

(2017) 03 TP CK 0004
In the Tripura High Court
Case No : 51 of 2013

Global Educational Net, & Ors.

APPELLANT

Vs

The State of Tripura, Represented by the Public Prosecutor,
High Court of Tripura, Agartala, & Ors.

RESPONDENT

Date of Decision : 22-03-2017

Acts Referred:

Constitution of India, Article 226 - Power of High Courts to Issue certain writs
Code of Criminal Procedure, 1973, Section 482 - Saving of inherent powers of High Court
Indian Penal Code, 1860, Section 120B, Section 420, Section 468, Section 471, Section 467, Section 409, Section 406 - Punishment of criminal conspiracy - Cheating and dishonestly inducing delivery of property - Forgery for purpose of cheating - Using as genuine a forged document - Forgery of valuable security, will, etc - Criminal breach of trust by public servant, or by banker, merchant or agent - Punishment for Criminal breach of trust

Citation : (2017) 03 TP CK 0004

Hon'ble Judges : T. Vaiphei

Bench : Single Bench

Advocate : N Ahmed, S S Kumar, S V Kumar, B C Das, A Ghosh

Final Decision : Dismissed

Judgement

1. To quash or not quash a particular FIR is once again confronting this Court in this criminal petition filed by the petitioners U/s 482 CrPC.

2. To appreciate the controversy, I may straightaway proceed to bring out the salient features of the case as pleaded by the petitioners. The petitioner No.1 is a society registered under the Travancore Cochin, Literary, Scientific and Charitable Societies Registration Act, 1955 whereas the petitioner Nos.2-4 are its office bearers. The Amtali Police Station registered FIR No.221/2013 against the petitioner for the offences punishable U/s 467/468/471/420/406/409/120-B IPC.

The case of the prosecution is that in the year 2004, the petitioners had approached the State government offering to establish a Medical College and Hospital in Tripura by showing their experience in the field of medical education. On granting permission an agreement dated 7-10-2004 was signed between the State Government and the petitioners for establishing a medical college and hospital on public private partnership model. The State Government accordingly granted a lease of 49.86 acres of land at Agartala for a period of 99 years for setting up the medical college and hospital. The Government also promised to grant necessary certificate for establishing the medical college and tax exemption in addition to granting a soft loan to the petitioners amounting to Rs.25 crores repayable after 15 years in equal installments with simple interest with matching contribution by the petitioner-society. The petitioners, in turn, agreed to upgrade the existing hospital building on the leased site and convert it into a full-fledged hospital in accordance with the norms prescribed by the Medical Council of India.

3. According to the respondents, the petitioners did not show any real interest in running the said medical college and hospital, but rather committed breach of faith on many occasions and indulged in gross financial irregularities, fudging and falsification of accounts and preparation of forged and fabricated documents causing embezzlement of Government funds provided to the petitioners as loan. It is also the case of the State-respondents that a review of the affairs of the medical college and hospital revealed that the petitioners had not maintained proper books of accounts and records of expenditures and not maintained invoices and supporting documents. In view of these misdeeds of the petitioner-society, the State-respondents through the Director (Audit), Government of Tripura had conducted preliminary inquiry and examined their Bank statements and Utilization Certificate submitted by them to the State-respondents led to unearthing of financial embezzlement amounting to Rs.5,19,79,759/-. The specific allegations of the respondents against the petitioners are:

(a) In 31 cases, cheques involving Rs.1,87,84,463/- were shown to have been issued to different parties on account of expenditures incurred by the Society out of the fund provided by the State Government as loan. But these cheques have not been found to be debited in the Bank Statement during the period from April 2005 to June 2009.

(b) Four cheques were found to have to have been shown in the utilization certificates more than once with the same cheque number but different dates and different payees amounting to Rs.10,36,816/-.

(c) Expenditures of Rs.3,59,798/- has been overstated in the utilization certificates submitted to the state Government.

(d) Identical capital expenditures amounting to Rs.1,08,83,959/- have been shown in the utilization certificates submitted to both State Government as well as HUDCO.

(e) Payment of Rs.2,09,14,723/- through 31 demand drafts shown in the

utilization certificates were not supported with appropriate narration as such actual payee could not be verified.

Thus, on the basis of those allegations, the State-respondents contend that the petitioners had induced, by false and fraudulent misrepresentation, the Government to advance them a sum of Rs.25 crores without any intention to make repayment of the loan; that the petitioners forged and fabricated documents such as utilization certificates, cheques, false statement of accounts and used the same in order to cheat the Government of Rs.5,19,79,759/-; that the petitioners have intention to cheat the Government from the very inception of the partnership; that they thereby committed the offences punishable U/s 467/468/471/420/ 406/409/120-B IPC. The grievance of the petitioners is that the Amtali Police Station, on receipt of the complaint, straightaway registered FIR No. 221/2013 without even conducting a preliminary enquiry though the subject of the complaint is in the realm of contract, that too, filed after 4 years of the alleged preliminary enquiry. Aggrieved by this, this criminal petition is filed for quashing the FIR.

4. It is the contention of Mr. N. Ahmed, the learned counsel for the petitioners, that a plain reading of the FIR dated 24-10-2013 reveals that the same is based on the alleged preliminary inquiry conducted through the Director (Audit), Government of Tripura, but no opportunity of hearing was afforded to the petitioners while conducting the preliminary inquiry by him. The learned counsel submits that the allegations made against the petitioners as narrated in the FIR does not reveal the commission of any forgery of valuable security, will, etc. and that no ingredients of Sections 467/468/471 IPC are made out from the allegations of the respondents. According to the learned counsel, the disputes/differences, which arose between the petitioners and the State Government, have been referred to an arbitrator, who is now proceeding with the arbitration, and the FIR is filed by the respondents merely in retaliation to the reference made by the petitioners for arbitration, which is malicious and smacks of vindictiveness. He maintains that since no ingredients of any criminal offence are made out, the impugned FIR is merely a desperate attempt of the respondents to convert a dispute of civil nature into criminal cases. It is also contended by him that though the inquiry was completed as early as 7-12-2009, yet the State-respondents had been sleeping over the case and woke up from their slumber only some five years later to lodge the FIR, which demonstrates that there are no serious material for initiating criminal proceeding against the petitioners and that they are simply out to wreak vengeance against them, and is thus mala fide, which is impermissible in law. These are the basic contentions of the learned counsel for the petitioners. Per contra, Mr. B. C. Das, the learned Advocate General, Tripura, submits that the criminal petition is an abuse of process of court and amounts to an attempt to stifle or scuttle genuine prosecution of the white collar crimes committed by the petitioners. According to the learned AG, this is not a case where the allegations made in the FIR, even if they are taken at their face value and accepted in their entirety, make out a prima facie case

against the petitioners. Though the learned counsel for the petitioners have extensively argued in the course of hearing, submits the learned AG, the submissions made by him are mostly in the realm of defense, which cannot be looked into by this Court at this stage; this Court will confine its enquiry only to the question whether the uncontroverted allegations made in the FIR and the evidence collected in support of the same disclose the commission of any offence and make out a case against the petitioners. He submits that the answer, on the facts of this case, must be in the affirmative. He maintains that there is absolutely no merit in this criminal petition, which is liable to be dismissed.

5. In the State of Haryana and others v. Bhajan Lal and others, 1992 Supp (1) SCC 335, a two Judge Bench of the Apex Court considered the statutory provisions of the Code and the earlier decisions of the Apex Court and held that in the following categories of cases, the extraordinary power of the High Court under Article 226 of the Constitution or the inherent power of the High Court under Section 482 CrPC can be exercised either to prevent abuse of process of the Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

6. As observed by the Apex Court in *Indian Oil Corpn. V. NEPC Ltd. and others*, (2006) 6 SCC 736, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such tendency is seen in several family disputes also leading to irretrievable breakdown in marriages/families. An impression is also gaining ground fast that if a person could somehow be entangled in a criminal prosecution, there is likelihood of imminent settlement. Therefore, any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In *G. Sagar Suri and another v. State of UP and others*, (2000) 2 SCC 636, the Apex Court succinctly observed:

"8. Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

7. It is against the backdrop of the legal principles enunciated by the Apex Court that I now propose to examine the contentions of the learned counsel appearing for the rival parties. The gravamen of the charge is that the State-respondents, pursuant to the agreement executed by the parties, had granted a sum of Rs.25 crores repayable after 15 years in equal installments with simple interest to be utilized exclusively for setting up medical college and hospital. However, to the consternation of the Staterespondents, the petitioners did not show real interest in running the Tripura Medical College and Dr. BRAM Teaching Hospital and committed various breaches of the understanding between them. In view of the

serious allegations of various irregularities and misdeeds in the activities of the petitioners, the State-respondents through the Director (Audit), Government of Tripura had conducted a preliminary inquiry, examined the Bank statements of the petitioners and the utilization certificates submitted by them for loan so provided, the following misdeeds and/or criminal acts were found:

(a) In 31 cases, cheques involving Rs.1,87,84,463/- were shown to have been issued to different parties on account of several expenditures incurred by the society out of the fund provided by the State Government as loan. But these cheques have not been found to be debited in the bank statement during the period from April, 2005 to June, 2009.

(b) Four cheques were found to have been shown in the utilization certificates more than twice with the same cheque number but different dates and different payees amounting to misappropriation of Rs.10,36,816/-.

(c) Expenditures of Rs.3,59,798/- has been overstated in utilization certificates submitted to the state Government.

(d) Identical capital expenditures amounting to Rs.1,08,83,959/- have been shown in the utilization certificates submitted to both the state Government and HUDCO (a financial institution which provided loan to the Society).

(e) Payment of Rs.2,09,14,723 through 31 demand drafts shown in the utilization certificates were not supported with appropriate narration as such actual could not be verified.

Thus, according to the State-respondents, financial embezzlement to the order of Rs.5,19,79,759/- committed by the petitioners was detected. On the facts and circumstances of the case, the question as to whether the said allegations made in the FIR/complaint, even if they are taken at their face value and accepted in their entirety does not need elaborate discussion. Whether the petitioners could be eventually convicted or not is an entirely different transaction, but the allegations made heretofore, in my opinion, prima facie constitute an offence of Section 420 against the petitioners. It will not be advisable to at this stage to shut out the prosecution case when more evidence can emerge in the course of investigation to find out if there was any intention on the part of the petitioners to cheat at the very inception; to interfere at this stage will amount to stifling prosecution. Similarly, the question as to whether, the said allegations, made in the FIR/complaint, even if they are taken at their face value and accepted in their entirety, prima facie constitute the offences punishable U/s 467/468/471/406/409/120-B against the petitioners, must be answered in the affirmative.

8. Section 467 IPC, among others, punishes a person who forges a document which purports to be valuable security. The term "valuable security" is defined by Section 30 IPC as follows:

"30. "Valuable security".-The words "valuable security" denote a document which

is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right."

Thus, a document whereby any right is created, extended, transferred or extinguished, etc. is a valuable security. In the instant case, the allegation of the State-respondents, among others, is that in 31 cases, cheques involving Rs.1,87,84,463/- were shown to have been issued to different parties on account of expenditures incurred by the society out of the fund provided by them, but these cheques have not been found to be debited in the Bank statement during the period the period from April, 2005 to June, 2009. The further allegation is that cheques were found to have been shown in the utilization certificates more than once with the same cheque number but different dates and different payees, which amount to forging of documents for misappropriation of Rs.10,36,816/-. There is also an allegation of the petitioners showing identical capital expenditures amounting to Rs.1,08,83,959/- in the utilization certificates submitted to both State Government as well as HUDCO. Further allegation is made against the petitioners about payment of Rs.2,09,14,723/- being shown in the utilization certificates unsubstantiated with appropriate narration as such actual payee could not be verified.

9. A valiant attempt has been made by the learned counsel for the petitioners to persuade me to hold that there is no prima facie case of any criminal offence against the petitioners. In my opinion, on meticulous examination of the FIR, it cannot at this stage be said that there is no prima facie case of Section 467/468/471/420/406/409/120-B IPC. The learned counsel for the petitioners, however, draws my attention to some of the documents annexed to the criminal petition to show that as an arbitration proceeding with respect to the same subject-matter is now pending, this Court should not allow conversion of a civil dispute to one of criminal dispute. According to the learned counsel, if the dispute is essentially a case of civil nature as in this case, it should not been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Though the learned counsel takes the pain of reading a number of the documents in the possession of the petitioners to show that there is no prima facie case of criminal liability or that the criminal case foisted upon the petitioners is in the nature of a civil dispute and not a criminal case, I am afraid, I have no jurisdiction to enter into such defence at this stage; my jurisdiction extends only to the question as to whether the allegations made in the FIR, even if they are taken at their face value and accepted in their entirety do not prima constitute any offence or make out a case against the petitioners. For answering this question, I cannot at this stage refer to the defense of the petitioners, no matter how appealing they are likely to be. Judged against the backdrop of the legal positions enunciated by the Apex Court in Bhajan Lal case, I have not the slightest doubt that there is a prima facie case against the petitioners with respect to the allegations made against them U/s 467/468/471/420/406/409/120-B IPC. To interfere in the investigation of the

case at this stage, I am afraid, will rather amount to an abuse of process of the Court.

10. For the reasons stated in the foregoing, there is no merit in this criminal petition, which is, accordingly, dismissed. The interim order stands vacated. Much time has already been unnecessarily wasted due to this criminal petition. The Investigating Officer of the case is, therefore, directed to speed up the investigation of the case and submit the charge sheet against the petitioners without further delay if sufficient materials are found against them for their trial in accordance with law.