
(2011) 03 RAJ CK 0040

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 246 of 2007

Hari Shankar and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 11-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 320(2)
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468

Citation : (2011) 5 RCR(Criminal) 863 : (2011) 2 RLW 1831

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vineet Kothari, J.—Heard learned Counsel for the Petitioners, learned Counsel for the Respondent No. 2-Complainant and learned Public Prosecutor on behalf of the State.

2. By this criminal misc. petition, the accused-Petitioners Hari Shankar and others have challenged the order dated 9.1.2007 passed by learned trial Court in Complaint Case No. 103/2006 Dharam Chand v. Hari Shankar and Ors.) taking cognizance against the accused persons u/s 467, 468 and 120-B IPC.

3. While admitting the present criminal misc. petition, the coordinate Bench of this Court had stayed the further proceedings in pursuance to the impugned order dated 9.1.2007 in the aforesaid complaint case.

4. The present criminal misc. petition was dismissed in default of appearance by another coordinate Bench of this Court on 11.3.2010, however, the same was restored by this Court while allowing the restoration application No. 349/201 land 9.3.2011.

5. Learned Counsel for the accused-Petitioners, Mr. Vivek Shrimali, submitted that the parties have already entered into a compromise, and a copy of the Memorandum of Understanding signed by both the parties on 25.5.2010 has

been produced before this Court.

6. Learned Counsel for the complaint, Mr. Pradeep Shah does not dispute this position of compromise between the parties. However, since the offences under Sections 467, 468 and 120-B of IPC are not compoundable, as such, learned Counsel for the Petitioner, Mr. Vivek Shrimali, relying upon a recent decision of Hon''ble the Supreme Court in the case of Nikhil Merchant v. C.B.I. and Anr. reported in AIR 2000 SC 428, submitted that in view of compromise between the parties, the criminal proceedings under Sees. 420, 468 and 471 of IPC was quashed by the Hon''ble Apex Court in the aforesaid matter, and similarly in the present case also, these proceedings including the impugned cognizance order dated 9.1.2007 deserves to be quashed and set aside.

7. Learned Public Prosecutor and learned Counsel appearing for the complainant-Respondent No. 2 do not dispute the aforesaid legal position.

8. The Hon''ble Supreme Court in the case of Nikhil Merchant (Supra) has held as under:

20. Having carefully considered the facts of the case and the submissions of learned Counsel in regard thereto, we are of the view that, although, technically there is force in the submissions made by the learned Additional Solicitor General, the facts of the case warrant interference in these proceedings.

21. The basic intention of the accused in this case appears to have been to misrepresent the financial status of the company, M/s. Neemuoch Emballage Limited, Mumbai, in order to avail of credit facilities to an extent to which the company was not entitled. In other words, the main intention of the company and its officers was to cheat the Bank and induce it to part with additional amounts of credit to which the company was not otherwise entitled.

22. Despite the ingredients and the factual content of an offence of cheating punishable u/s 420 IPC, the same has been made compoundable under Sub-section (2) of Section 320 Code of Criminal Procedure with the leave of the Court. Of course, forgery has not been included as one of the compoundable offences, but it is in such cases that the principle enunciated in B.S. Joshi's case (supra) becomes relevant.

23. In the instant case, the disputes between the Company and the Bank have been set at rest on the basis of the compromise arrived at by them whereunder the dues of the Bank have been cleared and the Bank does not appear to have any further claim against the Company. What, however, remains is the fact that certain documents were alleged to have been created by the Appellant herein in order to avail of credit facilities beyond the limit to which the company was entitled. The dispute involved herein has overtones of a civil dispute with certain criminal facets. The question which is required to be answered in this case is lies with this Court to quash the criminal proceedings pursuant to the compromise arrived at, should at-all be exercised?

24. On an overall view of the facts as indicated hereinabove and keeping in mind the decision of this Court in B.S. Joshi's case (supra) and the compromise arrived at between the Company and the Bank as also clause 11 of the consent terms filed in the suit filed by the Bank, we are satisfied that this is a fit case where technically should not be allowed to stand in the way in the quashing of the criminal proceedings, since in our view, the continuance of the same after the compromise arrived at between the parties would be a futile exercise.

25. We, therefore, set aside the order passed by the High Court dismissing the Petitioner's revision application No. 49 of 2003 in Special Case No. 80 of 1998 and quash the proceedings against the Appellant. The appeal is accordingly allowed.

9. In view of aforesaid legal position cited at bar and in view of compromise arrived at between the parties vide the Memorandum of Understanding dated 25.5.2010, this Court is of the opinion that though offence(s) alleged against the accused-Petitioners are not compoundable as per Section 320 of Code of Criminal Procedure but no useful purpose would be served in proceeding with the trial of the said alleged offences committed by the accused-Petitioners in view of compromise between the parties, which fact is supported by Memorandum of Understanding reduced into writing placed on record, and which fact is not disputed by the complainant's counsel. Accordingly, in view of compromise arrived at between the parties and aforesaid cited Apex Court's decision in the case of Nikhil Merchant (supra), this criminal misc. petition deserves to be allowed and the same is hereby allowed. The impugned cognizance order dated 9.1.2007 of offence u/s 467, 468 and 120-B of IPC against the Petitioners is set aside.