
(1990) 11 BOM CK 0013

In the Bombay High Court

Case No : Criminal Writ Petition No. 751 of 1989

Ravindra Sonusing Patil and another

APPELLANT

Vs

Smt. Rajendra Pandit Patil and others

RESPONDENT

Date of Decision : 15-11-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 17, 200, 420, 482

Penal Code, 1860 (IPC) — Section 120B, 34, 406, 420, 467

Citation : (1991) CriLJ 963

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : H.A. Solkar, Public Prosecutor, M.C. Shah, for the Appellant; C.A. Phadkar and P.S. Patil, for the Respondent

Judgement

1. This is a writ petition filed under S. 482 of the Code of Criminal Procedure and Art. 226 of the Constitution of India for quashing of a private complaint, which is Criminal Case No. 2/S of 1989 pending before the Metropolitan Magistrate's 12th Court, Bandra at Bombay. The two petitioners before me are the accused Nos. 1 and 2 before the criminal court and the respondent No. 2 is the original accused No. 3. The original complainant is the respondent No. 1 to this petition.

2. The complaint filed before the learned Magistrate alleged offences under Sections 420 and 406, I.P.C. Though there is a reference to S. 120B, I.P.C. in paragraphs 20 and 21 of the original complaint, we are not immediately concerned with the conspiracy charge because the learned Magistrate has issued process only under sections 406 and 420 read with 34, I.P.C.

3. The brief facts relating to the filing of the complaint may be set out as follows :

A partnership firm by the name of KTR Enterprises was formed on 30-1-1984 which came to be registered on 31-3-1984. The firm consisted of four partners viz., the complainant and the three accused. The partnership firm, admittedly, was doing the business as dealers of Bajaj Auto Ltd., at Jalgaon. According to the

averments in the complaint, the complainant is a permanent resident of Bombay. The complainant, incidentally, is related to the accused insofar as she is the sister-in-law of the accused No. 1. It appears that pursuant to certain disputes having arisen, which, according to the complainant are because of the fact that she is a resident of Bombay and the accused were managing the partnership business at Jalgaon, the firm came to be dissolved by a notice dated 26-10-1987 to which, there is a reply on 17-11-1987. Thereafter, the complainant filed a suit for dissolution and accounts before the Jalgaon Court on 7-12-1987 which is Suit No. 229 of 1987. Subsequently, on 16-1-1988, Bajaj Auto Ltd., terminated the dealership of the firm in question.

The complainant alleges that somewhere around the end of February 1988, the accused met her at Bombay and discussed about a proposal of resolving the disputes completely. They represented to her that a new partnership firm in the name and style of Rajendra Enterprises will be constituted between the three of them and the complainant's son Devendra for running the dealership business of Bajaj Auto Ltd., in Jalgaon District and that the partners will have equal shares. They further proposed that the premises of the dissolved firm should be utilised by the new firm of Rajendra Enterprises which included the show-room, workshop, spare shop, godown and office etc., together with the furniture and fixtures as also the stock-in-trade lying at the premises of the old firm, all of which constitute property of considerable value. It was further represented to the complainant that an amount of Rs. 60,000/- will be credited by the partners in the account of Devendra in the new firm of Rajendra Enterprises forthwith, and furthermore, the complainant was told that Devendra shall be the Managing partner of the new firm and that the bank operations of the new firm shall be controlled under the signatures of the accused No. 2 and Devendra. These representations were incorporated in an affidavit-cum-declaration in which all is mentioned in detail. On the basis of these terms, the complainant had agreed to give a consent letter to the three accused. Accordingly, it is the case of the complainant, that she executed a letter of the same date which she signed and handed over to the three accused which authorised the new firm of Rajendra Enterprises, Jalgaon to utilise the show-room, store-room, spare part room, the office, furniture, workshop, machinery and all the sundry instruments, compound, open space, etc., for running the business of the dealership till such time that dealership is terminated. It was further mentioned that this authority was final and irrevocable. According to the complainant, the three accused did not comply with any of the terms that are set out in the affidavit-cum-declaration, whereas, on the other hand, they have used the consent letter on which the complainant was induced to sign for purposes of converting the use of all the assets and property of the old firm KTR Enterprises to that of the new firm Rajendra Enterprises. The complainant states that the payments that were indicated were not made to her. She has further pointed out that the condition viz., that Devendra would be made a partner, that he would be the Managing Partner and furthermore, that he was to be paid Rs. 2000/- per month as

indicated in the affidavit-cum-declaration were not complied with. She has stated that in spite of letters from her, the accused did not honour the commitments.

The complainant further states that on or about 1st June 1988, an announcement appeared in the local daily newspaper Lokmat published at Jalgaon that M/s. Bajaj Auto Ltd., has appointed Rajendra Enterprises as their authorised dealers for Jalgaon District. The complainant further avers that the three accused have in fact started the business as dealers of Bajaj Auto Ltd., at Jalgaon in the name of M/s. Rajendra Enterprises by using the property and assets of the previous firm thereby converting them into the assets of the new firm totally leaving out the complainant and Devendra. The complainant has also referred to a letter dated 20-5-1988 addressed by the accused to the R.T.O., Jalgaon, for obtaining a trade certificate in which accused No. 1 is alleged to have falsely claimed that the new firm of Rajendra Enterprises was formed in which the very partners of the dissolved firm KTR Enterprises are partners and that the assets and liabilities of KTR Enterprises have been transferred to Rajendra Enterprises. It is the base of the complainant, that the statements contained in this letter dated 20-5-1988 are patently false but we are not immediately concerned with this particular letter. The complainant, however, relies on the letter for purpose of establishing that from the conduct of the accused, the trial Court was justified in drawing a conclusion that the representations made by them were false and dishonest.

The complainant has further contended that on the basis of the aforesaid facts, an offence of cheating and an offence of criminal breach of trust are disclosed against the three accused. The learned Magistrate, as pointed out earlier, had issued process against all the three accused for offences under S. 420 read with S. 34, I.P.C., and it is against this order that the petition has been directed.

4. Mr. Shah, learned Advocate appearing on behalf of the petitioners has, at the very outset, very vehemently contended that the filing of the complaint constitutes a total abuse and misuse of the process of the Criminal Court for the reason that, admittedly, a partnership dispute had arisen between the complainant and her erstwhile partners and pursuant to the dissolution of KTR Enterprises that the complainant had filed a civil suit before the Jalgaon court. Mr. Shah has produced copies of the applications made in that suit at the time when the suit was filed in December 1987. The complainant appears to have applied for appointment of a Commissioner. The complainant also appears to have sought appointment of a receiver and there is also a third application filed by the complainant praying for injunction. Mr. Shah states that it is not as though the accused are responsible for any delay or protraction of the civil litigation because they have filed the replies to the applications which are dated 11-1-1989 and he has contended that the replies were filed immediately but, thereafter, the complainant who is the plaintiff in that proceeding, has not taken steps to obtain any orders from that Court and it is his submission, that this lack of interest was only because of the fact that the complainant was fully aware of

the fact that none of the applications made by her are likely to be granted. Mr. Shah has, on the basis of this material, contended that the filing of the present complaint on 6-1-1989 is mala fide and motivated and that the same has been filed with the sole object of pressurising the accused who are businessmen normally resident at Jalgaon and that the complainant has set the criminal law in motion with the sole object of exerting pressure on the accused in the matter of securing from them a higher amount in relation to the settlement that has to be arrived at relating to KTR Enterprises. He has, therefore, submitted that since, admittedly, the dispute has emanated out of a partnership proceeding, and further, since a civil suit between the parties is already pending, there can be no manner of doubt whatsoever that the essential characteristics of the dispute and its inherent nature are both civil and that consequently, the machinery of the criminal court has wrongly been set in motion.

5. A characteristic submission is often advanced both before the trial Courts as also in these proceedings that the dispute in question is a civil dispute, implying thereby that if the party has a civil remedy, the legal redress through a criminal forum is barred. What is argued by implication is that there are distinct barriers between the civil and criminal courts and that the remedies available are mutually exclusive. This, unfortunately is a total fallacy. As observed by the Supreme Court in *Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others*, a dispute in question may even be predominantly civil but if the transaction partakes of the necessary ingredients of a criminal offence such as where false representations are made giving rise to wrongful loss or wrongful gain or cases where the transaction is accompanied by the ingredient of dishonesty, the aggrieved party would certainly be not only entitled but justified in moving a criminal court. There are no water-tight compartments segregating civil and criminal remedies nor does the adoption of the one preclude the other. In fact, even in a commercial transaction, where unfairness or dishonesty is practiced, the aggrieved party will have to move the criminal court for punishing the wrong-doer and will also have to move the civil court for recovery of the loss or compensation. A typical instance is in a commercial transaction involving an act of forgery or manipulation of accounts or fabrication of documents wherein the aggrieved litigant would, of necessity, have to invoke the criminal machinery as it would be very much in the public interest apart from the personal interest involved that the offender be brought to book. It is, therefore necessary to clarify that Mr. Shah's argument that the present transaction has its genesis in a civil dispute is not of much consequence because the conduct of the accused and the acts committed by them in the present case also make out the requisite ingredients of criminal offences.

6. While dealing with the concept relating to abuse of judicial process, it has become a favourite argument in these proceedings to allege that the institution of a criminal complaint is used to pressurise the accused. There is a basic fallacy in this argument because in the first instance, where it can be established to the satisfaction of the criminal court that there are grounds to proceed against an

accused on a criminal charge, the consequences emanating out of such a criminal prosecution are inevitable. If the prima facie involvement of the accused in a criminal offence is established, it can never be contended thereafter that the accused is prejudiced or pressurised through such a proceeding. Where such an argument can be accepted, will only be in those cases where it is demonstrated that the criminal machinery has wrongly and unjustifiably been set in motion without any justification and that there is gross abuse. It may also be added, in this context, that there is precious little justification for an argument regarding exertion or pressure in the case of an innocent person against whom no case is made out or where no case can be established. But a prosecution against an accused who has in fact indulged in acts of dishonesty or violence would inevitably result in a degree of mental pressure and tension because the accused faces the threat of a conviction about which no grievance can be made by such a litigant. I am, therefore, unable to accept either of the arguments advanced on behalf of the petitioners under these heads because a perusal of the material before me indicates that the criminal complaint was justified.

7. A further submission was advanced by Mr. Shah viz., that the mala fides on the part of the complainant would be further evident from the fact that whereas the entire dispute in relation to the partnership business which was, admittedly, being carried on at Jalgaon is pending before the Jalgaon Civil Court, that the complainant has filed the criminal case before a Bombay Court with the sole object of harassment. It is his submission that the Bombay Court ought not and could not have exercised any Jurisdiction in respect of this complaint, even assuming without admitting that any case of cheating or criminal breach of trust had been made out by the complainant.

8. Mr. Phadkar, learned Advocate appearing on behalf of the complainant has contended that the subject-matter of the present complaint is within a very narrow ambit viz., the circumstances under which the complainant was induced to sign the letter on 29-2-1988. It is his case that admittedly, the consent letter was signed at Bombay at the residence of the complainant which is within the jurisdiction of the learned Magistrate who has entertained the complaint. He has further pointed out, that the declaration of the same date was also executed at the same time and place and that the same has been executed by the accused at Bombay and that, consequently, the submission advanced by Mr. Shah with regard to the jurisdiction being confined to Jalgaon is wholly incorrect. In the present petition filed by the accused, there is no dispute raised with regard to the execution of the two documents in question at Bombay and, therefore, it will have to be held that since the documents were executed at the residence of the complainant, that regardless of the fact of the partnership property and business being located at Jalgaon that as far as the present complaint is concerned that the Bombay Court before which it has been filed did have jurisdiction to entertain the complaint. Section 17 of the Code of Criminal Procedure very clearly specifies that an offence is triable at the place where the act is done or the consequence ensue. In the present case, the allegation is to the effect that the complaint was

induced to sign the consent letter at her residence at Bombay and consequently, since the act of signing has taken place at Bombay, the local Court at Bombay would have jurisdiction to entertain and try this complaint.

9, In support of his first submission, Mr. Shah has placed strong reliance on the decision of the Supreme Court in *Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others*, wherein the Supreme Court had observed as follows (at page 711) :

"The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

A case of breach of trust is both a civil wrong and a criminal offence. There would predominantly be a civil wrong and may or may not amount to a criminal offence. In the instant case, a complaint was filed for offences punishable under sections 406, 467 read with Sections 34, 120B of the Penal Code. The property was trust property and one of the trustees was member of the settlor's family. The criminal proceedings were quashed by the High Court in respect of two persons but they were allowed to be continued against the rest. It was held that the case in question was one of that type where, if at all, the facts may constitute a civil wrong and the ingredients of the criminal offences are wanting. Therefore, the criminal proceeding had to be quashed. In that case, the Supreme Court came to the conclusion that even though the facts did constitute a civil wrong, the ingredients of a criminal offence were wanting. Mr. Shah has submitted that since in the present case, admittedly, the complainant has filed a suit before the Jalgaon Court in respect of the partnership dispute and since even the declaration and the consent letter are issues that are connected with that dispute and are arising therefrom, that even accepting the statements in the complaint at face value, that it cannot be contended that the ingredients of a criminal offence are made out. He has also submitted that it is not as though the complainant does not have adequate legal remedies, that she has in fact adopted the remedy before a civil court and that even in respect of the charge of the accused not complying with the representations that were made to her when the declaration was signed, that it is open to her to enforce her rights, if any, and that, consequently, no criminal case has been made out, and in any event that it should not be permitted to continue.

10. As against these submissions, Mr. Phadkar, learned counsel appearing on be-

half of the complainant has contended that there can be no doubt that the representations were made because these representations are in writing. He has further contended that one of these representations have been honoured. His submission is to the effect that even in the present petition that is filed before this Court, the accused have not put forward any explanation or any reasons from which the Court could come to the conclusion that the accused acted honestly on 29-2-1988 and that for certain other reasons that they have not complied with the representations or promises that were made by them. Whether a representation was false is to be judged by the circumstances in which it was made, the object behind making the representation and conduct of the parties particularly at the point of time proximate to the transaction. The very essence of cheating consists of the act of making a false promise. It will have to be noted in the present case that admittedly, there is a civil litigation pending between the parties. The fact that the complainant may or may not have remedies before a civil court, is an irrelevant issue. As far as the learned Magistrate was concerned, on the basis of the material placed before him, there was nothing wrong with the conclusion arrived at by the learned magistrate that the representations which were admittedly made and which, admittedly, have not been complied with are put forward with the dishonest intention of inducing the complainant to sign on the consent letter and for no other reason. If this be so, at the stage of issuing process, the learned Magistrate was justified in arriving at a prima facie conclusion that the said representations were false and that they were made with the sole object of inducing the complainant to put her signature to the consent letter on the basis of which they could not only secure the agency from Bajaj Auto Ltd., but also appropriate the entire assets of the previous partnership firm.

11. Mr. Phadkar has rightly pointed out that in the facts of the present case, the consent letter would constitute a valuable security insofar as it give the accused an irrevocable right of converting the entire assets and property of the old partnership firm which was under their dominion and control to that of the new partnership firm Rajendra Enterprises and that consequently, rights are created by virtue of the execution of this document. In this view of the matter, it cannot be said that the necessary ingredients of the offence of cheating were not made out by the complainant before the Criminal Court. It will, however, have to be clarified that these observations relate to the prima facie consideration and application of mind of the material before the learned Magistrate at the stage of issuing process. It is always open to the accused to point out that another conclusion is possible and to point out that the allegation against them, to the effect that they have acted either fraudulently or dishonestly or that they have committed an offence are wholly unjustified and that they are not liable to be convicted by the criminal court. The trial Court will, therefore, have to hear and decide the case independently of the observations made in this judgment, and without either relying on them or being influenced by them.

12. Mr. Shah has relied on the decision of the Supreme Court in Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, . In that decision, the Supreme

Court has laid down four tests indicating the class of cases, wherein a criminal court would be justified in quashing a prosecution against the accused. The four tests laid down by the Supreme Court are the following (at page 1951 para 5) :

- "1. Where the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;
2. Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;
3. Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and
4. Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.,"

Mr. Shah has contended that as far as the first test is concerned, he is justified in asking for the quashing of the criminal proceedings because taking the allegations made in the complaint and the material produced, into consideration, absolutely no criminal case is made out against the accused to establish against the accused the essential ingredients of an offence are wanting (sic). As pointed out earlier, on the facts as presented before the learned Magistrate, it cannot be contended that the essential ingredients of the offence of cheating had not been made out.

13. At this stage, Mr. Shah has also drawn my attention to the verification statement of the complainant. He has pointed out that the complaint undoubtedly, was drafted by the legal advisers of the complainant and that the Court should, from the verification statement, really read between the lines and arrive at a correct decision as to what exactly was the grievance projected by the complainant. It is true that there are minor variations in the verification statement as produced by Mr. Phadkar. In the verification statement, the complainant has referred to the payment of Rs. 2000/- as royalty indicating therein that the amount was to be paid to her. Apart from this statement, and a grievance that an amount of Rs. 60,000/- has not been transferred to the new partnership, the verification statement does not portray a case that is materially different from the one made out in the complaint. It is necessary to appreciate the fact that the verification statement consists only of the substance of the complaint, that it is not the examination-in-chief or evidence on oath in that sense of the term and that consequently, the purpose of taking down the verification statement is for purposes of the trial Court being satisfied that the grievance projected by the complainant is in fact the very one which the Court is inquiring into and that there is no basic divergence from the case made out in the Court and the one in the complaint. In any event, the learned Magistrate is

required to arrive at the prima facie satisfaction on the basis of all the material placed before him and not only the verification statement, and to my mind, this minor variation does not change the complexion of the present matter at all.

14. Section 200 of the Code of Criminal Procedure is an improvement on the corresponding Section of the old Code. The purpose behind the amendment was because it had repeatedly come to the notice of the Courts that a complaint in writing drafted out by the complainant's lawyer was often time presented to the trial Magistrate which substantially differed both on facts as also, averments from what was orally submitted before the trial Court in the course of arguments for purposes of obtaining process. Having regard to the time pressures on the trial Courts, what was often happening was that the trial Magistrates were induced to issue process on the basis of such oral statements which differed materially from the complaint. In order to guard against this unfortunate practice, the new S. 200 required the Magistrate to examine the complaint and to record the substance of such examination which has been signed by the complainant. In other words, this is a mere verification process and consequently, apart from ascertaining as to whether it substantially adheres to the scheme of the complaint, not much sanctity is to be attached to such verification. Undoubtedly, where there are material contradictions between the case made out in the complaint, and the verification, or no case at all is made out in the verification statement, a doubt would arise with regard to the veracity of the contents of the present complaint. Coming to the present case, however, it is essentially a case on documents, the minor variation between the complaint and the verification statement are wholly inconsequential and are of no significance whatsoever.

15. Mr. Shah has also relied on one more decision of the Supreme Court, *State of Bihar Vs. Murad Ali Khan and Others*, . In this case, the High Court had quashed the proceedings and the State of Bihar had appealed to the Supreme Court against that order. The Supreme Court observed that where the allegations in the complaint taken on the fact value amounted to an offence that the High Court was wrong in having exercised the jurisdiction under S. 482 of the Code of Criminal Procedure. Where the proceeding is at the preliminary stage, the High Court would be fully justified in refusing to exercise its inherent powers under S. 482 of the Code of Criminal Procedure if the essential ingredients of a criminal charge have been made out before the trial Court.

16. Mr. Shah had drawn my attention to a decision of the Aurangabad Bench of this Court, reported in 1983(3) Bombay Cases Reporter 284, wherein a dispute in relation to a hire purchase agreement was brought before a Criminal Court and the High Court took the view that where the dispute between the parties was of a civil nature that a prosecution under the Penal Code would amount to abuse of the process of the Court and that the prosecution was liable to be quashed under S. 482 of the Code of Criminal Procedure. The facts in that case were entirely different to the present case in so far as the dispute was essentially within the ambit of a hire purchase agreement and the dispute arose with regard to the

recovery of possession. In my opinion, that case is distinguishable from the present one.

17. Mr. Shah has also relied on a decision of the Nagpur Bench of this Court, reported in 1987 (3) BCR 216 Ramlal son of Badriprasad Mishra v. Madhaorao son of Chintaman Sontakke. In that case, a school teacher had been convicted on the allegation that he had made false representations to the school authorities by removing and destroying the evidence of his real date of birth. By making false representations, he had arranged to get his name in the register of the school as 1-7-1923 even though he had already given his date of birth as 1-7-1920 to the Government authorities. In that case, while dealing with S. 420, the Court came to the conclusion that the accused had wrongly been of an offence under S. 420 because on the facts before the Court, there was nothing to show that the accused had made a false representation and induced the authorities to act on the basis of the same. That case is again distinguishable from the facts of the present case and to my mind, has no application.

18. In the light of the position that emerges from the record before me, and having regard to the case law on the point, it is clear that the present order of the learned Magistrate does not call for any interference at this point of time. It is correct that the present dispute initially started as a civil dispute. It is, however, equally true that in the course of the same or a subsequent transaction, the facts may disclose a dispute that is actionable before a Civil Court but the facts may also justify a parallel proceeding being instituted before Criminal Court. In the present case, the transaction of 29-2-1988 which is the subject matter of the criminal complaint has nothing to do with the earlier partnership litigation which was pending before the Civil Court and is quite distinct from that set of facts. As far as the present complaint is concerned, as indicated earlier, there was enough material before the learned Magistrate for purposes of issuing process and consequently, the petitioners are not entitled to challenge that order at this stage.

19. In the result, the petition fails. Rule is discharged. Interim orders to stand vacated.

20. At this stage, Mr. Shah, learned Advocate appearing on behalf of the petitioners requests that the interim stay should be continued for a period of eight weeks as the petitioners desire to adopt certain proceedings. The application of Mr. Shah is granted. The interim stay to continue for a period of eight weeks.

21. Order accordingly.