

(2009) 02 AHC CK 0022
In the Allahabad High Court
Case No : Criminal M.A. No. 244 of 2009

Prabhat Dhandhanian and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 05-02-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200, 202, 203, 341
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 341, 504, 506

Citation : (2010) 2 ACR 1302

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Advocate : Sheo Ram Singh and Sanjeev Kumar Asthana, for the Appellant;
Sujeet Kumar, A.G.A., for the Respondent

Judgement

Vinod Prasad, J.—A quadruple applicants Prabhat Dhandhanian, Pawan Kumar Dhandhanian, Surendra Pratap Singh, and K. N. Misra have knocked the door of this Court invoking its inherent jurisdiction u/s 482, Code of Criminal Procedure through the above criminal misc. application hankered with the prayer to get their prosecution of Criminal Case No. 1795 of 2008, Girja Shankar Jaiswal v. Prabhat Dhandhanian and Ors., under Sections 504, 506, 341, I.P.C. relating to Police Station Sagra, district Varanasi pending in the Court of VII Ith Judicial Magistrate, Varanasi quashed with interim prayer for stay of the trial courts proceeding pendente lite.

2. Briefly stated, backgrounds facts generating this criminal misc. application are that complainant Girja Shankar Jaiswal, Respondent No. 2, is a dealer in cement and other building materials and during course of his business he had developed friendly intimacy with Prabhat Dhandhanian applicant, who is the owner of Annapurna Distributors situated at Kashi Vidya Peeth Road, district Varanasi. For business deal talks complainant went to the Firm of the applicant Prabhat Dhandhanian on 25.4.2005 at 2 p.m., where rest of the applicants also reached. Conversation between them centered around for payment of residue of money on

which complainant informed the applicant that no credit amount is due to him of previous business transactions. On this all the applicants started vituperising complainant and intimidated him criminally with his life and snatched his scooter DYE-7510 its papers and rupees 2,100. Further, complainant was detained for three hours and was made to sign on some blank stamp papers. Endeavour of complainant to get his F.I.R. of the said incident registered went in vain and therefore, on 6.5.2005, he wielded the power of Chief Judicial Magistrate, Varanasi u/s 156(3), Code of Criminal Procedure vide Annexure-3 to this application but his said application was rejected by the Court on 15.5.2005. After a gap of more than six months Respondent No. 2 complainant filed another application u/s 156(3), Code of Criminal Procedure on 9.12.2005 on the same allegations vide Annexure-4. In this second attempt the application of Respondent No. 2 was treated to be a complaint by the Magistrate vide his order dated 18.12.2006, who registered Complaint Case No. 3538 of 2006, on the said basis and thereafter rejected the said complaint u/s 203, Code of Criminal Procedure on 24.10.2007, after recording statements under Sections 200 and 202, Code of Criminal Procedure Respondent No. 2 successfully challenged the rejection of his complaint order in Criminal Revision No. 510 of 2007, which was allowed on 6.5.2008 by Additional Sessions Judge F.T.C.-2, Varanasi and the case was remanded back to the Magistrate vide C.A.-2 to the counter-affidavit filed in this application. It seems that Respondent No. 2 moved another application u/s 156(3), Code of Criminal Procedure against the applicants but the said application was rejected by a detailed order on 1.8.2007 by C.J.M., Varanasi (Annexure-7). Thereafter vide order dated 17.11.2008, VII Ith Judicial Magistrate, Varanasi summoned the applicants in the complaint case for offence under Sections 504, 506 and 341, I.P.C. Hence, this application by the applicants to get their prosecution of the complaint case quashed.

3. At the time of admission itself complainant appeared in this criminal misc. application and filed a counter-affidavit to which a rejoinder-affidavit has also been filed. This criminal misc. application was heard finally in agreement with both the sides since the pleadings in this case were complete.

4. Sri. Sanjiv Kumar Asthana and Sri. Shiv Ram Singh learned Counsels for the applicants vehemently attacked the complaint case and submitted that the same has been instituted vexatiously and maliciously only as a harassing device to take vengeance from the applicants as they had instituted an earlier complaint against Respondent No. 2 u/s 138 of the N.I. Act. Relying upon Annexures-1 and 2 appended alongwith this criminal misc. application, which is the copy of the complaint and summoning order u/s 138, N.I. Act proceedings, it was submitted that finding himself in deep trouble in the said proceeding, that a false case has been cooked up by Respondent No. 2 to implicate respectable persons who had no criminal background at all. It was submitted that snatching of a scooter and its papers by the applicants who are whole sellers of J. P. Cement and run their own Firm in the name and style M/s. Annapurna Distributors is nothing but mala fide. It was submitted that in the year 2003 Respondent No. 2 had issued

cheques to applicant No. 1 which were dishonoured because of insufficiency of funds in the account of the complainant Respondent No. 2 and hence Complaint Case No. 1654 of 2003, J.P. Cement through Proprietor sri. Annapurna Distributors, Prabhat Kumar Dhandhanian v. Girja Shankar Jaiswal, u/s 138, N.I. Act was instituted in the Court on 15.10.2003 and Respondent No. 2 complainant herein was summoned on 4.12.2003 that is why he has falsely implicated the applicants. It was submitted that other applicants are witnesses in that 138 N.I. Act case. It was submitted that the allegations in the impugned complaint are patently absurd and hence the prosecution of the applicants deserves to be quashed. It was further contended that first application u/s 156(3), Code of Criminal Procedure was dismissed on 16.6.2005 and after a gap of six months that another application was filed which indicates malicious intent of the complainant. Dismissal order of his first application dated 16.6.2005 came to the knowledge of Respondent No. 2 on the same day yet he preferred to remain silent for six months and it was only after that he moved another application which projects his ulterior motives of harassing the applicants in this false case which is totally absurd. Concludingly it was submitted that the harassment of the applicants be curbed and their prosecution in the above complaint case be quashed.

5. Per contra, sri. Sujeet Kumar and learned Additional Government Advocate urged that since the offences are disclosed there is no reason for this Court to interfere with the prosecution at its very inception and quash the same. Defence of the applicants cannot be considered to thwart a legitimately instituted prosecution submitted learned Counsel for Respondent No. 2 complainant. Without addition or subtraction, the version of the complaint has to be accepted as correct and true and summing from that angle, complaint of Respondent No. 2 cannot be quashed. Disputed questions of facts cannot be adjudged at this initial stage of the trial and hence the prosecution of the applicants cannot be stultified at its very inception and the complainant must be afforded opportunity to establish his case. Summing up, it was contended that this criminal misc. application being bereft of merits deserves to be dismissed.

6. I have considered rival submissions and have gone through the record of this case. Undisputed and uncontroverted facts of the application brings out that Respondent No. 2 complainant gained affinity with the applicants during course of his business. They both have their own Firms dealing in J.P. Cement and therefore both of them stood in relationship with each other as Distributors and sale promoter in J.P. Cements as applicants No. 1 Prabhat Dhandhanian and his Firm M/s. Annapurna Distributors are wholesale distributors in J.P. Cement. Annexures-1 and 2 to this application in conjunction with Annexure-CA-1 to the counter-affidavit filed by Respondent No. 2 clearly indicates that prosecution of Complaint Case No. 1654 of 2003 was instituted by applicant No. 1 against Respondent No. 2 u/s 138 of N.I. Act in which Respondent No. 2 was summoned. No doubt the proceeding of that complaint case was stayed by this Court but only for the reason that the complaint was time barred. No order to the effect that no

offence is made out was passed by this Court and hence as a matter of fact the version of the applicants here that they have instituted a complaint case against Respondent No. 2 prior to lodging of present complaint by Respondent No. 2 is an established fact. It is also established that after the said complaint was instituted by the applicant No. 1, Respondent No. 2 filed an application u/s 156(3), Code of Criminal Procedure on 6.5.2005 under Sections 392 and 504, Code of Criminal Procedure mentioning the date and time of the incident to be 25.4.2005 at 2 p.m. with place of incident to be M/s. Annapurna Mills Ltd. A copy of the said application vide Annexure-3 to this application has not been disputed by the complainant Respondent No. 2. This application Annexure-3 was rejected by the Court on 15.5.2005, which fact is admitted to Respondent No. 2 vide CA-2 to the counter-affidavit. It was after a gap of six months that another application u/s 156(3), Code of Criminal Procedure was filed by Respondent No. 2 on 9.12.2005 vide Annexure-4 to the instant application which was treated to be a complaint, and complaint case was registered as Complaint Case No. 3538 of 2006. This complaint was dismissed u/s 203, Code of Criminal Procedure by the Magistrate, which order was set aside by the lower revisional court in Criminal Revision No. 510 of 2007, vide its order dated 6.5.2008 and the case was remanded back to the trial Magistrate. It is here that instead of prosecuting the complaint case that Respondent No. 2 moved another application u/s 156(3), Code of Criminal Procedure in the years 2007 after a gap of four years. This attempt by Respondent No. 2 was with ulterior motives to get F.I.R. registered against the applicants and get them arrested was again thwarted by Magistrate, who rejected the application of Respondent No. 2 vide its order dated 1.8.2007. It was after this that C.J.M., Varanasi after the remand of the complaint case from lower revisional court vide its order dated 6.5.2008 and after looking into the statements recorded in the said complaint case summoned the applicants for offences u/s 504/506/341, Code of Criminal Procedure. Thus, what is conspicuously clear is that the whole attempt by Respondent No. 2 was to get applicants arrested and send them to jail after he was being prosecuted by applicant No. 1 for a charge u/s 138, N.I. Act. There was business deal. The whole scenario as has been projected by Respondent No. 2 clearly indicates that he has launched the prosecution against the applicants only mala fide and with vindictiveness. Trial court itself has disbelieved his version regarding snatching of scooter and papers. Respondent No. 2 waited for nearly six months after his first application u/s 156(3), Code of Criminal Procedure was rejected to lodge another application on the same facts and during this period he did not make any complaint to any body. Complainant's inaction for six months only brings out the fact that his version of wrongful confinement and intimidation is nothing but false and concocted. It is also a very quaint conduct that Respondent No. 2 tolerated for 3-4 years to lodge a case against the applicants. Further the discord between Respondent No. 2 and applicant No. 1 and his Firm seems to be for payment of money as is perceptible from Annexure-6 to this application, the genuineness of which has not been denied by Respondent No. 2. Such disputes are nothing but are civil in nature. The case of the applicants falls in more than one category

recorded by the Apex Court for quashing of prosecution at its very inception.

7. From another aspect prosecution of the applicants cannot be allowed to go on. It is the case of the complainant himself that he was summoned for business deal talks. It was during that conversation that payment of balance amount figured in. This being the fact continuation of talks for some hours does not make out any offence u/s 341, I.P.C. As noted above it seems that as a pressure tactics Respondent No. 2 had instituted a lame prosecution against the applicants.

8. Summing up I am of the view that the prosecution of the applicants through Criminal Case No. 1795 of 2008, Girja Shankar Jaiswal v. Prabhat Dhandhanian and Ors., under Sections 504, 506 and 341, I.P.C. relating to Police Station Sagra, district Varanasi pending in the Court of VII Ith Judicial Magistrate, Varanasi is nothing but vindictive, mala fide and purposive and therefore, to secure the ends of justice, deserves to be quashed and is hereby quashed.

9. Resultantly this criminal misc. application is allowed as aforesaid.