
(2012) 07 SHI CK 0092
In the High Court Of Himachal Pradesh
Case No : Criminal MMO No. 33 of 2012

Rahul Chauhan

APPELLANT

Vs

State of Himachal Pradesh and Arjun Chand

RESPONDENT

Date of Decision : 20-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Penal Code, 1860 (IPC) — Section 147, 148, 149, 323, 324

Citation : (2012) 07 SHI CK 0092

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Advocate : Anup Rattan, for the Appellant; Ruma Kaushik, A.A.G. and Mr. Vikrant Chandel, Advocate, for the Respondent

Judgement

Kuldeep Singh, J.—This is a petition u/s 482 Cr.P.C. for quashing FIR No.349 dated 25.9.2011, registered at Police Station, Nurpur. The facts in brief are that respondent No.2 is the Branch Manager of Canara Bank and is the complainant in FIR No.349 dated 25.9.2011. The complainant has alleged that petitioner has misused the cheque of one Rajesh Kaushik amounting to Rs. 49,000/-. Rajesh Kaushik informed the bank that the cheque was misused and the amount was fraudulently disbursed from his bank account. On receiving such information, respondent No.2 lodged a complaint with the Police Station, Nurpur, thereupon FIR No.349 of 2011 dated 25.9.2011 came to be registered.

2. It has been alleged that Rajesh Kaushik handed over the cheque to the petitioner for encashment but later on differences arose between petitioner and Rajesh Kaushik. On account of such differences, Rajesh Kaushik made the complaint to respondent No.2 Bank Manager which led to lodging of FIR against the petitioner.

3. The petitioner after registration of the case approached Rajesh Kaushik, who told the petitioner that in case petitioner deposits the amount in the bank, the matter would be amicably settled and he will withdraw his complaint made to

respondent No.2.

4. It has been stated that in view of compromise between the parties, continuation of any further proceedings on the basis of FIR in question would be nothing but an abuse of the process of law. It has been stated that even on its face value and in its entirety the FIR does not disclose essential ingredients of an offence. The dispute arose between Rajesh Kaushik only due to misunderstanding.

5. The respondent No.1 has filed short reply. It has been stated that FIR No.349 dated 25.9.2011 has been registered on the complaint of Arjun Chand, Bank Manager, Canara Bank, Nurpur. It has come during investigation that petitioner has committed offences punishable under Sections 420, 379, 467, 468, 471 IPC. The offences under Sections 379, 467, 468, 471 IPC are not compoundable, as such even if the complainant has given any affidavit that the matter has been settled, the proceedings cannot be quashed.

6. On 20.6.2012 the learned counsel for the respondent No.2 had stated that the case has been registered at the instance of respondent No.2. The matter has been settled with the petitioner, respondent No.2 has no objection, if the petition is allowed. The petitioner alongwith the petition has filed affidavit dated 13.1.2012 of Arjun Chand respondent No.2. The deponent has stated that he is the Manager of Canara Bank, Nurpur. Rajesh Kaushik is having an account in his bank. The cheque in question belongs to Rajesh Kaushik. The said cheque got encashed from Canara Bank, Nurpur by petitioner. A total amount of ₹49,000/- was withdrawn by using the cheque in question.

7. The respondent No.2 in the affidavit has further stated that amount of Rs. 49,000/- has been deposited in the account of Rajesh Kaushik or his firm/company in pursuance to the compromise amicably arrived at between them and all the disputes have been peacefully and mutually settled. All the losses have been made good, the bank does not wish to continue with its complaint. In view of aforesaid compromise, the bank has no objection, if the FIR No.349 of 2011 dated 25.9.2011 is quashed and all the charges against the petitioner are withdrawn.

8. Heard. The FIR No.349 of 2011 dated 25.9.2011 has been lodged by respondent No.2. The respondent No.1 has taken the stand that it has come in the investigation that petitioner has committed offences punishable under Sections 420, 379, 467, 468, 471 IPC. The offences punishable under Sections 379, 467, 468, 471 IPC are not compoundable. The consent of respondent No.2 for quashing the FIR No.349 of 2011 is inconsequential. The respondent No.2 by way of affidavit dated 13.1.2012 has stated that matter has been settled between the petitioner and Rajesh Kaushik. The bank has no objection, if FIR No.349 of 2012 against the petitioner is quashed and charges against the petitioner are withdrawn. The learned counsel for respondent No.2 in the Court has also stated that respondent No.2 has no objection, if the petition is allowed.

9. In B.S. Joshi and Others Vs. State of Haryana and Another, it has been held that powers of the High Court u/s 482 of the Code are not, in any manner controlled by Section 320 of the Code. The Supreme Court in Shiji alias Pappu and others v. Radhika and another 2011 (10) SCC 705 has held that simply because an offence is not compoundable u/s 320 Cr.P.C. is by itself no reason for the High Court to refuse exercise of its power u/s 482 Cr.P.C. The power can be exercised in cases where there is no chance of recording a conviction against the accused and the entire exercise of a trial is destined to be an exercise in futility. In Ashwani Kumar and others vs. State of H.P. & others Latest HLJ 2011 (HP) 663 on the basis of compromise the High Court quashed the proceedings pending in the Court under Sections 452, 147, 148, 149, 323, 324 IPC.

10. In the present case, in view of affidavit dated 13.1.2012 of respondent No.2 complainant the matter has been settled. The complainant has no objection for quashing FIR No.349 of 2011 dated 25.9.2011. In view of stand now taken by respondent No.2 complainant, the continuation of case against petitioner very likely will be an exercise in futility. It appears respondent No.2 and other witnesses may not support the prosecution case, therefore, to keep the system of administration of justice unpolluted, a situation where the witness, for certain compelling reason, is likely to make false statement on oath, has to be dealt with in a manner most suited to meet the ends of justice. It appears this situation exists in the present case. In view of above, In the interest of justice, it is a fit case where FIR No.349 of 2011 dated 25.9.2011, registered at Police Station, Nurpur under Sections 420, 379, 467, 468, 471 IPC is liable to be quashed. Hence, petition is allowed, FIR No.349 of 2011 dated 25.9.2011, registered at Police Station, Nurpur under Sections 420, 379, 467, 468, 471 IPC is quashed. Cr.MP No.229 of 2012 disposed of in view of disposal of main petition.