
(2007) 12 UK CK 0046

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No"s. 16 of 2001 and 164 of 2002

New Standard Engineering Company Ltd. and Others

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 11-12-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 482
Penal Code, 1860 (IPC) — Section 405, 408, 420, 506

Citation : (2008) 3 UC 1589

Hon'ble Judges : B.C. Kandpal, J

Bench : Single Bench

Advocate : Alok Singh, assisted by, Mamta Joshi, for the Appellant; M.C. Bansal and Learned A.G.A. for State, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Kandpal, J.—By way of these petitions, u/s 482 of the Code of Criminal Procedure the Petitioners have sought relief to quash the proceedings of the complaint case No. 1453 of 2000, Shivangi Crafts v. New Standard Engineering Company and Ors. u/s 420 I.P.C. pending before the Additional C.J.M. Kashipur and the order dated 9-5-2002 passed in Criminal Revision No. 30 of 2001 as well as the summoning order.

2. Both these petitions arise out of the same criminal case pending before the trial Court, hence these are being decided by this common judgment.

3. Brief facts of the case are that the Petitioner M/S New Standard Engineering Company Ltd. is a public Limited Company incorporated under the Indian Companies Act and the other Petitioners are Directors and Managing Director. The Respondent M/S Shivangi Crafts Ltd. was in need of Blow Room Machine and Carding Engines for their open-end-project at Kashipur. On 11-6-1997 the Petitioner, who are well-known manufacturer of the said item submitted an offer with the Respondent Crafts Ltd. According to the agreement the Respondent issued cheque of Rs. Ten Lakhs in favour of Petitioner Company. On 17-12-1997

the Petitioner Company again demanded advance of Rs. Ten Lakhs. At this two cheques amounting to Rs. Five Lakhs each were also given as advance. On 15-7-1998 the Petitioner sent a proforma invoice amounting to Rs. 33,06,902/- to the Respondent towards the price of machinery. Again the Petitioner wrote a letter on 31-8-1998 demanding Rs. 50 Lakhs for the purpose of effecting dispatches of the machinery. On 16-11-1998 the Respondent Crafts Company sent letter to the Petitioner for cancellation of order of Blow Room Machines and Cards on the ground that in view of the market slump in general and bad condition of the open-end Units they had dropped the idea of putting up open-end Unit at Kashipur. According to the Petitioners the machines for which order was placed on 14-10-1997 by the Respondent was ready for dispatch and the Petitioner had spent huge fortune in the construction and manufacturer of the said machinery. On 1-1-1999 Respondent again wrote a letter about the cancellation and for refund of advance money of Rs. 20 Lakhs. The Petitioner also sent notice to Respondent Crafts Ltd. for payment of Rs. One Crore so as to enable the Petitioner to dispatch the said machinery and in case the same amount is not paid within 15 days then suit will be filed.

4. The Respondent Crafts Ltd. filed a criminal complaint in the Court of Addl. C.J.M. Kashipur Under Sections 420, 405, 506 and 408 I.P.C. against the Petitioner Company and its 8 Directors and also against the Regional Manager and Executive Vice President and Senior Vice President. The learned Magistrate recorded the statement of Yogesh Kumar Jindal, Respondent, the Managing Director of Shivangi Crafts Ltd. The statements of Piyush Gupta and R.D. Sharma were also recorded u/s 202 Code of Criminal Procedure and being satisfied that prima facie case u/s 420 I.P.C. is made out against the Petitioners, took cognizance against them vide summoning order dated 5-1-2001.

5. Feeling aggrieved by the above order dated 5-1-2001, the Petitioners filed criminal revision before the Additional Sessions Judge, Kashipur, who vide impugned order dated 9-5-2002, dismissed the revision.

6. The Petitioners have preferred the petitions for quashing of the criminal complaint case, pending before the Addl. C.J.M., Kashipur and also for quashing of the summoning order dated 5-1-2001 as well as the order of the revisional court dated 9-5-2002.

7. The Respondent Crafts Ltd. filed counter affidavit and denied the allegations of the petitions. In the counter affidavit it has been averred that the Petitioner did not send a proforma invoice according to the terms and conditions of the supply order. It was agreed between the parties that the prepared machinery to be supplied by the Petitioner will be inspected by the technical experts of Respondent through letter dated 15-7-1998. Sri R.D. Sharma, visited the office of Petitioner at Mumbai for inspection of the machinery and he found that the letter dated 15-7-1998 was a false letter and no machinery was ready for its delivery and dispatch and thereby cheated the Respondent Crafts Ltd.

8. Heard the learned Counsel for the parties and perused the record.
9. Learned Counsel for the Petitioners has submitted that the dispute between the parties is purely a civil dispute. He also alleged that according to the terms and conditions of the agreement the machinery was ready for dispatch but the Respondents cancelled the order for his own problems. There was no element of misappropriation or conversion of the money for own use and cheating the Respondent. The trial court has not evaluated the facts in right prospectus of the case and passed the summoning order in a cursory manner. The revisional court also erred in confirming the summoning order.
10. On the other hand the learned Counsel for the private Respondents has submitted that as per the terms of the agreement the machinery should have been put for inspection and when the representative of the Respondents went for the inspection of the same for two times, the machinery was not prepared and the Petitioners cheated the Respondents. The Petitioner has also wrongly alleged that payment of the advance of Rs. Ten Lakhs was made whereas advance of Rs. 20 Lakhs was given the Petitioner Company. The intention of the Petitioners from the very inception was to deceive and cheat the Respondents and therefore the trial court has rightly passed the summoning order and the revisional court finding no force in the revision petition, dismissed the same.
11. Learned Counsel for the Petitioners in support of his submissions has filed the copy of the judgment dated 24-10-2007, rendered by this Court in Criminal Misc. Application No. 269/2004 Narender Pandit v. State and Ors. I have gone through the above judgment and find that the facts of the cited case are not applicable to the facts of instant case as the same are totally different.
12. I have gone through the summoning order dated 21-5-2001 and the revisional court's order. It has come on record that as per the agreement the Petitioner was given Rs. 20 Lakhs as an advance and when the machinery is prepared, it was to be inspected by the Respondents. When the information was sent to the Respondents, its representatives were sent twice for inspection of the machinery but it was found that no machinery was prepared. The learned Magistrate in his summoning order has given the reasons for taking cognizance against the accused/Petitioners u/s 420 I.P.C. on finding a prima facie case and I do not find any illegality and infirmity in it. The revisional court in his order, has recorded the finding that from the very inception the intention of the Petitioners was to deceive the Respondents and from the statements of the complainant and his witnesses, prima facie case u/s 420 I.P.C. was made out.
13. The disputed facts cannot be adjudged in a petition u/s 482 Code of Criminal Procedure I am not supposed to embark upon an enquiry whether the allegations in the F.I.R. are likely to be established by evidence or not. No abuse of process of Court has been committed in passing the impugned order by the learned Magistrate while issuing summons to the accused/Applicants. The Applicant will have opportunity before the trial Judge to put forth their defence.

14. The Hon''ble Apex Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, , has observed that "High Court is not justified in going into the disputed question of fact by appreciating the documents and evidence produced before it by treating them as evidence to hold the accused person as innocent because it will amount to pre-trial of a criminal case under inherent powers of the Court." The Hon''ble Apex Court in the same judgment has also observed that-"High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. The High Court may only examine whether the F.I.R. or the complaint or the material collected by prosecution taken on their face value and accepted in entirety, prima facie constitute an offence or make out a case against the accused person."

15. The Hon''ble Apex Court in an another case State of Bihar Vs. Raj Narain Singh, , has observed that "High Court prejudging police papers and having found discrepancies etc. in them and quashing a pending criminal case would be improper."

16. Further the Hon''ble Apex Court in a case Kailash Verma v. Punjab State Civil Supplies Corporation and Anr. reported in 2005 (1) Crimes 188 (S.C.) has held that the High Court can entertain a petition u/s 482 Code of Criminal Procedure only when there was serious miscarriage of justice and abuse of process of court or mandatory provisions of law were not applied with and when High Court felt that inherent jurisdiction to be exercised to correct the mistake committed by the revisional Court. I do not find any mistake in the revisional court's order. As stated earlier, prima facie, on the basis of the evidence adduced before the trial court, a case u/s 420 I.P.C. was made out to summon the accused/Petitioners and no illegality and impropriety was there in the summoning order and the revisional court's order by which the summoning order was affirmed.

17. For the reasons recorded above, I do not find any merit in these petitions and the same are liable to be dismissed.

18. Accordingly the petitions are dismissed. The interim order, if any, stands vacated.

19. Let a copy of this judgment be placed in the file of Criminal Misc. Application No. 16/2001.