(1997) 05 GAU CK 0005

In the Gauhati High Court

Case No : Criminal Revision No. 158 of 1997

Indian Research Institute Ltd. and Others — APPELLANT

Vs

Swapan Paul — RESPONDENT

Date of Decision : 15-05-1997

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 204, 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 139

Citation : (1998) CriLJ 1164 : (1998) 1 GLT 143

Hon'ble Judges : D.N. Chowdhury, J

Bench : Single Bench

Advocate : A. Thakur and B. Dutta, for the Appellant; A. Roy, C.K. Das and P.K. Roy Chowdhury, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Chowdhury, J.—This is an application seeking for quashing of the Criminal proceeding pending before the Sub-Divisional Judicial Magistrate, Guwahati in C.R. Case No. 2411C/96. A complaint was lodged before the Chief Judicial Magistrate, Kamrup, Guwahati for initiation of a criminal proceeding of offence punishable u/s 138 of the Negotiable Instruments Act, 1881. The materials part of the accusation are quoted below :

...4. That according to aforesaid agreement, the accused persons took Rs. 3,00,000/ - from the complainant as cash deposit in form of Banker Cheque by Cheque No. 690099 dated 12-8-1994 on United Bank of India, Romal Exchange Branch, Calcutta drawn by his banker. The Industrial Cooperative Bank Ltd. Guwahati and one Bank Guarantee of Rs. 3 lacs of Punjab National Bank, Fancy Bazar, Guwahati vide No. 7/94 dated 13-8-1994 as security carrying 18% interest per annum on the aforesaid Rs. 3 lacs cash deposit. The accused acknowledged the receipt thereof vide their letter No. 1/AC/343/94 dated 16-8-1994.

5. That the complainant thereafter acted as C & F Agent of the Accused No. 7

Company for more then two years. However, after one year of the aforesaid agreement, the Bank Guarantee of Rs. 3 lacs was realeased and the complainant was acting as C & F Agent for another one year. Suddenly in the month of Feb. 1996 the accused stopped the operation without any reason or information to the complainant and also failed to pay the commisison and expreses bill to the complainant and also failed to release the security cash deposite of Rs. 3 lacs.

6. That on several requests and demand made by the complainant the accused persons issued six post dated cheques of Rs. 50,000/- each payable at United Bank of India Baranagar Branch, Calcutta.

7. That the complainant deposited one cheque No. 225648 dated 5-10-1996 for Rs. 50,000/-with his banker Bank of Baroda, A.T. Road, Guwahati. But the said cheque was dishonoured by the banker on 4-11-1996 due to insufficient fund.

8. That similarly the complainant deposited two more cheques being cheque No. 225646 dated 24-8-1996 and cheque No. 225649 dated 25-10-1996 each for Rs. 50,000/- to the banker Punjab National Bank, Fancy Bazar Branch, Guwahati, Bank of Baroda AT Road Branch, Guwahati, separately for encashment. But both the aforesaid cheques were returned by the bankers on 25-11-1996 and 12-11-1996 respectively due to insufficient fund in the account of the accused company.

9. That after receipt of the information regarding dishonour of the cheques the complainant informed the accused regarding the dishonour of aforesaid three cheques and requested to make payment of the cheques amount. But the accused persons did not make payment inspite of the requests made by the complainant and so the complainant issued notices on 9-11-1996, 23-11-1996 and 27-11-1996 respectively through his lawyer and demanded payment of the bill amount with interest within 15 days from the date of receipts of the notice. The accused have received the said notices but did not pay the cheque amount.

10. That the action and behaviour of the accused in not making payment in spite of repeated requests made by the complainant and issue of cheques without sufficient fund in the account shows their bad intentions. The aforesaid cheques were issued by the accused persons knowing fully well that there was no sufficient fund in their account and in spite of information regarding the dishonour of cheques they failed to make payment of the cheque amount within 15 days and as such they have committed an offence u/s 138 of the Negotiable Instrument Act for which they are liable to be punished under the aforesaid section....

2. The learned Sub-Divisional Judicial Magistrate, Guwahati on perusal of the complainant petition and upon examination of the complainant found sufficient ground for proceeding against the accused persons and accordingly issued summons for attendance of the accused persons u/s 204 of the Cr.P.C. The legality and validity of the aforesaid Criminal Proceeding is challanged before this Court mainly on the ground that even if the accusation are taken its face value

no criminal offence is discernable.

3. Mr. A. Thakur, learned counsel appearing for the petitioners has drawn my attention to the averments made in the complaint, some of which were already mentioned in this petition and submitted that the matter pertains to the domain of a Civil Court and there being total absence of mens-rea question of initiations and continuance of Criminal Proceeding is wholly unjustified. Mr. Thakur also submitted that the learned SDJM, Gauhati fell into serious error by initiation process in a most mechanical fashion without applying its judicial mind.

4. Mr. A. Roy, learned Counsel appearing on behalf of the respondents on the other hand submits that the complaint unerringly disclosed Criminal offences against the accused persons. Mr. Roy also drawn my attention to the provisions of Section 139 of the Negotiable Instruments Act, 1881 and submits that unless contrary is proved, that the holder of the cheque received the cheque, of the nature referred to in Section 138 for the dicharge, in whole or in part, of any debt or other liability the Courts shall draw presumption in favour of the holder. Mr. Roy also submitted that this is not one of those rarest of rare cases requiring interference from this Court u/s 482, Cr.P.C.

5. The scope of inquiry at the stage of initiation of a person (sic) is extremely limited and the Court is only to ascertain the truth or falsity of the allegation made in the complainant for the limited purpose of finding put as to whether a prima facie case for the issue of process has been made out. For deciding the question from the point of view of the complainant, the Court is only to ascertain as to whether there is any prima facie evidence in respect of the alleged offence. If the complaint discloses a prima facie case, the Court is to issue the process because the Court cannot usher into the function of a trial Court. On perusal of the complaint and the statement of the complainant as recorded by the SDJM, Guwahati, I do not find any infirmity in the order of the learned SDJM, Guwahati in initiating the process in the instant case.

6. I have given my anxious consideration on the matter, upon consideration of the accusation made in the complaint, a prima facie case is disclosed. At this stage, it is not necessary to scrutinise the allegations for the purpose of deciding as to whether such allegations are likely to be upheld in the trial. Evidences are yet to be laid in support of the accusation made in the complaint petition constitute a Criminal Offence. There may be a tinge of Civil wrong but that by itself cannot oust the Criminal Court in trying a criminal offence. Section 482 of the Cr.P.C. entrusted upon the High Court the inherent power to remedy manifest injustice when there is an abuse of the process of the Court. The inherent power of the High Court can be exercised when the allegations either in the FIR or the complaint together with other materials collected in the course of investigation on its face value do not constitute the offence alleged or when a cognizance of offence is taken despite a statutory embargo. The High Court no doubt can exercise such extra ordinary power as and when the situation calls upon. The Criminal proceeding is now only at the threshold, at this stage, it is not open for

the Court to shift the evidence or to appreciate the same and arrive at a conclusion that no criminal offence is made out. The High Court except in a very extraordinary circumstances exercise its jurisdiction u/s 482, Cr.P.C. for quashing a prosecution after it is launched. As stated earlier the complaint petition disclose prima facie materials to proceed against the accused persons under the law.

In State of Bihar Vs. Rajendra Agrawalla, observed that - "It has been held by this Court in several cases that the inherent power of the Court u/s 482 of the Code of Criminal Procedure should be very sparingly and cautiously used only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the Court, if such power is not exercised. So far as the order of cognizance by a Magistrate is concerned, the inherent power can be exercised when the allegations in the first information report or the complaint together with other materials collected during investigation, taken at their face value, do not constitute the offence alleged....

On overall consideration of the materials on record, I do not find any ground to intervene at the threshold of the proceeding in exercise of the inherent power u/s 482 of the Cr.P.C.

The petition is thus dismissed. The petitioners are directed to appear before the Court of SDJM, Guwahati either in person or through their counsel on 30-6-1997 and the said learned SDJM, Guwahati thereafter shall proceed with the matter in accordance with law. Warrants if any, issued earlier shall be kept in abeyance till 30-6-1997.

With the above direction the petition is disposed of.

