

(2014) 10 KAR CK 0154

In the Karnataka High Court

Case No : Criminal Revision Petition No. 1022 of 2010

Mevida Steels Private Limited

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 320, 482
Penal Code, 1860 (IPC) — Section 120(B), 120B, 420

Citation : (2014) 4 AKR 767 : (2014) 4 KCCR 3754

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : M.R.C. Manohar, Advocate for the Appellant; C.H. Jadhav, Senior Advocate for P.M. Nawaz, Advocate for the Respondent

Judgement

Anand Byrareddy, J.—The petitioner no. 1 is a private limited company incorporated under the Companies Act, 1956. It is represented by its Managing Director, the petitioner no. 2 herein. Petitioner no. 3 is said to be an Accountant employed by the company. The said petitioners are arrayed as Accused no. 4, 5 and 8, respectively, in a pending case before the Court of the Special Judge for CBI cases, Bangalore in Spl. C.C. No. 117 of 2001. The present petition is filed challenging the rejection of the prayer of the petitioners seeking discharge under Section 227 of the Code of Criminal Procedure, 1973 (Hereinafter referred to as the "Cr.P.C. for brevity).

2. It is the allegation against the petitioners that they had approached M/s. Vijaya Bank, Moore Street Branch, Chennai, seeking Credit facilities. That in connivance and in conspiracy with the officials of the said bank, who are arrayed as the other accused, had obtained the facility, in the face of their doubtful credit worthiness. It is in that background, a case was registered for offences punishable under Section 120(B) read with Section 420 of the Indian Penal Code, 1860 (Hereinafter referred to as the "IPC for brevity), apart from offences " punishable under the provisions of the Prevention of corruption Act, 1988

(Hereinafter referred to as the "PC Act", for brevity), with which the other accused, who were public servants at the relevant point of time, are sought to be prosecuted.

It is not in dispute that the bank had also initiated civil proceedings for recovery of monies due under the transaction from the petitioner no. 1 company. Those proceedings have resulted in the parties having fully and finally settled the matter before the Debts Recovery Tribunal. It is hence contended in the present petition that the case on hand is squarely covered by a catena decisions of the Apex court, the most recent being CBI, ACB, Mumbai Vs. Narendra Lal Jain and Others, . It is contended that the court below has failed to consider the same.

The short point for consideration therefore, is though the initiation of simultaneous criminal and civil action on the same set of facts is maintainable, whether on disposal of the civil proceedings for recovery, on a compromise, upon receipt of payments by the claimants, would amount to compounding the offence of cheating? This question has been answered by the Apex Court in Central Bureau of Investigation, SPE, SIU (X), New Delhi Vs. Duncans Agro Industries Ltd., Calcutta, and B.S. Joshi and Others Vs. State of Haryana and Another, , which has been referred to and followed in Narendra Lal's case, afore mentioned.

3. The present petitioners being private parties, the charges that could be framed against them are only for offences punishable under Sections 120-B and 420 IPC and not under the provisions of the PC Act as they are not public servants.

It is however, to be noticed that though it has been held by the Apex court that a settlement of the civil proceedings would amount to compounding of the offence of cheating, Section 120-B of the IPC, which has been invoked in the present case on hand, cannot be compounded under Section 320 of the Cr.PC. It is hence clear that the court below has not chosen to refer to or consider the decisions cited by the petitioners, in canvassing a case for discharge, on the basis that there is deemed to be a compounding of the offence, alleged in so far as the petitioners are concerned.

But in the light of the settled legal position and the admitted facts and circumstances of the case, it is to be held that on a compromise and settlement of the civil proceedings, the criminal proceedings for the offence of cheating which are simultaneously launched, would deemed to be compounded. Therefore, in exercise of power under Section 482 of the Cr.P.C., the proceedings against the present petitioners, pending before the court below are hereby quashed.