
(2009) 09 CHH CK 0038
In the Chhattisgarh High Court

Laxmi Chand Goyal, Smt. Indrawati Goyal, Manoj Chand
Goyal and Kamlesh Goyal

APPELLANT

Vs

Gajanand Burange and State of Chhattisgarh

RESPONDENT

Date of Decision : 01-09-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195, 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 193, 195, 196, 197, 198

Citation : (2009) 09 CHH CK 0038

Hon'ble Judges : T.P. Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

T.P. Sharma, J.—The petitioners have filed this petition u/s 482 of the Code of Criminal Procedure, 1973 (in short 'the Code') for quashment of the criminal proceeding initiated on the basis of complaint made by respondent No. 1 for the offence punishable under Sections 418 and 468 of the Indian Penal Code against them.

2. Quashment is challenged on the ground that complaint filed on behalf of respondent No. 1 is barred in terms of Section 195(1)(b)(ii) of the Code.

3. Brief facts leading to filing of this petition are that that present petitioner No. 1 had filed a complaint against respondent No. 1 for the offence punishable u/s 138 of the Negotiable Instruments Act, 1881 (in short 'the Act, 1881') relating to cheque bearing cheque No. 708057 issued by respondent No. 1 and same is pending before the Additional Chief Judicial Magistrate, Bilaspur, in Criminal Case No. 1829/2005. Present respondent No. 1 has also filed criminal complaint against the present petitioners in connection with the offences punishable under Sections 193, 196, 197, 198, 199, 200, 209, 210, 211, 417, 418, 465, 467, 468, 469, 471 read with Section 34 and 37 of the Indian Penal Code and Section 11(f) and 11(f) (f) of the Chhattisgarh Money Lenders Act, 1934 (in short 'the Act,

1934") relating to same cheque bearing cheque No. 708057.

4. Learned Judicial Magistrate First Class, Bilaspur has taken cognizance for the offence punishable under Sections 193, 196, 199, 209, 211, 418, 468 read with Section 34 of the Indian Penal Code and Section 11(f) and (ff) of the Act, 1934 vide order dated 7.1.2007 which has been challenged by the present petitioners before the revisional Court in Criminal Revision No. 66/07. Order was modified by the Special Judge (Atrocity) and Additional Sessions Judge, Bilaspur in its order dated 22.8.2007 and order taking cognizance of the offences punishable under Sections 418 and 468 of the Indian Penal Code have been maintained against the present petitioners.

5. I have heard Shri Shri Ravindra Agrawal, counsel for the petitioners, Shri Sunil Otmani, counsel for respondent No. 1 and Shri Rajendra Tripathi, Panel lawyer for respondent No. 2/State and perused the judgment impugned and other documents filed on behalf of the petitioners.

6. Learned Counsel for the petitioners vehemently argued that present complaint was filed by complainant/respondent No. 1 against the petitioners in which he has alleged that the present petitioners have committed cheating and forgery relating to cheque filed criminal complaint and criminal complaint No. 1829/05 was filed by present petitioner No. 1 against the respondent No. 1, therefore, before any decision of first criminal case, order taking cognizance on the basis of same document which is subject matter of first criminal case is bad in law and continuance of any proceeding on the basis of such complaint would be abuse of process of the Court. Learned Counsel further argued that bar u/s 195(1)(b)(ii) of the Code is created in taking cognizance of the matter covered under the aforesaid revision. Learned Counsel placed reliance in the matter of M. Ravi and Ors. v. Elumalal Chettiar¹ in which the High Court of Madras has held that subsequent complaint filed by the accused relating to some cheque which is subject matter of first complaint is not maintainable because the Court concerned have to make report of same after recording finding as such while disposing of case for dishonour of cheque. Learned Counsel further placed reliance in the matter of Ashok Chaturvedi and Ors. v. Shitul H. Chanchani and Anr. in which the Apex Court has held that in the absence of prima facie case against the accused persons, complaint is liable to be quashed. Learned Counsel also placed reliance in the matter of M.S. Ahlawat v. State of Haryana and Anr. in which the Apex Court has held that making complaint in terms of Section 195 of the Code are mandatory and no Court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required under that section.

7. On the other hand, learned Counsel for respondent No. 1 opposed the petition and argued that though disputed cheque is one and the same in both cases but on the basis of said cheque, present petitioner No. 1 has filed a complaint for the offence punishable u/s 138 of the Act, 1881 against respondent No. 1 and respondent No. 1 has filed a complaint against the petitioners for commission of

offence of cheating and forgery along with other offences and has made allegation that document has been forged and offence has been committed prior to filing of the same before the Court, therefore, complaint filed on behalf of respondent No. 1 against the petitioners is maintainable. If the Court came into conclusion that forgery and cheating has been committed relating to the aforesaid cheque, the Court before a complaint for the offence filed on behalf of petitioner No. 1 would not be in a position to convict present respondent No. 1 u/s 138 of the Act, 1881, therefore, before passing any judgment on the basis of such cheque, genuineness of the cheque is required to ascertain. Learned Counsel placed reliance in the matter of Sachida Nand Singh and Anr. v. State of Bihar and Anr. in which three judges Bench of the Apex Court has observed that bar u/s 195(1)(b)(ii) of the Code of taking cognizance of offence described in Section 463 or punishable under Sections 471, 475, 476 of the Indian Penal Code committed in respect of a document produced or given in evidence in a proceeding in a Court would not attract if offence alleged was committed before production of document before the Court.

8. Present petitioner No. 1 has filed a complaint u/s 138 of the Act, 1881 against respondent No. 1 before the Additional Chief Judicial Magistrate, Bilaspur and present respondent No. 1 has filed a complaint for the offence punishable under Sections 193, 196, 197, 198, 199, 200, 209, 210, 211, 417, 418, 465, 467, 468, 469, 471 read with Section 34 and 37 of the Indian Penal Code and Section 11(f) and (ff) of the Act, 1934 before the Chief Judicial Magistrate, Bilaspur on the basis of disputed cheque bearing cheque No. 708057. Present petitioner No. 1 has alleged in his complaint that cheque has been executed and issued by respondent No. 1 for discharge of his liability and present respondent No. 1 has alleged in his complaint that the petitioners had committed cheating and forgery relating to the said cheque. If Criminal Court arrived at a finding that cheque has been executed and issued for discharge of his liability, then subsequently same Court of equal status would not be competent to take different view of forgery and cheating relating to same cheque vice-versa. If the alleged document i.e. cheque is found forged and offence of cheating has been committed relating to said cheque, then it would not be possible by the Court of same status to declare the cheque genuine and executed and issued for discharge of liability.

9. While dealing with the question of creation of bar u/s 195(1)(b)(ii) of the Code in the matter of Surjit Singh and Ors. v. Balbir Singh, the Apex Court held that bar is created for taking cognizance on the basis of complaint made by a private party.

10. While dealing with the same question, in the matter of M.S. Ahlawat (supra), the Apex Court has held the same view.

11. Conflicting judgment rendered in the matters of Surjit and Sachida (supra) were placed before five judges Constitution Bench for interpretation of Section 195(1)(b)(ii) of the Code. In the matter of Iqbal Singh Marwah and Anr. v. Meenakshi Marwah and Anr. five judges Constitution Bench of the Apex Court has

approved the law declared in the matter of Sachida (supra). Para 33 of the matter of Iqbal (supra) reads as under:

33. In view of the discussion made above, we are of the opinion that Sachinda Nand Singh has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) CrPC would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in custodia legis.

In the light of law laid down by the Constitution Bench of the Apex Court in the matter of Iqbal (supra) it has been held that complaint by a private party relating to forgery of the document prior to producing before the Court is maintainable and bar u/s 195(1)(b)(ii) of the Code is not attracted for taking cognizance.

12. Learned Judicial Magistrate First Class, Bilaspur has taken cognizance on the basis of complaint and order taking cognizance was modified by the revisional Court. As held by the Apex Court in the matter of Iqbal (supra), the revisional Court has not committed any illegality and cognizance taken by the trial Court for the offence punishable u/s 418 and 468 of the Indian Penal Code is sustainable under the law. I do not find any scope for interference in exercise of power u/s 482 of the Code.

13. Consequently, the petition has no force, same is liable to be dismissed and is hereby dismissed. However, to avoid any controversy or future complication or difference of finding/view relating to same document, the Chief Judicial Magistrate, Bilaspur is directed to recall both the complaints case pending in different Courts and either decide itself or transfer to one Court and such Court shall try and decide both the complaints simultaneously.

A copy of this order be sent to the Chief Judicial Magistrate Bilaspur and both the Courts concerned.