
(2002) 02 MP CK 0091

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 3651 of 2001

Meenakshi Sundaram Textile Ltd. and Another

APPELLANT

Vs

Gokulchand Rakhabchand

RESPONDENT

Date of Decision : 22-02-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 420

Citation : (2002) CriLJ 4366

Hon'ble Judges : S.L. Kochar, J

Bench : Single Bench

Advocate : Ashish Gupta, for the Appellant; Sitaram Saraf, for the Respondent

Final Decision : Dismissed

Judgement

S.L. Kochar, J.—This petition u/s 482, Cr.P.C., has been filed by the applicants against the order dated 14th August, 2001 passed by XII ASJ Indore in Cri. Revision No. 372/99, arising out of the order dated 13.10.1999 passed in Criminal Complaint No. 431/99 by II Additional Chief Judicial Magistrate, Indore.

2. Non-applicant Gokulchand Rakhabchand has filed criminal complaint against the applicants before II ACJM Indore. His case, in brief, is that through cotton broker, Algappan, the applicants had approached him for purchase of bale of cotton with an assurance to make the payment between 15 to 20 days from the date of receipt of bale of cotton after deducting 19% through DD. On this inducement the non-applicant agreed to send cotton bundles but they did not pay the price as per the agreement. The non-applicant was sending cotton bales valuing more than crores of rupees on the pretext of their promise to pay money. He was also sending cotton bales for maintaining relations because he had to recover previous balance from them and if he would stop to send the goods and would stop transactions, they will not send any amount and he will have to loose balance amount. It has also been alleged by the non-applicant in his complaint

that non-applicant had purchased cotton bales at 1,2007-rupees less price per Kahndi and the same were sold to the other concern who is their sister-concern at 6007- rupees less price at different dates and earned profit but did not remit the amount to them. The applicants sent post-dated cheque bearing No. 817189 dated 15.1.1999 for Rs. 4,85,1097- drawn on Bank of Madura Ltd. but on production, it was bounced. The applicants had committed cheating with the non-applicant and after playing fraud and misrepresentation they had earned wrongful gain and cause wrongful loss to the non-applicant.

3. The Trial Court, after examining witnesses of the complainant/non-applicant, under Sections 200, Cr.P.C. and 202, Cr.P.C. passed the order against the applicants and broker Algappan and also issued process against them.

4. Against this order dated 13.10.1999, the applicants went up in revision and the same has been dismissed by the Revisional Court holding that prima facie case of proceedings u/s 420, IPC is made out against the applicants and they are liable for facing the prosecution as per law before the Trial Court. This petition u/s 482, Cr.P.C. has been filed against this order passed in revision.

5. Having heard the Counsel for the parties and after perusing the complaint as well as the statements recorded by the Trial Court under Sections 200/202, Cr.P.C. as well as after perusing the order dated 13.10.1999 passed by the Trial Court and thereafter order dated 14.8.2001 passed by the Revisional Court, this Court is of the opinion that there is sufficient prima facie material against the applicants for the offence punishable u/s 420, IPC for facing trial.

6. The contention of the Counsel for the applicants is that alleged transaction was of a civil nature and no offence punishable u/s 420, IPC is made out. He also submits that at the most offence u/s 138 of Negotiable Instruments Act would be made out against applicants.

7. There is no force in the first contention of the Counsel for the applicants on the basis of facts narrated in the complaint. The statement recorded before the Trial Court under Sections 200/202, Cr.P.C, reveals the transaction commercial or the money transaction but it is hardly a reason for holding that the offence of cheating would elude from such transaction. For one transaction, the applicants may be held responsible for civil as well as criminal liability. In the present case the applicants had received bales of cotton worth crores of rupees and also sold the same to others and earned huge profit even thereafter they did not pay money. Such evidence would prima facie make out a case for trial by the Trial Court on the basis of complaint filed by the non-applicant. Offence u/s 138, Negotiable Instruments Act, may also be made out but it does not mean that in such a case offence u/s 420, IPC would not be made out. The basic ingredients are present in the complaint as well as in the statement recorded by the Trial Court under Sections 200/202, Cr.P.C. for proceedings and trying the applicants. Reliance can safely be placed on the judgment reported in *Rajesh Bajaj v. State* NCT Delhi and Ors. III (1999) SLT 523:11 (1999) CCR 4 (SC): 1999 Cr.LJ 1833;

Medehi Chemicals and Pharma Pvt. Ltd. v. M/s. Biological E. Ltd. and Ors. II (2000) SLT 414:1 (2000) CCR 288 (SC): 2000 Cr.LJ 1487; Lalmuni Devi (Smt.) v. State of Bihar I (2001) SLT 26: I (2001) CCR 9 (SC): 2001 (1) MPWN SN 167 and Trisuns Chemical Industry Vs. Rajesh Agarwal and others, In all these cases, Hon"ble Supreme Court has held that criminal prosecution cannot be thwarted merely because civil proceedings are also maintainable. Aggrieved party can take recourse to both the proceedings.

8. This petition u/s 482, Cr.P.C. which for exercising inherent powers of this Court which are required to be used sparingly, when there is clear abuse of process of Court of law or otherwise to secure ends of justice. Prima facie, there is absolutely no material in the case filed by the applicants for proving the abuse of process of Court of law or otherwise in the interest of justice.

9. Consequently, this petition is dismissed with no orders as to cost.