

(1995) 03 AHC CK 0002
In the Allahabad High Court
Case No : Criminal Revision No. 40 of 1982

L.N. Singh

APPELLANT

Vs

Fibreglass Products and Another

RESPONDENT

Date of Decision : 29-03-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202
Penal Code, 1860 (IPC) — Section 120B, 420

Citation : (1995) 03 AHC CK 0002

Hon'ble Judges : O.P. Pradhan, J

Bench : Single Bench

Judgement

O.P. Pradhan, J.—This revision is directed against the order dated 7.12.1981, passed by the Chief Judicial Magistrate, Lucknow whereby he summoned the revisionist in connection with an offence u/s 420, I.P.C.

2. The facts giving rise to this revision lie in a short compass. The opposite-party No. 1 undertook a job of repairing and re-lining of H.C.L. Storage Tanks in 1981 at the premises of M/s. Paraffins and Chemicals Ltd., Rae Bareilly, whose Managing Director was Jai Pakash Sharma at the material time. For the job done, M/s. Paraffins and Chemicals Ltd. were billed for two different amounts, out of which a cheque of Rs. 5,000 drawn upon the State Bank of India, Rae Bareilly was sent to M/s. Fibreglass Products Ltd. who sent the same to their Bankers for collection of the amount. This cheque was ultimately returned on 18.6.1981 to M/s. Fibreglass Products Ltd., uncashed. Thereafter a complaint was lodged by M/s. Fibreglass Products against Jai Prakash Sharma, the Managing Director of M/s. Paraffins and Chemicals Ltd. and Sri L. N. Singh, who was at the material time, the Manager of the State Bank of India, Rae Bareilly, in connection with offence under Sections 420 and 120B, I.P.C. in the Court of Chief Judicial Magistrate, Lucknow. After inquiry in accordance with Chapter XV, the learned Chief Judicial Magistrate issued process against the revisionist and Jai Prakash Sharma in connection with offence u/s 420, I.P.C. It is against this order dated 7.12.1981 summoning the revisionist that this revision has been preferred in this Court.

3. I have heard the learned Counsel for the revisionist as also the learned Addl. Government Advocate. However, none appeared on behalf of the opposite party No. 1 even though the names of their counsel, S/Sri G.R. Chhabra and T.R. Bhutani were clearly shown in the cause-list of the day as counsel for the opposite-party. The lower court record has also been waded through by me.

4. The learned Counsel for the revisionist contended that the revisionist did receive the cheque of Rs. 5,000 for the clearance but the same was countermanded by the drawer and, therefore, it was ultimately returned to drawee on 18.6.1981. He further urged that the revisionist had to act in accordance with the instructions of his customer whose account had to be dealt with by the revisionist as per instructions given from time to time by the customer, namely, M/s. Paraffins and Chemicals Ltd. The learned Counsel, therefore, submitted that the order summoning the revisionist is liable to be quashed since no prima facie case was made out at its face value on the basis of the material, placed before the learned Chief Judicial Magistrate.

5. Some tests were laid down by Hon'ble Supreme Court in the case of Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, , where an order of the Magistrate issuing process against the accused can be quashed or set aside:

(1) Where the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

6. In the instant case, the learned Magistrate recorded the statement of Sunil Kumar Gulati who was the Manager of M/s. Fibreglass Products as also the statements on oath of two other witnesses u/s 202, Code of Criminal Procedure. These two other witnesses gave formal evidence and Sunil Kumar Gulati, whose statement was recorded u/s 200, Code of Criminal Procedure, stated this much as against the revisionist that he, in conspiracy with Jai Prakash Sharma, withheld the cheque from 14.2.1981 to 18.6.1981 and thus cheated him and caused him loss of Rs. five thousand. The complainant also filed ten documents in the court of the learned C.J.M., in support of his case well before the process was issued. These documents include the cheque, in question, and the memo dated 18.6.1981 of the Bank referring the drawee to the drawer/There is a letter

dated 14.8.1981 issued by the revisionist to Sri Shyam Chandra Sinha Advocate, Lucknow, saying with reference to his letter dated 3.8.1981 that the payment of the cheque in question, was countermanded by the drawer (M/s. Paraffins & Chemicals Ltd.). This letter was sent by registered post to Sri Sinha in response to his notice dated 3.8.1981 sent to the revisionist. A copy of this notice dated 3.8.1981 had also been filed by the complainant in the lower court well before the impugned order was passed. A perusal of these documents goes to indicate that the revisionist had no option but to act according to the instructions received from the drawer and accordingly the cheque, in question, was returned on 18.6.1981 together with the memo of the date which had also been filed before the learned C.J.M. Had these documents been gone into by the learned C.J.M., he would have reached the conclusion that there was no prima facie case u/s 420, I.P.C., against the revisionist. The materials placed on record including the statement on oath of Sunil Kumar Gulati do not disclose a prima facie case against the revisionist in so far as the essential ingredients of Section 420, I.P.C., are concerned. The learned Magistrate was duty bound to take into consideration the relevant facts and circumstances as also the material placed on record before issuing the process. It appears that the learned Magistrate issued the process against the revisionist in a mechanical way, without satisfying himself that a prima facie case had been made out against him, so as to put him on a regular trial. Reference in this behalf may also be made to Punjab National Bank and others Vs. Surendra Prasad Sinha, and Mohinder Singh Vs. Gulwant Singh and others, .

7. Even if the allegations made in the complaint or the statement of Sunil " Kumar Gulati u/s 200, Code of Criminal Procedure, in support of the complaint are taken at the face value, no prima facie case is made out against the revisionist in connection with offence u/s 420, I.P.C., whose essential ingredients are also found lacking in the complaint or the material placed in support of the complaint in the lower court. As already indicated earlier, the revisionist had to act in accordance with the instruction of the account-holder, who according to the letter dated 14.8.1981, had countermanded the cheque, in question. It has, therefore, to be found that the impugned order of the learned Magistrate in issuing process u/s 420, I.P.C., against the revisionist is capricious and arbitrary, having been based on no prima facie evidence against him with regard to the essential ingredients of Section 420, I.P.C. The learned Magistrate had to be prima facie satisfied whether there were sufficient grounds for proceeding against the revisionist u/s 420, I.P.C., before passing the impugned order, summoning him in connection with the said offence. Thus the impugned order, summoning the revisionist in connection with offence u/s 420, I.P.C. is liable to be quashed.

8. In the result, this revision is allowed and the order dated 7.12.1981, passed by the C.J.M., Lucknow in Criminal Case No. 123C of 1981 whereby he summoned the revisionist in connection with the offence u/s 420, I.P.C., is hereby quashed. The interim stay order dated 2.2.1981, passed by this Court,

stands vacated.

9. Let the record of the lower Court be sent back within fifteen days positively so that further proceedings are conducted in the case in accordance with law.