
(2004) 02 CAL CK 0029
In the Calcutta High Court
Case No : C.R.R. No. 927 of 2003

I.T.C. Limited and Others

APPELLANT

Vs

Amitava Dutta

RESPONDENT

Date of Decision : 26-02-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468C, 482
Penal Code, 1860 (IPC) — Section 34, 406

Citation : (2004) 2 CHN 335

Hon'ble Judges : Sadhan Kumar Gupta, J

Bench : Single Bench

Advocate : Dilip Kumar Dutta, Sekhar Kumar Basu, Jaymalya Bagchi and Debipriya Mitra, for the Appellant; Milan Mukherjee, Bharati Dutta, Aniket Mitra and Haimanti Mukherjee, for the Respondent

Final Decision : Allowed

Judgement

Sadhan Kumar Gupta, J.—This revisional application has been filed u/s 482 of the Code of Criminal Procedure, praying for quashing of the proceedings bearing complaint Case No. 82-C/2003 pending before the Judicial Magistrate, 3rd Court, Bankura u/s 406/34 of the Indian Penal Code. The case of the petitioners is that the petitioner No. 1 is a public limited company and the petitioner No. 2 is the Chairman of the said company. Said petitioner No. 2 assumed the office of the Chairman of the petitioner No. 1 company on and from 01.01.1996, The O. P. is the managing partner of M/s. Aswini Kumar Dutta & Sons, a registered partnership firm situated in the Bankura town. Business relationship in between the petitioner No. 1 and the opposite party started in the year 1980 as per terms and conditions which were printed overleaf the purchase orders and/or the invoice. The opposite party's firm submitted a security deposit to the tune of Rs. 1,00,000/- in the month of March, 1981 under the aforesaid terms and conditions of sale. In the course of the said trade, large amounts became due and payable from the opposite party's firm and as such, the petitioner No. 1 company ceased trade with the opposite party's firm and in the month of

February, 1983 adjusted the amount of the security deposit towards the unpaid price which was due from the opposite party to the petitioner No. 1. Such adjustment was duly reflected in the ledger maintained by the petitioner No. 1 company and opposite party's firm confirmed the said adjustment vide its letter dated 17.3.1986. Thereafter the opposite party's firm on several occasions requested the petitioner No. 1 for revival of the trade relationship, but the petitioner No. 1 company did not agree. In the year 1989 the opposite party initiated another criminal case against the petitioner No. 1 and its officers under sections 420, 120B I.P.C. and the said criminal case resulted in a criminal revision filed by the petitioner No. 1 company and it was subsequently disposed of. On 29.07.89 the opposite party filed a money suit bearing No. 22/1989 claiming for a decree of more than Rs. 2,00,000/- along with interest against the petitioner No. 1 company. Said civil suit is still pending and it is being contested by the petitioner No. 1 company. The opposite party's firm and its partners filed another title suit bearing No. 26 of 2003 against the petitioner No. 2 and other officers of the petitioner No. 1 company praying for declaration that the rejection of the wholesale dealership for selling of the cigarettes to the opposite party, in the district of Bankura is void ab initio, unfounded, wrong and illegal. The present petitioners are contesting the said suit. Suddenly on 16.12.2002 the petitioner No. 2 received a letter dated 13.12.2002 from the opposite party wherein he claimed refund of the security deposit of Rs. 1,00,000/- along with interest thereon. Said letter was duly replied. Upon the above fact, the opposite party has filed the present petition of complaint before the learned Chief Judicial Magistrate, Bankura, u/s 406/34 of the Indian Penal Code alleging therein that the present petitioners misappropriated and/or converted the security deposit in violation of the law or legal contract causing loss to the opposite party. On the basis of the said allegation, the learned Chief Judicial Magistrate, Bankura took cognizance of the alleged offence and issued process against the petitioners. Subsequently, the case was transferred to the Court of learned Judicial Magistrate, 3rd Court, Bankura and is pending for trial. The petitioners have claimed that the allegations as made in the petition of complaint, even if it is believed to be true then also it does not disclose any offence at all. The petitioners have claimed that as per terms and conditions of the trade they are entitled to adjust the security deposit against any dues of the opposite party. According to the petitioner, the learned Chief Judicial Magistrate was not at all justified in taking cognizance of the matter and as such, it will be an abuse of the process of the Court if the proceeding, as pending before the learned Court below, is allowed to continue. The petitioners have claimed that it is a fit case where the proceeding pending before the learned Magistrate should be quashed.

2. I have heard the submissions made by the learned Advocate for the petitioners as well as for the opposite party Mr, Dutta, the learned Advocate for the petitioners argued that there cannot be any offence in absence of mens rea. The company is a juristic person and it cannot under any stretch of imagination be expected that the said company had mens rea in committing the offence. That

apart the learned Advocate for the petitioner further argued that the incident took place allegedly in the year 1981. The present petitioner No. 2 joined in the company as Managing Director in the year 1996. The adjustment of the security deposit was allegedly made by the company around the year 1983. So under no stretch of imagination it can be said that the petitioner No. 2 had any occasion to make the conspiracy in respect of the alleged criminal misappropriation as claimed by the opposite party. That the petitioner No. 2 joined in the company in the year 1996 has not been denied by the learned Advocate for the opposite party at the time of hearing. So, the fact remains that the petitioner No. 2 was no way connected with the company when allegedly the offence of criminal misappropriation took place. Naturally, I find force in the argument of Mr. Dutta that there cannot be any criminal liability on the part of the petitioner No. 2 so far as the present case is concerned and as such, I think that it was not proper on the part of the learned Magistrate to take cognizance against the petitioner No. 2, I have already pointed out that the petitioner No. 1 is a juristic person and is incapable of any mens rea. In absence of mens rea, no offence of the Indian Penal Code can be committed. As such, there was no justification on the part of the learned Magistrate to take cognizance against the petitioner No. 1 on the basis of the allegation as made in the petition of complaint. In this respect the learned Advocate for the petitioners has cited a decision reported in 1993 SCC (Cri.) 149, Punjab International Bank and Ors. v. Surendra Prasad Singha. It has been decided in the said decision that the creditor, when he is in possession of an adequate security could adjust the time barred debt due, from the security in his possession"and credit the balance amount to the Savings Bank Account of the respondent. It has also been decided in the said decision that by taking such action the bank did not violate any law nor converted the amount entrusted to them dishonestly for any purpose. As such, it was held that the complaint did not make out any case much less prima facie case, a condition precedent to set criminal law in motion. In the said decision it has further been observed that judicial process should not be an instrument of oppression or needless harassment. The Magistrate has got the responsibility to find whether there is any case made out against the particular accused. The decision, as cited above clearly shows that the adjustment of a security deposit towards an existing debt is permissible and if that action is taken then it can not be said that the authority, in case of adjustment of the security deposit, is liable to be punished for the offence of criminal misappropriation.

3. The learned Advocate for the petitioner further cited decisions reported in 1974 CHN 400, Champa Agency and Anr. v. R. Chowdhury and Anr., 2001 C Cr LR 106, G. Telefilms Ltd. v. Sahara India Commercial Corporation Ltd. and Anr., JT 2003 (2) SC 99, Assistant Commissioner, Assessment-11, Bangalore and Ors. v. Velliappa Textiles Ltd. and Anr.: 1993 SCC (Cri.) 591, Radhey Shyam Khemka and Anr. v. State of Bihar, I have considered those decisions. It appears, from those decisions that mainly it has been stated therein that the company being a juristic person cannot have mens rea which is the main ingredients for an offence

under the I.P.C. As because, in the present case according to the learned Advocate for the petitioners, the basic element of mens rea is not available, so issuance of process by the learned Magistrate cannot be justified. I find force in the argument of the learned Advocate for the petitioner. The learned Advocate for the opposite party argued that there was criminal intention on the part of the present petitioners and as such, the case is maintainable. But I regret I cannot agree with this argument because a juristic person cannot have mens rea and the petitioner No. 2 being not in the service of the petitioner No. 1 at the time of the commission of the offence cannot have any liability in the commission of the alleged offence. As such, this argument on the part of the learned Advocate for the opposite party is not accepted. Moreover, it appears that the alleged offence took place in the year 1982/83. Present case has been filed before the learned Magistrate in the year 2003. So, it appears that as per provisions of Section 468(C) of the Cr. P. C. the case is hopelessly barred by limitation. Learned Advocate for the opposite party tried to argue that there cannot be any limitation as there was fresh cause of action. But it appears that the alleged cause of action arose in the year 1983. Simply because a letter has been written in the meantime that cannot be a ground to argue that there is fresh cause of action on the basis of the said letter and by that process limitation has been saved. The fact remains that about 20 years have passed since the alleged cause of action took place. So, I am of opinion that the present case is thoroughly barred by limitation.

4. That apart, it appears that there is a dispute regarding the business transaction in between the parties. That dispute undoubtedly is a civil dispute and it is the admitted position that civil litigations are pending between the parties over that dispute. To my mind, it is the Civil Court which is the appropriate forum for determination of the dispute amongst the parties and it is not open for the Criminal Court to interfere into the matter. If, the dispute of civil nature is allowed to be taken into the Criminal Court then in that event it will certainly cause failure of justice and it indirectly will encourage a party to file this type of criminal litigation in order to harass his adversary. The Court cannot play into the hands of such unscrupulous litigant. The Court should be vigilant to see that this type of harassing litigation is not encouraged by allowing process against a person. The learned Magistrate, while taking cognizance of the matter did not consider all these things and it is very much clear that he took the cognizance of the offence mechanically and without applying any mind whatsoever. It is a clear case of non-application of mind by the learned Magistrate while issuing the process against the petitioners and I am of opinion that the learned Magistrate was not at all justified in taking cognizance of the case and in issuing process against the petitioners. As such, I think that if the proceeding pending before the Court below is allowed to be continued then in that event, that will cause unnecessary harassment to the petitioners and as such I think that it is a fit case where the proceeding pending before the Court below should be quashed.

5. In the result, the revisional application is allowed. The proceeding pending before the learned Judicial Magistrate, 3rd Court, being complaint Case No. 82-C/2003 is quashed. The accused persons are discharged.
6. Send a copy of this order to the learned Court below at once in order to take appropriate step in this respect.
7. Xerox certified copy, if applied for, may be handed over to the party on urgent basis.