
(2011) 03 CAL CK 0136
In the Calcutta High Court
Case No : C.R.R. No. 2314 of 2010

Mr. Mohammed Rafique @ Rafik Shaikh	APPELLANT
Vs	
State of West Bengal and Others	RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 320, 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 120B, 406, 420, 467, 468

Citation : (2011) 5 CHN 117

Hon'ble Judges : Ashim Kumar Banerjee, J

Bench : Single Bench

Advocate : Bhaskar Sen, Tirthankar Ghosh, U.S. Menon and Arabinda Sen, L.K. Gupta, for the Appellant; Joymalya Bagchi, Mohit Gupta for Respondent No. 1, Swapan Kumar Mullick, for State, for the Respondent

Final Decision : Allowed

Judgement

Ashim Kumar Banerjee. J.

1. The moot question involved in this litigation is whether the Court is entitled to allow the parties to settle a dispute resulted in a criminal proceeding in respect of a cognizable offence and, if so, in what circumstance the precedents on the issue differ from case to case, however the majority view is in favour of the proposition.

2. Md. Rafique, the Petitioner above named was the proprietor of M/s. Euro International. Md. Akram, Md. Koya and Anwar were also part of the said organization. The Respondent No. 2 V. Jayachandra lodged a complaint with the Police on December 10, 2004 at Karaya Police Station, Kolkata as against them. According to the said complaint, Jayachandra was associated with M/s. Sky Link Tours & Travels, Vellore, Tamil Nadu. Rafique contacted him and introduced himself as proprietor of M/s. Euro International. He had contacts with Government of India to send three hundred persons of different categories of job for Caspian Petroleum Project at Azerbaijan and offered him to be his main

recruiting agent. After negotiations, Jayachandra paid a sum of rupees ten lacs to Rafique at his Dubai office towards commission for recruitment and a further sum of rupees twelve lacs at their Kolkata office. Jayachandra, appointed two agents at Tamil Nadu and collected applications from three hundred persons with initial payment. He deposited those applications along with their Passports and requisite papers and sent those documents to Kolkata. Rafique arranged for VISA in favour of those three hundred persons which were later on turned as fake. Jayachandra contacted Rafique when he expressed his inability to send people at Azerbaijan due to difficulty and promised to refund the money in due course. He issued cheques which were dishonoured for non-payment. On being cheated, Jayachandra made the complaint. He came to learn young persons all over India had been cheated in the same manner in the year 2003 and the amount covered by such cheating ran into crores. He alleged criminal conspiracy as against Rafique.

3. Acting upon the said complaint the Police arrested Rafique and his companions and charged them u/s 467/468/471/420/120-B of the Indian Penal Code. During the pendency of the said criminal case the parties compromised. They entered into a Deed of Compromise dated March 10, 2010 whereby Rafique refunded a sum of rupees twenty two lacs in full and final settlement of the claim of Jayachandra. By the said Deed of Compromise Jayachandra agreed and undertook to withdraw his complaint lodged in Karaya Police Station referred to above. He also agreed not to oppose application for bail in connection with the said case.

4. In this backdrop Rafique approached this Court for quashing of the said proceeding. Jayachandra supported his prayer through his advocate. According to the learned Counsel, since Jayachandra got back his money he had no grievance as against Rafique and/or his companions. Significant to note, Jayachandra did not disclose any document pertaining to his allegation with regard to forgery of the VIS As or alleged cheating of several people in the recent past (2003).

5. I heard Mr. Bhaskar Sen, learned senior counsel for the Petitioner, Mr. Joymalya Bagchi for Jayachandra and Mr. Swapan Kumar Mullick for the State. I also requested Mr. Lakshmi Kumar Gupta, learned senior counsel of this Court to act as Amicus Curiae to assist this Court. Accordingly Mr. Gupta made submissions along with the learned Counsel mentioned above.

6. Mr. Sen contended that once the parties resolved the dispute amongst themselves the Court should take a pragmatic approach and quash the proceeding if according to the Court no useful purpose would be served by keeping the said case pending. According to Mr. Sen, once the complainant was satisfied by the compromise made between them he would obviously not pursue his complaint. In absence of his persuasion the case would result in an obvious acquittal and/or discharge of the accused. He relied on four Apex Court decisions on the issue that I would be discussing shortly after.

7. Adopting the contention of Mr. Sen, Mr. Bagchi appearing for Jayachandra contended that he lodged the FIR on a misconception that Rafique was involved in forging the VIS As. He, however, could not produce any supporting document to the prosecution to support his allegation. He was principally aggrieved due to non-refund of his money paid to Rafique. Once he got back his money he was not interested to proceed with his complaint. According to Mr. Bagchi, an unwilling complainant could not be compelled to prosecute and/or pursue his complaint even if his grievance was met. According to Mr. Bagchi, there was neither any material on the allegation u/s 468 nor any element of cheating attracting Section 420. In the instant case, Jayachandra lodged the complaint on a misconception and being aggrieved by non-refund of his money. No useful purpose would be served pursuing the said complaint any more. He also relied on the decisions cited by Mr. Sen referred to above.

8. Mr. Mullick appearing for the prosecution while opposing the prayer contended that the FIR was nothing but a process of activation of the Investigative Agency. The accused were charge-sheeted. Hence, the Court should proceed with the trial as the incident had an element of public importance. According to Mr. Mullick, the parties might raise this issue at the time of trial. Stage did not come to consider whether there was any material to frame the charges implicating the accused. He also relied on two Apex Court decisions to be discussed shortly after.

9. Acting as Amicus Curiae, Mr. Gupta made an elaborate submission that was of immense assistance to this Court. He contended that on a combined reading of the decisions cited at the Bar four issues emerge which are -

- (i) the dispute purely personal or basically civil
- (ii) public policy
- (iii) useful purpose
- (iv) chance of ultimate conviction bleak

According to Mr. Gupta, if the issue No. 1 and 4 could get an affirmative answer having issue No. 2 and 3 in the negative the Court should quash the proceeding even if it was a cognizable offence. Otherwise the Court should not quash the said proceeding despite a compromise being had between the parties involved in the said controversy as it would be contrary to public policy.

10. Applying the aforesaid test Mr. Gupta examined the present case and ultimately observed that the Petitioner was justified in making the prayer for quashing as no useful purpose would be served by keeping the said proceeding pending and the proceeding, if quashed would not be contrary to public policy involving issue of public importance. Mr. Gupta contended that the factual matrix involved herein successfully passed the aforesaid four tests and got the desired result in favour of quashing.

11. Let me first discuss the law on the subject. The decisions cited by the parties

are -

- (i) Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others,
- (ii) State of U.P. Vs. R.K. Srivastava and Another,
- (iii) R.S. Raghunath Vs. State of Karnataka and another,
- (iv) Surendra Nath Mohanty and Anr. v. State of Orissa 1999 SCC(Criminal) 998
- (v) B.S. Joshi and Others Vs. State of Haryana and Another,
- (vi) Jagdish Chanana and Ors. v. State of Haryana and Anr. 2008 14 SCC 704
- (vii) Manoj Sharma v. State and Ors. 2008 16 SCC 1
- (viii) Madan Mohan Abbot Vs. State of Punjab,
- (ix) Nikhil Merchant Vs. Central Bureau of Investigation and Another,
- (x) Alope Roy and Ors. v. The State of West Bengal and Anr. 2009 1 Cal CLR (Cal) 930
- (xi) Central Bureau of Investigation Vs. A. Ravishankar Prasad and Others,
- (xii) Smt. Rumi Dhar Vs. State of West Bengal and Another,
- (xiii) Amar Nath Shukla v. State of Uttaranchal 2010 1 Cal CLR(SC) 39
- (xiv) State of Maharashtra and Others v. Arun Gulab Gawali and Ors. 2010 3 SCC (Criminal) 1459

In the case of State of Haryana v. Bhajan Lal (Supra), the Apex Court framed a guideline for quashing of the criminal cases. The Apex Court framed seven categories of cases where such power could be exercised , the categories are -

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.

12. If we look to all the seven categories we would find that the Apex Court did not oversee the category involved in our case. This question cropped up in the case of B.S. Joshi (Supra). The non-compoundable evidence committed u/s 498-A/406 of the Indian Penal Code committed by the in-laws of a married lady came up for consideration whether the same could be quashed despite specific bar in the Criminal Procedure Code. The Apex Court observed that Section 320 of the Code of Criminal Procedure did not limit or affect the power of the High Court u/s 482. The Apex Court was of the view that no useful purpose would be served by keeping the said proceeding pending as there was no reasonable likelihood of the accused being convicted of the offence. The Apex Court relied on the case of Madhu Limaye reported in 1978 Supreme Court Cases (Criminal) Page-10 and observed that for ends of justice High Court could interfere and bar would not operate to prevent abuse of process and to secure ends of justice. The Apex Court also considered the fact that there was every likelihood that non-exercise of such inherent power might cause hindrance for the couple to settle the dispute amongst themselves.

13. The latest decision of the Apex Court in the case of Manoj Sharma and Madan Mohan Abbot (Supra) considered a like situation. In the case of Manoj the Apex Court was of the view that in case of a dispute being of private and/or personal nature the High Court could exercise power u/s 482 whereas in the case of Madan Mohan (Supra) the Apex Court once again reiterated by saying that the dispute being purely personal could not have any involvement of public policy and the High Court could exercise its power.

14. Mr. Mullick relied on Surendra Nath Mohanty (Supra) and Amar Nath Shukla (Supra) where the trial was already conducted resulting in conviction of the accused and the accused already suffered imprisonment. However considering the changed scenario, the Apex Court reduced the sentence. In the case of Amar Nath Shukla (Supra) the Apex Court was of the view that once the offence was a non-compoundable the Court could not compound the same on the basis of the compromise. In that case the accused already suffered a punishment and was in

jail when compromise was entered into during pendency of the appeal. These two cases, in my view, could not be of any assistance to us to answer the question involved herein. When an offence has already been tried by a competent Court and a conviction is passed the conviction can only be altered by the superior Court in appeal. The parties by compromise cannot upset such conviction. In the instant case the charge-sheet has been submitted. The charges are yet to be framed. Hence, these two cases would be of no importance.

15. In the case of Rumi Dhar (Supra), the Apex Court came to a definite conclusion that the nature of the offence involved an element of public policy. In the said case the accused was charged of defrauding a public Bank. The parties settled the civil proceeding by adjusting the accounts maintained between themselves. The element of criminality involved therein was non-compoundable and the Apex Court was of the view that settlement of dispute before a civil forum adjusting civil liability would not per se give rise to a right to the accused to ask for quashing of the criminal proceeding. The Apex Court referred to the decision in the case of Nikhil Merchant (Supra) wherein the decision in the case of B.S. Joshi (Supra) was considered. The Apex Court observed in Nikhil Merchant (Supra) that the dispute between the company and Bank had been set at rest on the basis of the compromise. However the dispute involved in the criminal case had "overtones of a civil dispute with certain criminal facets". Taking a sum total of the situation above I am of the view that close analysis of these decisions made by Mr. Gupta is not only apt but also accurate. If a dispute is of a civil nature involving respective personal interest of the parties without having any public importance touching the public policy, the High Court, for ends of justice and to set at rest the long standing animosity between the parties, is competent to quash the proceeding. The Court, in my view, should take a pragmatic approach to find out whether any useful purpose would be served by keeping the proceeding pending as it would have an obvious result of failure in absence of persuasion of the complaint by the complainant.

16. Coming back to the present case, we find Jayachandra lodging complaint for dishonour of cheques attracting mischief of Section 138 of the Negotiable Instrument Act. He, however, did not pursue such remedy. Had he done so, it could have been compounded. Be that as it may, he approached the criminal Court through Police alleging forgery and cheating. The offence u/s 420 is compoundable with the permission of the Court. Hence, there was no impediment to quash the proceeding initiated under this provision.

17. With regard to the forgery, Mr. Gupta drew my attention to the charge-sheet which would ex facie show that the charge was devoid of any material. Vague allegation that three hundred VIS As were fake or that several persons were cheated likewise in the recent past, did not have any support from the evidence that was likely to be placed by the prosecution as indicated in the charge-sheet. Such offence, in my view, would have an obvious result of failure irrespective of the fact that the complainant was no longer interested in proceeding with his

complaint.

18. Thus leaves us with the question as to whether quashing would be contrary to public policy. On a combined reading of the complaint it would ex facie appear that the dispute was absolutely personal involving Rafique and Jayachandra. The allegation of forgery or cheating of other persons might have involvement of public element. However such allegations did not have any evidentiary support even if the chargesheet was taken on its face value. I have no hesitation to hold that the charges brought against the accused although having smell of public element did not have any basis in reality. In short, giving full credence to the complaint such charge of forgery and cheating of unknown victims did not disclose any cognizable offence having likelihood of success at the ultimate trial.

19. The application thus succeeds and is allowed.

20. The EBGR case No. 32 of 2004 arising out of Karaya Police Station case No. 376 dated December 18, 2004 is quashed and set aside along with orders passed and/or directions given from time to time there under.

21. CRR 2314 of 2010 is disposed of.

22. Urgent photostat copy will be given to the parties, if applied for.