(1999) 11 DEL CK 0039

In the Delhi High Court

Case No : Criminal Misc. Main No. 912/97

Harinder Jit Singh Walia APPELLANT

Vs

The State and Another RESPONDENT

Date of Decision : 02-11-1999

Acts Referred:

Citation : (2000) 1 AD 389

Hon'ble Judges : D.K. Jain, J

Bench : Single Bench

Advocate : Mr. K.T.S. Tulsi and Mr. K. Sultan Singh, for the Appellant; Mr. R.N. Mittal, Mr. B.R. Puri, Mr. Puneet Mittal and Mr. S.S. Mayer, for the Respondent

Judgement

D.K. Jain, J.—Having tried and failed in this various attempts to obtain anticipatory bail at various forums, including this Court, Calcutta High Court and Guwahati High Court, where initially he had succeeded will the order granting anticipatory bail by that Court was set aside by the Supreme Court on motion by the complainant, the petitioner has now approached this court u/s 482 Cr. PC for quashing the criminal proceedings initiated against him by the Crime Branch, PHQ, Delhi under Sections 408, 420, 468, 471 read with Section 120-B IPC, arising out of FIR No. 479/93 dated 19 August 1993, Police Station Srinivaspuri, New Delhi.

2. To appreciate the rival contentions it would be necessary to notice the facts, as can be culled out from the charge sheet, in little detail.

3. The complainant, M/s. R.M.B. Associates Limited, incorporated in the year 1982 at Calcutta, with the object of carrying on business of leasing, hire purchase, financing etc., had its principal branch office at New Delhi. In 1991 the company decided to diversify into the business of hire purchase of consumer durables. In order of promote its business it employed the petitioner in June 1991. According to the company, the petitioner was its employee, entrusted with the duties to select dealers for supply of consumer durables as well as to look for

consumers desirous of purchasing such consumer items on hire purchase basis for which he was paid salary and other emoluments by means of crossed cheques against signed vouchers. He was to procure invoices from the dealers in the names of the customers, whose names, addresses and particulars of the guarantors for them were also to be collected by him. These consumers and their guarantors were required to sign the hire purchase documents and other forms prescribed by the company.

4. As per the procedure and practice followed by the company, the consumer was required to pay 25% to 30% of the cost of the item, as mentioned in the invoices of the dealer, towards the margin money and the balance amount, including hire purchase charges fixed by the company, were to be paid by the consumer in agreed fixed installments. The margin money and the monthly installments, incorporated in the documents, to be signed by the consumer, was to be collected by the petitioner. On petitioner''s submitting the aforesaid agreement forms and the related hire purchase documents, duly completed and signed by the customer and his guarantor, along with the margin money, the documents were then signed by one of the Directors'' or the President of the company, where after a crossed cheque, for the amount as mentioned in the invoice, used to be issued by the company in the name of the dealer or the customer as per the representation of the petitioner, who was to arrange for the supply and delivery of the items to the consumer. The simple crossed cheques, issued by the company in favor of the selling dealers in the full amount of the value of the item(s) as per the invoices used to be entrusted to the petitioner for arranging supply of the consumer durables by the dealer concerned to the customers.

5. The modus operandi of the petitioner has been explained in the charge sheet thus : the petitioner would present to the company invoices in the names of fictitious customers, purported to have been issued by the dealer M/s. Kumar Electronics, identified by him for the purpose of supplying consumer items; the company would issue cheques for payment of the invoiced amount and entrust the same to the petitioner for handing to the said Kumar Electronics against delivery of the ordered items; the crossed cheques issued by the company in favor of the said Kumar Electronics were deposited in a fictitious account opened by the petitioner in the name of M/s. Kumar Electronics in the fictitious name of one Gurmeet Singh Walia; the petitioner had authorisation in his name to operate the said account; the petitioner had opened yet another account in the name of Kumar Electronics in the Bank of Madura, Nehru Place Branch, New Delhi by showing himself as proprietor of the said concern and in this manner a large number of cheques totaling approximately Rs. 34 lakhs, issued by he company against various invoices purportedly issued by the said Kumar Electronics, were deposited by the petitioner in the said account. It is also alleged that the crossed cheques issued by the company in the names of various customers and entrusted to the petitioner were diverted by the petitioner to one of the various accounts opened by his two other family members by forging endorsements of the payees and in this manner a large number of crossed

cheques amounting to approximately Rs. 48 lakhs, issued by the company in favor of the customers, were credited in these accounts in connivance with one Paramjeet Singh Cheema, a bank employee, who had confirmed the endorsements of the first payee on the said cheques.

6. In order to assure the company about the genuineness of the transactions being made by the petitioner with the dealers/customers, and to obtain more funds, the petitioner used to deposit with the company the margin money up to 25% to 30 % of the cost of the items, purported to have been collected by him from the customers and also used to remit the monthly installments to the company, showing the same to have been collected from various customers. It was only in April-May, 1992, when the monthly installments started getting delayed and finally stopped, that the company detected the fraud having been played by the petitioner. It is claimed by the company that the funds so diverted by the petitioner are to the extent of approximately Rs. 36.13 lakhs, without taking into account the future hire purchase charges payable by various customers.

7. The case of the Prosecution is that the aforenoted persons entered into a criminal conspiracy in the manner aforesaid to commit breach of trust and to dishonestly misappropriate or convert for their use the said amounts, thereby committing various illegal acts for which they are punishable under Sections 120B, 408, 420, 467, 468 and 471 IPC.

8. On the other hand, the stand of the petitioner is that in order of promote its hire purchase business, the complainant company had approached the State Bank of India for cash credit facility to the tune of Rs 40 lakhs; the Bank agreed to finance 75% of the cost of the goods: the company was to finance 75% of the cost of the goods; the company was to finance 25% of the cost; similar arrangement was arrived at with the Bank of Rajasthan, which agreed to finance 70% of the cost of goods on similar terms: since the company did not have adequate funds to finance 20% or 30 % respectively (margin money) of the cost of goods, as an added incentive to the customers, the petitioner was approached for advancing margin money on behalf of the customers; it was agreed that the margin money advanced by the petitioner would be treated as loan on which interest @ 22% per annum was payable to him; Rs 62.38 lakhs was advanced by the petitioner by way of loans between 1991-1993, by means of account payee cheques and Therefore, besides the said amount, Rs. 40.19 lakhs was due to the petitioner as interest from the company and for the recovery of the said amount and rendition of accounts the petitioner had filed a Civil Suit No. 738/96 again the company and others, which is pending.

9. Alleging that a false, fabricated and connected criminal case has been filed against the petitioner at the instance of the complainant company in collusion with the investigating officer, to victimise him, the present petition has been filed.

10. I have heard Mr. K.T.S. Tulsi, learned senior counsel for the petitioner, Mr.

M.S. Butalia for the State and Mr. R.N. Mittal on behalf of the complainant, who vide order dated 12 May 1997, was allowed to intervene and address the Court.

11. At the initial stage it is not within the province of inherent powers of this Court u/s 482 Cr. PC to embark upon a detailed inquiry to determine as to whether ingredients of the offences, alleged against the petitioner in the charge-sheet, are fulfilled or not. Therefore, I have heard learned counsel for the parties only on the main contention of learned counsel for the petitioner as to whether in the facts of the case, criminal proceedings initiated against the petitioner are liable to be stayed till the aforenoted Civil Suit, field by the petitioner, and another suit filed by the complainant against the petitioner (Suit No. 1639/96 - for recovery) are concluded.

12. It is submitted by Mr. Tulsi that the criminal proceedings deserve to be stayed because : (i) the allegations of fact made in the charge sheet being substantially similar to the Civil Suit No. 1639/96, filed by the complainant company against the petitioner for recovery and Civil Suit No. 738/96, filed by the petitioner against the company for revisit ion of accounts and recovery, the criminal proceedings are in the nature of parallel proceedings and, Therefore, conflicting findings of fact should be avoided and (ii) if the findings of fact in the Civil proceedings are rendered in favor of the petitioner, the very basis of allegation of fraud and cheating leveled against him in the criminal case will vanish and the petitioner will be saved from unnecessary harassment. Elaborating further, learned counsel has contended that the main question for determination in the criminal case is as to whether the petitioner was an employee of the complainant company or was he a dealer in consumer goods who had advanced various sums of money by way of loans and substantially the same question namely, whether the nature of the transactions between the parties was loan transaction as claimed by the petitioner or was it a mere case of an agent or trustee of the company - as claimed by the company is to be adjudicated in Civil proceedings. In support of the first proposition reliance is placed on judgments of various High Courts.

13. On the other hand, it is urged on behalf of the State and the complainant that the real cause of action of the facts in is in criminal proceedings is the alleged forgery and fabrication of hundreds of hire purchase agreements, invoices and endorsements on cheques etc., whereas the cause of action in the Civil Suit No. 738/96 is merely to rendition of accounts and in Civil Suit No. 1639/96 for recovery of money, which is alleged to have been received by the petitioner and for damages against the Bank for collecting cheques negligently, without due care and that the two proceedings are independent and different in nature and content from each other. It is also submitted that in the instant case, the petitioner has not brought out any compelling or exceptional circumstances warranting stay of criminal proceedings. It is, Therefore, asserted that whatever be the relationship between the parties i.e. whether as employee or agent or a dealer and whatever be the nature of transaction - whether loan or otherwise,

the petitioner cannot escape his criminal liability for having committed acts of malfeasance and misfeasance, clearly spelt out in the charge-sheet and deserves to be brought to books as swiftly as possible and any delay in criminal trial will impair justice.

14. The question whether it is desirable to permit civil and criminal proceedings to be taken simultaneously, has come up for consideration before the Supreme Court in a number of cases, where the Court infact was dealing with the converse situation namely, whether the civil suit/departmental proceedings, should be stayed till the disposal of criminal proceedings. In those cases, the argument was primarily based on the right of a person to protection against self-incrimination or testimonial compulsion, as enshrined in Article 20(3) of the Constitution and it was sought to be contended that all accused has a constitutional right to maintain silence and he cannot be compelled to state his defense in a criminal proceeding by filing affidavit in suit. The theory of protection under Article 20(3) in a case where the accused files an affidavit or examines himself as a witness in a civil suit on the plea that it would be tantamount to compelling has to be a witness against himself in respect of the criminal proceedings was rejected on the ground that protection under Article 20(3) relates to the question of compulsion, which was non-existent in the aforenoted situation. It was observed that the rule against testimonial compulsion does not go to the extent of making the accused a universally privileged person.

15. Dealing with the question whether the civil action namely, disciplinary proceedings for assaulting a supervisory officer should be stayed till the disposal of criminal case instituted against an employee, the Supreme Court in Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others, , applying the ratio of its earlier decisions in The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan, , Tata Oil Mills Co. Ltd. Vs. Its Workmen, , Jang Bahadur Singh Vs. Baij Nath Tiwari, , held that there is no legal bar for simultaneous proceedings being taken, but the question whether in a particular case disciplinary proceedings should be interdicted pending criminal trial has to be decided in the facts and circumstances of each case and it is neither possible nor advisable to evolve any hard and fast, straight - jacket formula valid for all cases and of general application without regard to the particularities of the individual situation.

16. In M.S. Sheriff Vs. The State of Madras and Others, , rejecting the argument that simultaneous prosecution for perjury and the civil for damages for wrongful confinement would embarrass the accused and considering the question as to which of the proceedings should be stayed, the Apex Court while opining that as between the civil and criminal proceedings, the criminal matters should be given precedence, observed "that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as

is consistent with a fair and impartial trial."

17. In a recent decision in V.M. Shah Vs. State of Maharashtra and another, , the Supreme Court has re-emphasised the need for giving preference to the criminal proceedings.

18. The settled principle of law, thus, is that there is no constitutional or legal bar or prohibition for both the civil as well as the criminal proceedings, to go on simultaneously. There is no rigid straight-jacket fixed formula for staying proceedings in a criminal case while civil pro- ceedings are pending and it would depend on the facts of each case. Indeed, as observed by the Apex Court in M.S. Sheriff''s case (Supra) the public interest demands that criminal justice should be swift and sure so that the guilty are punished while the events are still fresh in the public mind. Therefore, criminal matters should be given precedence over the civil matters. Besides, ordinarily, decision of a civil court is not binding on a criminal Court. Nor is a criminal court''s decision binding on the civil court. In a criminal case all the ingredients of the offences have to be established in order to secure the conviction of the accused.

19. Having considered the matter in the light of the aforenoted broad principles of law-governing the issue at hand, I am of the view that the petitioner has failed to make out a case for stay of criminal trial till the conclusion of proceedings in the two aforenoted civil suits. As noticed above, the allegations against the petitioner in the charge sheet, inter alias are : fabrication and forging of hire purchase agreements, proposals and invoices in the names of non-existent persons; forging of invoices on the printed proforma invoice of the dealer will the authorisation misrepresentation to the company of having struck deals with non-existent consumers desirous of purchasing consumer durables and dishonestly collecting cheques from the company in the name of such consumers by depositing margin money purported to have been paid by such consumers; diversion of crossed cheques by fabricating endorsement of the payers and depositing the same by opening fictitious accounts in the names of the dealers. All these are serious allegations, elements whereof have little relevance in the civil suit filed by the petitioner''s concern namely, M/s. S.B. Enterprises against the complainant company and others, wherein the petitioner has merely sought recovery of money from the complainant has merely sought recovery of money from the complainant on the plea that he had advanced loans to the company in the form of margin money on behalf of customers. I feel that my finding in the civil suit filed by the petitioner for recovery and rendition of accounts is not likely to have any material bearing insofar as trial for the alleged criminal offences on the aforenoted allegations is concerned. A finding for or against in either case will not necessarily conclude the fate of of the other. Since the decision of the Civil Court will neither be a decision in the nature as mentioned in Section 41 of the Indian Evidence Act, 1872 nor will it be a decision between the same parties concerning a dispute relating to a question of title. It will not be binding on the parties in criminal proceedings. The criminal Court will judge the case before it

independently on the evidence which may be adduced before it. The petitioner has not brought out any exceptional circumstances warranting stay of criminal proceedings against him. At this stage, it also deserves mention that while declining interim relief to the petitioner, in his civil suit No. 738/96, pending in this Court, the learned Civil Court had observed that it was "a speculative suit judge to protect him from criminal proceedings". There is no ground for this Court to interfere in the exercise of its inherent powers at the inception of the criminal proceedings.

20. In view of the foregoing discussion, I do not find any impediment in both the civil and criminal proceedings being taken against the petitioner simultaneously. The petitioner is utterly misconcerned, filed with an ulterior motive to delay the trial and the same is accordingly dismissed with costs, quantified at Rs. 5000/-. Interim order dated 3rd April, 1997 to hereby vacated.

21. It is clarified that whatever has been said above will be confined to the question at issue i.e. desirability of stay of criminal proceedings pending civil proceedings and shall not be construed as expression of opinion on the merits of the case of either of the parties.

22. The records of the Trial Court shall be sent back forthwith through a special messenger. The petitioner is directed to appear before the Trial Court on 12 November, 1999 for further proceedings. The Trial Court will try to expedite the trial.