

(2010) 10 AHC CK 0413

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 12371 of 2006

Nandini Roofing System Pvt. Ltd. and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 05-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200, 244, 482
Penal Code, 1860 (IPC) — Section 406, 415, 420

Citation : (2013) 1 ACR 619

Hon'ble Judges : Kant Tripathi, J

Bench : Single Bench

Advocate : G.S. Chaturvedi, Manoj Kumar Singh-III and Nishant Singh, for the Appellant; Ajay Bhdnot, for the Respondent

Final Decision : Dismissed

Judgement

Shri Kant Tripathi, J.—Heard Mr. G.S. Chaturvedi, the learned senior counsel assisted by Mr. Manoj Kumar Singh-III and Mr. Nishant Singh for the petitioners and Mr. Ajay Bhanot for the respondent No. 2 and the learned A.G.A. for the respondent No. 1 and perused the record. This is a petition u/s 482, Cr.P.C. for quashing the summoning order dated 31.7.2006 passed in the complaint case No. 1780 of 2006, Karam Chand Thapar and Brothers (C.S.) Limited v. Nandini Roofing System Put. Ltd. and others, whereby the learned Special Judicial Magistrate (C.B.I.) Ghaziabad has summoned the petitioners u/s 420, I.P.C. for trial.

2. The respondent No. 2 M/s. Karam Chand Thapar and Brothers (C.S.) Limited is a private limited company. The complaint on its behalf was filed by Mr. Rahul Jain as an authorised representative of the company. The said company is involved in the field of construction and also in the field of sale of coal etc. and had been granted a contract for carrying out certain works in the Tehri Dam Project and for execution of the said work the Company was in need of G.I.C. sheets of special quality. The petitioners No. 2 and 3 who were directors of Nandini Roofing

System Pvt. Limited informed the respondent company that they had experience of manufacturing G.I.C. sheets of the special quality and had also necessary machinery and equipments etc. for such manufacturing. Accordingly the respondent No. 2 placed a written order dated 5.11.2005 for supply of 120 metric tonnes of G.I.C. sheets on certain terms and conditions. The raw materials were supplied by the respondent No. 2 and as per the agreement, the petitioners were required to supply G.I.C. sheets within sixteen weeks from the date of the order. In execution of the agreement, the respondent No. 2 gave a bank draft of Rs. four lac on 24.5.2005 and Rs. ten lac on 25.6.2005 to the petitioners. A sum of Rs. ten lac was also paid on 18.8.2005. In this way, the respondent No. 2 paid a total sum of Rs. twenty four lac to the petitioner. Moreover, the respondent No. 2 supplied 46.35 Metric tonnes raw materials to the petitioners and the cost of raw materials was Rs. eighteen lac. Despite the supply of raw materials by the respondent No. 2 and payment of the aforesaid amount, the petitioners did not make any supply of G.I.C. sheets and had been giving false assurances. The petitioners company through letter dated 27.11.2005 gave an assurance in writing that Roll Tools would be manufactured upto 30.11.2005 and the final trial production would start within 4-5 days. Despite that assurance no supply was made. On inquiry, the respondent No. 2 found that the petitioners had no machinery and other facilities for manufacturing G.I.C. sheets and they had given false assurances and in this way they misappropriated Rs. twenty four lac and also raw materials worth Rs. eighteen lac.

3. The respondent No. 2 moved an application u/s 156(3) of the Code of Criminal Procedure (in short "the Code") before the concerned Magistrate, who treated the application as complaint. In support of the complaint, the complainant was examined u/s 200 of the Code and various documents were also filed. The learned Magistrate, keeping in view the facts and circumstances of the case, held that there was sufficient grounds to proceed with the complaint against the petitioners u/s 420, I.P.C. However, the learned Magistrate held that no offence u/s 406, I.P.C. was made out. Accordingly, the learned Magistrate passed the summoning order dated 31.7.2006.

4. Mr. G.S. Chaturvedi submitted that the dispute is of civil nature arising out of a commercial contract. Moreover, a civil suit is also pending, therefore, the summoning order in regard to a civil matter was not proper. Mr. Chaturvedi further submitted that funding was not made as per the supply order, therefore, the petitioners were not responsible for the breach. Continuance of the proceedings of the criminal case in such circumstances would be nothing except an abuse of the process of the court.

5. Mr. Ajay Bhanot, on the other hand, submitted that the fact disclosed in the complaint constitute a criminal charge u/s 420, I.P.C. against the petitioners. From the facts stated in the complaint, if a civil case is also made out and is pending, the criminal proceedings cannot be quashed on this ground. It was next

submitted that the intention of the petitioners was dishonest from the very inception of the transaction. In para No. 1 of the complaint, it is very specifically stated that the petitioners had given a false assurance that they had machinery and equipments for manufacture of G.I.C. sheets, which, on inquiry, the respondent No. 2 found incorrect. The agreement was obtained by making false statements and misrepresentations, therefore, the intention of the petitioners was dishonest at the time they entered into the contract with the respondent No. 2. As such it is not a case of breach of contract simpliciter. The petitioners had been paid huge amount. Despite that they did not make any attempt to supply the G.I.C. sheets, therefore, the case falls within four corner of a criminal charge u/s 420, I.P.C.

6. Mr. Ajay Bhanot placed reliance on Indian Oil Corporation Vs. NEPC India Ltd. and Others, , in support of his submission. In the said case, the Apex Court after referring to a large number of previous decisions, propounded inter alia the following principles:

A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

7. It was further observed that a given set of facts will make out a case; purely a civil wrong; or purely a criminal offence; or a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

8. Mr. G.S. Chaturvedi did not dispute the aforesaid settled principle but contended that the facts and circumstances of the case do not constitute any criminal charge.

9. Section 415, I.P.C. defines cheating, which reads:

415. Cheating.--Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause

damage or harm to that person in body, mind, reputation or property, is said to "cheat".

10. An offence of cheating, therefore, is not made out unless the following ingredients exist:

(i) deception of a person either by making a false or misleading representation or by other action or omission;

(ii) fraudulently or dishonestly inducing any person to deliver any property; or to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

11. In the case of Syed Askari Hadi Ali Augustine Imam and Another Vs. State (Delhi Admn.) and Another, , the Apex Court has held that indisputably, in a given case, a civil proceeding as also a criminal proceeding may proceed simultaneously. Cognizance in a criminal proceeding can be taken by the criminal court upon arriving at the satisfaction that there exists a prima facie case.....It is now well-settled that ordinarily a criminal proceeding will have primacy over the civil proceeding. Precedence to a criminal proceeding is given having regard to the fact that disposal of a civil proceeding ordinarily takes a long time and in the interest of justice the former should be disposed of as expeditiously as possible. If primacy is to be given to a criminal proceeding, the civil suit must be determined on its own merit, keeping in view the evidence brought on record therein and not in terms of the evidence brought in the criminal proceeding.

12. The aforesaid principles have been reiterated by the Apex Court in the case of Devendra and Others Vs. State of U.P. and Another, .

13. Therefore, It is well-settled that only the allegations made in the complaint have to be taken at their face value without embarking upon an inquiry as to the reliability and genuineness of the allegations. If the facts stated in the complaint constitute a criminal charge as also a civil case, the proceedings of the complaint case cannot be quashed. It can be quashed only when the allegations do not constitute any criminal charge and merely constitute a case of civil nature.

14. In the present case, allegations are that the petitioners had no machinery and equipments for manufacturing the G.I.C. sheets and despite that they made the statement that they had machinery and equipments for manufacturing G.I.C. sheets and would also supply the same within the agreed time. On the basis of this misrepresentation the respondent No. 2 agreed to place supply order to the petitioners and paid a sum of Rs. twenty four lac besides supplying raw materials worth Rs. eighteen lac. In view of this, the allegations, as made in the complaint, do not only make out a civil wrong rather the allegations do constitute a criminal charge u/s 420, I.P.C. besides the civil liability. If the entire case is read together, it transpires that the intentions of the petitioners were dishonest from the very beginning and they acted with that intention and induced the respondent No. 2

to place supply order and make the payments. In this view of the matter the contention that the allegations made in the complaint merely constitute a civil wrong, has no substance.

15. In view of the aforesaid, the summoning order seems to be perfectly correct and require no interference. The petition has no merit and is accordingly dismissed. It will however, be open to the petitioners to press for discharge after the evidence u/s 244 of the Code is adduced in support of the complaint and in that event the learned trial court will consider the plea of discharge without being influenced from any of the observations made hereinbefore.