(2006) 11 AHC CK 0019

In the Allahabad High Court

Rajdeo Gupta and Sanjay Kumar Gupta alias ''Tony'' APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 16-11-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155, 156, 170, 482

Penal Code, 1860 (IPC) — Section 120B, 406, 415, 420

Citation : (2007) 5 RCR(Criminal) 449

Hon'ble Judges : Imtiyaz Murtaza, J;Amar Saran, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Imtiyaz Murtaza and Amar Saran, JJ.—This petition has been filed for issuing: a writ order or direction in the nature of certiorari quashing the impugned first information report dated 1.2.2006 relating to case crime No. 56 of 2006 under Sections 120B, 406, 420 I.P.C. police station Patna lodged by respondent No. 7; a writ order or direction in the nature of mandamus, commanding the respondents No. 2,4 and 5 to transfer the investigation being conducted by investigating officer of police station Kotwali, District Patna in Bihar to the respondent No. 6 or any other investigating agency of U.P. police; a writ order or direction in the nature of prohibition restraining the respondent No. 4 and 5 or any other investigating agency of Bihar police from taking any further steps in respect of case crime No. 56 of 2006 under Sections 120B, 406, 420 I.P.C. police station Patna lodged by respondent No. 7; a writ order or direction in the nature of mandamus commanding the respondents not to arrest and not harass the petitioners in respect of case crime No. 56 of 2006 under Sections 120B, 406, 420 I.P.C. police station Patna lodged by respondent No. 7; and a writ order or direction in the nature of mandamus, which this Hon''ble Court may deem fit and proper to meet the ends of justice.

2. The brief facts of the case are that first information report was lodged by respondent No. 7 against the petitioners with the allegations that the petitioners

who are resident of 8-A Beli Road, New Katra, Allahabad has taken an advance of Rs. 25,000/- at Patna towards the sale of land and house situated at 8B-B, Beli Road, New Katra, Allahabad, The informant had made payment vide cheque No. 426013 of Vijaya Bank, Beli road Branch, Allahabad. It was a postal dated cheque bearing date 12.4.2004 and was delivered to the petitioners at Patna towards the said payment. It was further alleged that it was clearly mentioned on the back of the cheque that the said amount of Rs. 25,000/- was in respect of advance payment of the land and a house at 8B-B, Beli Road, New Katra, Allahabad. The said cheque was deposited by Raj Deo Gupta in his S.B. Account No. 7468 on 12.4.2004 and the amount was credited in his account. The petitioner No. 1 took further payment of Rs. 50,000/- from the informant which was paid vide cheque No. 426015 dated 18.5.2004. It was also mentioned that this amount is in respect of part payment towards the purchase of the land and a house. The informant had contacted Shri Rajdeo Gupta and Shri Sanjay Kumar alias Tony several times for execution of the sale deed in respect of the said house and also sent letters by speed post/UPC from Patna for the same. It was further alleged that the informant came to know that petitioners have cheated him and fraudulently sold the house to some other person without informing him and misappropriated the money received by them. The said report was registered at case crime No. 56 of 2006 under Sections 120B, 406, 420 I.P.C.

3. We have heard Shri P.P. Yadav, learned Counsel for the petitioners and the learned A.G.A. for the Stale.

4. Learned Counsel for the petitioners challenged the report on the ground that since the property in question is situated at Allahabad and a suit for permanent injunction bearing suit No. 722 of 2005, Mohan Lal Khare and Ors. v. Rajdeo Gupta and Anr. has been filed in the court of Civil Judge, West (Jr. D) Allahabad and the dispute is of civil nature and no offence is made out on the basis of allegations made in the report against the petitioners. It is also submitted by learned Counsel that no cause of action relating to the transaction alleged in the first information report arose in Patna and the respondent No. 5 investigating officer has no territorial jurisdiction or power to register and investigate the case and he should have transferred the investigation to Allahabad. It has been further submitted that the report has been lodged with malafide intention and ulterior motive with a view to harass the petitioners and grab his properties.

5. The law is well settled regarding interference by the High Court with an investigation of a case. In the case of State of Haryana v. Bhajan Lal reported in 1992 SCC 426 the Apex Court gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice, making it clear that it may not be possible to lay down any precise, clearly-defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised:

102. (7) 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 malafide 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.

6. The Apex Court added a note of caution to the effect that the power of quashing a criminal proceeding should be exercised "very sparingly and with circumspection and that too in the rarest of rare cases".

7. In our opinion the case of the petitioners is not covered in any of the above categories. A perusal of the impugned first information report clearly discloses the commission of cognizable offences.

8. It is also well settled that the court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. The court also cannot enquire whether the allegations in the complaint are likely to be established

9. In the report there are specific allegations of cheating and fraudulently misappropriation of the money received by the petitioners.

10. The submission of learned Counsel for the petitioner that on account of pendency of civil suit the criminal proceedings should not be permitted to

continue. We do not find any force in this submission also. The law is well settled that criminal proceedings cannot be quashed only because of civil suit with respect to same property is pending. The Apex Court in the case of M. Krishnan Vs. Vijay Singh and Another, has held that if mere pendency of a suit is made a ground for quashing the criminal proceedings the unscrupulous litigants apprehending criminal against them would be encouraged to frustrate the course of justice and law by filing suit with respect to the documents initiated to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings. Such a course can be the mandate of law. Civil proceedings, as distinguished from the criminal action have to be adjudicated and concluded by adopting separate yardsticks.

11. In the case of Rajesh Bajaj Vs. State NCT of Delhi and Others, the Apex Court has held as under:

10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions. One of the illustrations set out u/s 415 of the Indian Penal Code [Illustration (f)] is worthy of notice now:

''(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.''

1. The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not. The complainant has stated in the body of the complaint that he was induced to believe that the respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not clear. He also mentioned that the respondent after receiving the goods have sold them to others and still he did not pay the money. Such averments would prima facie make out a case for investigation by the authorities.

12. It was further observed that

11. The High Court seems to have adopted a strictly hyper technical approach and sieved the complaint through a calendar of finest gauzes for testing the ingredients u/s 415 IPC. Such an endeavour may be justified during trial, but certainly not during the stage of investigation. At any rate, it is too premature a stage for the High Court to step in and stall the investigation by declaring that it is a commercial transaction simpliciter wherein no semblance of criminal offence is involved.

13. According to the allegations of the report the payment was made at Patna, therefore, it cannot be said that cause of action did not accrue within the

jurisdiction of respondent No. 5.

14. From the averments made in the complaint the offence is also made out within the jurisdiction of Patna. So far as the lodging of the report is concerned, it can be lodged at any place. Section 156 of the Code of Criminal Procedure provides that no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case one which such officer was not empowered under this section to investigate. In the case of Satvinder Kaur Vs. State (Govt. of N.C.T. of Delhi) and Another, the Apex Court has held as under:

(1) The SHO has statutory authority u/s 156 of the Criminal Procedure Code to investigate any cognizable case for which an FIR is lodged.

(2) At the stage of investigation, there is no question of interference u/s 482 of the Criminal Procedure Code on the ground that the investigating officer has no territorial jurisdiction.

(3) After investigation is over, if the investigating officer arrives at the conclusion that the cause of action for lodging the FIR has not arisen within his territorial jurisdiction, then he is required to submit a report accordingly u/s 170 of the Criminal Procedure Code and to forward the case to the Magistrate empowered to take cognizance of the offence.

15. In view of the above this petition lacks merit and is hereby dismissed. Interim order, granted earlier, is also vacated.

