
(2012) 12 SHI CK 0085
In the High Court Of Himachal Pradesh
Case No : Criminal MMO No. 157 of 2012

Rajeev Singh Rana and Manoj Sharma APPELLANT
Vs
State of H.P. RESPONDENT

Date of Decision : 27-12-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 320, 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 120B, 406, 420, 465, 471

Citation : (2012) 12 SHI CK 0085

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Advocate : Vishal Panwar, for the Appellant; Ruma Kaushik, A.A.G. for respondent No. 1, Mr. Raj Negi, Advocate vice and Mr. B.C. Negi, Advocate, for the Respondent

Judgement

Kuldeep Singh, Judge

1. This petition u/s 482 Cr. P.C. has been filed for quashing FIR No. 66 dated 14.08.2009 under Sections 406, 420, 465, 471, 120-B IPC, registered at Police Station, East, Shimla, and criminal case arising out of said FIR pending in the Court of Judicial Magistrate Ist Class, Court No. 1, Shimla. It has been stated that respondent No. 2 is a Company registered under the Companies Act, 1956. The petitioners had been working in respondent No. 2-Company at Circle Office of respondent No. 2, situate at Mehli Mount, Mehli, Shimla-9. On 14.08.2009, respondent No. 2 has lodged FIR No. 66 under Sections 406, 420, 465, 471, 120-B IPC against both the petitioners at Police Station, East, due to some misunderstanding on the basis of complaint made by some inimical person.

2. It has been alleged in the complaint that petitioners had misused their positions and allotted work to their own funded firms without disclosing this fact to the Company and further approved the inflated bills of the said firms. The alleged act of the petitioners is against the Code of Conduct and business ethics,

guidelines and thus petitioners have breached the faith and interest of the company.

3. The petitioner No. 1 has also lodged FIR No. 144 dated 17.09.2012 at Police Station, Sector 18, Gurgaon, Haryana, on the basis of order passed u/s 156(3) Cr. P.C. by Judicial Magistrate Ist Class, Gurgaon, against company officials. The Commissioner of Police, Gurgaon in Cr. Misc. Petition No. 30331-M/2009 in the Punjab and Haryana High Court has filed an affidavit and submitted that cancellation report would be filed shortly. But, no closure report was filed, the petitioner No. 1 filed a complaint before Judicial Magistrate Ist Class, Gurgaon, subsequently a fresh complaint Rajeev Rana Versus Bharti Infratel Ltd. and others dated 18.10.2011 was instituted against some officials of respondent No. 2. The said complaint is pending before Judicial Magistrate Ist Class, Gurgaon.

4. It has been stated that criminal case arising out of FIR No. 66 dated 14.08.2009, registered at Police Station, East, is pending before Judicial Magistrate Ist Class, Court No. 1, Shimla for framing of charge. The respondent No. 2 has also filed a complaint u/s 138 of the Negotiable Instruments Act, 1881, against petitioner No. 1 before Judicial Magistrate Ist Class, Gurgaon.

5. On 04.08.2012, an amicable settlement took place between petitioners and respondent No. 2. The parties have executed a deed of settlement on 04.08.2012 to end the disputes between the parties. It has been agreed that petitioners and respondent No. 2 would unconditionally withdraw the cases filed by either side. In pursuance of deed of settlement, petitioners and respondent No. 2 have withdrawn their cases pending before Judicial Magistrate Ist Class, Gurgaon.

6. The matter in issue in the present case is of civil nature. The petitioners and respondent No. 2 have come to amicable settlement not to pursue the matter further. The submission has been made for quashing FIR No. 66 dated 14.08.2009, Police Station, East, Shimla and criminal proceedings arising out of said FIR pending in the Court of Judicial Magistrate Ist Class, Court No. 1, Shimla. No prejudice is going to be caused to respondent No. 2 in case the petition is allowed in pursuance of settlement dated 04.08.2012 between the parties.

7. The respondent No. 1 has filed reply. It has been stated that petition is not maintainable. The present case discloses cognizable offence. The investigation reveals that prima facie case is made out against the petitioners. The challan has been put up before Judicial Magistrate Ist Class, Court No. 1, Shimla and is fixed for consideration of charge. It has been stated in the FIR that petitioners misused their positions by allotting works to their own funded firms and by approving inflated bills of these firms, as such misappropriated money of respondent No. 2. The petitioners cheated the Company by making false/forged documents. It has been denied that case is of civil nature inasmuch as petitioners have misappropriated an amount of Rs. 23,50,817/- after committing

forgery as per allegation.

8. The respondent No. 2 has filed short reply. It has been stated that vide deed of settlement dated 04.08.2012 the dispute interse the parties has been amicably settled. In terms of the settlement deed, the respondent No. 2- Company has no objection to the petition filed by the petitioners.

9. Heard. The petitioners as well as respondent No. 2 have placed on record deed of settlement dated 04.08.2012 between petitioners and respondent No. 2. In the deed of settlement, the petitioners are shown as first party and respondent No. 2 as second party. It has been stated in deed of settlement that all financial claims stand duly resolved and settled as per mutual understanding and satisfaction. The first party shall unconditionally withdraw all cases filed by it against the second party and its officials and vendors. The second party shall unconditionally withdraw the case filed u/s 138 of the Negotiable Instruments Act against Rajeev Singh Rana pending at Gurgaon. The second party unconditionally agree that it shall not raise any objection in the event of first party moving a petition seeking quashing of the FIR No. 66 registered with Shimla police. There are other terms and conditions also in the deed of settlement.

10. In B.S. Joshi and Others Vs. State of Haryana and Another, it has been held that powers of High Court u/s 482 of the Code are not, in any manner controlled by Section 320 of the Code. This again has been reiterated in Shiji @ Pappu and Others Vs. Radhika and Another, . In Nikhil Merchant Vs. Central Bureau of Investigation and Another, , it has been held as follows:-

30 In the instant case, the disputes between the Company and the Bank have been set at rest on the basis of the compromise arrived at by them whereunder the dues of the Bank have been cleared and the Bank does not appear to have any further claim against the Company. What, however, remains is the fact that certain documents were alleged to have been created by the appellant herein in order to avail of credit facilities beyond the limit to which the company was entitled. The dispute involved herein has overtones of a civil dispute with certain criminal facets. The question which is required to be answered in this case is whether the power which independently lies with this Court to quash the criminal proceedings pursuant to the compromise arrived at, should at all be exercised?

31. On an overall view of the facts as indicated hereinabove and keeping in mind the decision of this Court in B.S. Joshi case and the compromise arrived at between the Company and the Bank as also Clause 11 of the consent terms filed in the suit filed by the Bank, we are satisfied that this is a fit case where technicality should not be allowed to stand in the way in the quashing of the criminal proceedings, since, in our view, the continuance of the same after the compromise arrived at between the parties would be a futile exercise.

11. In Gian Singh Vs. State of Punjab and Another, it has been held as follows:-

57. The position that emerges from the above discussion can be summarized

thus: the power of the High in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences u/s 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R. may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape dacoity etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question (s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

12. The FIR No. 66 dated 14.08.2009 was registered at the instance of respondent No. 2. The petitioners and respondent No. 2 have settled the dispute and have placed on record settlement deed dated 04.08.2012. In view of stand now taken by petitioners and respondent No. 2, the continuation of case arising out of FIR No. 66 dated 14.08.2009 registered at Police Station, East, Shimla, will be an exercise in futility. It appears from the stand of the petitioners and respondent No. 2 that dispute between them basically is of civil nature and as per settlement deed, all financial claims stand duly resolved and settled as per

mutual understanding and satisfaction of petitioners and respondent No. 2. It appears the respondent No. 2 and its officials now very likely will not support the prosecution case. In view of settlement between the parties, it is a fit case where FIR No. 66 dated 14.08.2009, registered at Police Station, East, Shimla, under Sections 406, 420, 465, 471 and 120-B IPC and criminal case arising out of said FIR and pending in the Court of Judicial Magistrate Ist Class, Court No. 1, Shimla, are liable to be quashed. In view of above, the petition is allowed, FIR No. 66 dated 14.08.2009, registered at Police Station, East, Shimla, under Sections 406, 420, 465, 471 and 120-B IPC and criminal case arising out of said FIR and pending in the Court of Judicial Magistrate Ist Class, Court No. 1, Shimla, are quashed. The pending application is also disposed of in view of disposal of main petition.