

(2008) 12 SC CK 0052

In the Supreme Court Of India

Case No : Criminal Appeal No. 1966 of 2008 (Arising out of SLP (Criminal) No. 4957 of 2006)

Mahindra and Mahindra Financial Services Ltd. and Another APPELLANT
Vs

Rajiv Dubey RESPONDENT

Date of Decision : 04-12-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 200, 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 294, 406, 420, 506, 34

Citation : (2009) 1 ACR 880 : (2008) 13 JT 455 : (2008) 16 SCALE 62

Hon'ble Judges : Mukundakam Sharma, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : Mukul Rohtagi, Prashant Kumar, Triveni Potekar, Manoj, Vandana and Chander Shekhar Ashri, for the Appellant; V. Shekhar Manoj, Aparna Sinha and Abhijat P. Medh, for the Respondent

Final Decision : Allowed

Judgement

Arijit Pasayat, J.—Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Orissa High Court declining to interfere with the order passed by learned SDJM, Bhubaneswar in ICC 210 of 2000 taking cognizance of offence punishable under Sections 406 and 420 of the Indian Penal Code, 1860 (in short the 'IPC'). In the complaint it was inter-alia alleged as follows:

The complainant as the Managing Director of Team Finance Company Pvt. Ltd., Janpath Tower, Bhubaneswar had availed hire purchased finance from Mahindra & Mahindra Financial Services Limited, accused appellant No. 1 with the consent and knowledge of its Managing Director, accused appellant No. 2 in respect of a vehicle for a sum of Rs. 1,89,000,00. He had given seven blank cheques drawn on Canara Bank, Main Branch Bhubaneswar in favour of accused-appellant No. 1

in the year. 1994 when the agreement had been executed between the parties with mutual understanding that the said cheques would not be presented for encashment by the accused-appellant, but then payments would be made through demand drafts regularly till the entire amount was repaid. According to the complainant, in consonance with the said understanding the entire dues were repaid by him through demand drafts and after repayment he wrote a letter to accused-appellant No. 1 for returning the blank cheques to him. However, without doing so, the accused appellants mischievously and with ulterior motive presented the cheques in the bank, a fact he learnt after receiving communication from the concerned Bank, that as sufficient money was not available in his account. The cheques were presented in bank by the accused-appellants even though their entire amount had been repaid by the complainant. This was done with a motive to cheat and harass the complainant and makes out offences under Sections 406 and 420 IPC. The court below after recording the initial statement of the complainant u/s 200 of the Code of Criminal Procedure, 1973 (in short the `Code') perusing the materials produced before him and being prima facie satisfied about commission of the aforesaid offences took cognizance thereof.

3. Stand of the appellants before the High Court was that the complaint was nothing but abuse of the process of the law. It was as a counter blast to the proceedings initiated u/s 138 of the Negotiable Instruments Act, 1881 (in short the `Act'). The High Court found that it is not a case for interference u/s 482 of the Code.

4. Learned Counsel for the appellants, inter-alia, submitted as follows:

Pursuant to the minutes of meeting dated 23.6.1995 it was agreed to enter into a tripartite Agreement between the appellant No. 1-Company, the Respondent's company Team Finance Corporation Pvt. Ltd. and the customers availing the loan and buying the vehicle whereby appellant No. 1 agreed to extend loans under hire and purchase/lease directly to customers with Team Finance Co. Pvt. Ltd. being the guarantor for disbursement of the said loans to the customers for which the Respondent was given a margin of 3-4% to market the loan scheme. As per clause (e) of the said minutes of the meeting and as per clause (f) the respondent had to open a separate bank account and deposit all the post dated installment cheques received from the customers in the said account which was required to be remitted to the appellant Company on minimum balance basis in its Bombay account by way of Telegraphic Transfer and as per clause (g) the respondent was required to send reports and statements on monthly basis to the appellant company. As per clause (h) for any customer once defaults in payment reached a figure of 3, the respondent had to reimburse the said defaulted installment to the appellant Company. This understanding was further reinforced as per the minutes of discussions held between the appellant and respondent on 18-07.1996 and certain additional conditions were imposed on the respondent by the appellants whereby a limit of Rs. 20 lakhs was fixed for extending finance per

month by the respondent.

5. As such several tripartite loan agreements were signed and loan disbursed to the customers directly by the appellants with the Respondent being a guarantor and as on 25th March 2000, the total outstanding against respondent Team Finance Corporation Pvt. Ltd. stood at Rs. 2,39,73,795/- the said amount being unpaid despite several reminders to settle the outstanding amount.

6. The appellants presented 7 cheques on 29-03-2000 bearing numbers and amounts as following:

Cheque No. Amount Dated

7891578 1655516/- 29-03-2000

7891579 2526794/- 29-03-2000

7891580 1477323/- 29-03-2000

7891581 722419/- 29-03-2000

7891582 19631031/- 29-03-2000

7891583 1942609/- 29-03-2000

7891584 4712236/- 29-03-2000

7. The appellants presented 3 cheques on 2-08-2000 against the discharge of the remaining outstanding payments bearing the number and amounts as follows:

Cheque No. Amount Dated

7891585 3515726/- 2.8.2000

7891586 3530903/- 2.8.2000

7891587 1927166/- 2.8.2000

8. All these cheques were returned by the Bank to the appellants with the endorsement that the account is not valid and insufficient funds.

9. In the meanwhile, in order to pre-empt the impending proceeding under sec 138 of the Act, the respondent filed a criminal complaint CC No. 210 of 2000 against the appellants under Sections 406, 420, 294, 506, 34 IPC before SDJM Bhubneshwar on 11-05-2000, inter-alia, claiming that the cheques issued by respondent were towards an outstanding amount of Rs. 1,89,000/- and the said payment has already been made by the Respondent by way of a Demand Draft of which no number, date or any other details are provided in the complaint. The appellants became aware of institution of such a case only later when the process was issued on 18.04.2001 and the same was received by the appellants.

10. On 02-08-2000 the appellants filed Case No. 753/S/2000 u/s 138 of the Act read with Section 34 of IPC before ACMM, Esplanade, Bombay.

11. The respondent in the meanwhile kept on representing that he will clear the payments and vide letter dated 8-11-2000 made an offer to the appellants to agree for the full and final settlement of the outstanding dues for a mere sum of 25,00,000/- against a balance of 2,39,73,795/-.

12. On 18.04.2001, the Learned Court of SDJM, Bhubaneswar in ICC 210 of 2000 issued process against the appellants u/s 406/420 IPC.

13. According to the appellants the ingredients of Section 405 are not present. In any event, the plea of the respondent filing the petition mala fide is clearly borne out.

14. Learned Counsel for the respondent on the other hand submitted that the appellants have not come to this Court with clean hands.

15. The appellants have introduced a fabricated letter dated 24.6.1995. It is their stand that the entire amount was paid and, therefore, on receiving the full payment, the appellants ought to have returned the cheques which were held only as a collateral security.

16. It is not in dispute that the proceedings u/s 138 are pending. That being so, the question of proceeding for alleged breach of trust does not arise.

17. It is interesting to note that the respondent does not dispute issuance of cheques. Even a casual reading of the complaint does not show that the ingredients of Section 406 IPC are in any event made out. It is also not understandable as to how Section 294 has any application to the facts of the case much less Section 506 IPC. In addition to this, perusal of the complaint apparently shows the ulterior motive. It is clear that the proceeding initiated by the respondent clearly amounted to abuse of the process of law. In State of Haryana and others Vs. Ch. Bhajan Lal and others, , it was, inter-alia, observed as follows:

108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers u/s 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if

any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

18. The case at hand falls under category (7).

19. Therefore, in view of what has been stated in Bhajan Lal's case (supra), the proceedings in ICC 210 of 2000 before learned SDJM, Bhubaneswar stand quashed. The appeal is allowed.