerned, it has also no substance in view of the fact that the allegations of making forged documents to justify use of the money and purchase of machinery slitting line have been made. The way, the money has been siphoned off prima facie does not support the contention that the Petitioner''s intention was not dishonest and fraudulent at the inception of the transaction. The submission of the learned Counsel for the Petitioner that no offence is made out and the case is of a civil nature, has no substance.

13. The second submission of the learned senior Counsel for the Petitioner was that the learned Magistrate has not passed the summoning order with reasons and as such the same is a non-speaking order, which is liable to be quashed on this ground alone. The learned Counsel for the Petitioner placed reliance on the following observations of the Apex Court in the case of Pepsi Food Ltd. (supra):

28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

14. In the case of Kewal Krishan Vs. Suraj Bhan and Another, the Apex Court has held that at the stage of passing a summoning order, the Magistrate is not to weigh the evidence meticulously as if he were the trial Court. The standard to be adopted by the Magistrate in scrutinising the evidence is not the same as the one which is to be kept in view at the stage of framing charges. If there is prima facie evidence in support of the allegations in the complaint, it will be a sufficient ground for issuing process to the accused.

15. In the case of Kanti Bhadra Shah and Another Vs. The State of West Bengal, the Apex Court opined that if the trial Court decides to frame a charge there is

no legal requirement that he should pass an order specifying the reasons as to why he opts to do so.... If there is no legal requirement that the trial Court should write an order showing the reasons for framing a charge why should the already burdened criminal Courts be further burdened with such an extra work. The time has reached to adopt all possible measures to expedite the Court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail paced progress of proceedings in trial Courts would further be slowed down.... But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial.

16. The principles of law propounded in the case of Kanti Bhadra Shah (supra) have been reiterated by the Apex Court in the case of U.P. Pollution Control Board v. Mohan Meakins Ltd. and ors. AIR 2000 SC 1456 : 2000 (1) ACR 836 (SC).

17. In view of the aforesaid decisions of the Apex Court, it is no doubt a duty of the Magistrate to peruse the police report and relevant materials placed in support of the police report and to see whether or not there is sufficient ground to proceed with the case and to summon the accused. If the Magistrate comes to the conclusion that a prima facie case is made out and sufficient materials are available against the accused he would be justified in issuing process to the accused. At the stage of taking cognizance, what is required from the Magistrate is to apply his mind to the facts of the case including the evidence collected during the investigation and to see whether or not a prima facie case is made out against the accused. If the answer is in affirmative, issue of process to the accused cannot be assailed on the ground that the Magistrate while taking cognizance of the offence and issuing process to the accused, has not passed a reasoned order (speaking order). The learned Magistrate was not, therefore, legally required to record a detailed reasoned order and evaluate evidence of the case while taking cognizance of the offences and issuing process to the Petitioner and other accused. The second submission of the learned Counsel for the Petitioner has also no substance.

18. It appears that the petition filed by the co-accused Ram Krishna Agrahari has already been dismissed by Hon''ble Ved Pal, J., vide the order dated 8.4.2009 in Criminal Misc. Case (under Section 482, Code of Criminal Procedure) No. 1089 of 2009 Ram Krishna Agrahari v. Central Bureau of Investigation.

19. For the reasons disclosed above, the petition u/s 482, Code of Criminal Procedure has no substance and it is accordingly dismissed.