(2006) 03 CAL CK 0036

In the Calcutta High Court

Case No : C.R.R. No. 599 of 1999

Sanjay Kumar Singhania and Another — APPELLANT

Vs

State of West Bengal and Others — RESPONDENT

Date of Decision : 22-03-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 173, 482
Penal Code, 1860 (IPC) — Section 120B, 418, 420, 465, 471

Citation : (2006) 3 CHN 95

Hon'ble Judges : Arun Kumar Bhattacharya, J

Bench : Single Bench

Advocate : Goutam Chakraborty, Pankaj Banerjee and Aniket Mitra, for the Appellant; Ashim Roy and Sudipta Moitra and Ranabir Roy Chowdhury for Opposite Party No. 4, for the Respondent

Final Decision : Dismissed

Judgement

Arun Kumar Bhattacharya, J.—The hearing stems from an application u/s 482 Cr. PC filed by the petitioners praying for quashing the proceeding being G. R. Case No. 2799/97 arising out of Hare Street P. S. Case No. 689/97 and for setting aside the order dated 17.03.99 passed by the Id. Chief Metropolitan Magistrate, Calcutta directing investigation in the matter.

2. The circumstances leading to the above application are that Spark Dealers (P) Ltd. represented by a Director Prem Lal Jain filed a complaint u/s 120B/418/420/465/471 IPC in the Court of Id. Chief Metropolitan Magistrate, Calcutta for treating it as an FIR u/s 156(3) Cr. PC inter alia alleging that after voluntary retirement of Directors Sudhakar Rathi and Mohan Kothari, the management of the company went in the hands of accused No. 1 and one K, K. Dhandhania. At the instance of accused No. 1, the company took part in an auction held under the order of this Court for sale of two units of M/s. Usha Automobiles and Engineering Company Ltd. (in liquidation) and bid an offer for purchase of the said company at Rs. 3,61,50,000/-. The offer was accepted on

payment of Rs. 10,00,000/- as part earnest money. As accused No. 1 did not deposit 20% of the earnest money, the Official Liquidator filed an application before the Division Bench of this Court for cancellation of sale and for forfeiture of the deposit of Rs. 10,00,000/-. Against order of this Court, the company filed SLP before the Apex Court, and the Hon''ble Apex Court directed the company to deposit Rs. 63,00,000/- within one week. G. S, Jain, elder brother of the petitioner and his friend R.K. Shethi being induced by accused No. 1, his father accused No. 2 and other accused persons, agreed to part with the said amount on certain terms. On the resignation of K.K. Dhandhania from the Board of Directors, the controlling power went in favour of G.S. Jain and R.K. Shethi and the entire share capital was transferred in their favour. The petitioner and his younger brother Kamlesh Jain were also appointed as Directors of the company on 10.05.97. G.S. Jain was unanimously authorized in the Board meeting on 25.06.97 to deal with the company matters relating to the Official Liquidator and that of the said company in liquidation. The company paid the rest of the bid money by 10.07.97. On 11.07.97 the sale of company in liquidation was confirmed by this Court. The previous Advocate-on-Record who was appointed by accused No. 1 tried to get an order for handing over the said company to its nominee or nominees without any such resolution of the Board which was foiled by this Court. As per order of this Court, the Official Liquidator handed over possession of Cossipore Unit and Sahibabad Unit to G. S. Jain on 14.07.97. On 28.07.97 the said Advocate-on-Record made a prayer before this Court for a direction on Official Liquidator to execute necessary conveyance or conveyances in respect of all immovable properties of the company in liquidation in favour of the company and its nominee or nominees against the original terms and conditions of order of sale of the company in liquidation and obtained an order, and the Official Liquidator though present in Court did not oppose to the insertion of nominee clause. Accused Nos. 1 & 2 forged the signature of G S, Jain and sent a letter to the Official Liquidator on 29.07.97 showing assignment of Sahibabad Unit in favour of M/s. Ontime Cargo & Courier (P) Ltd. run by accused No. 5. On being confronted, the Advocate-on-Record pleaded that he acted as per instructions of accused No. 1. On hearing that the Official Liquidator had left for Delhi with accused Nos. 2 & 3 on 31.07.97 to get conveyance executed in favour of Ontime Cargo and Courier (P) Ltd. at Dadri Registry Office, G.S. Jain contacted the Official Liquidator over phone, informed him about the forgery and requested him not to proceed with the process of execution of conveyance. Though the Official Liquidator assured that he would wait at the hotel upto 11.00 a.m. and requested G.S. Jain to reach Delhi on 01.08.97, on reaching there on 01.08.97 by morning flight G.S. Jain came to learn that accused Nos. 2 & 3 had already left with Official Liquidator before 8.00 a.m. Accused Nos. 2, 3 & 5 got the registration of the assignment fraudulently done by Official Liquidator on that very date. On an application filed by the company disclosing about the forgery this Court passed an order of status quo and also for not giving effect to the conveyance of assignment executed by Official Liquidator at Dadri on 01.08.97. The police did not take any action on the FIR lodged by G.S. Jain at Hare Street

P. S.

3. On 17.03.99 Id. Chief Metropolitan Magistrate, Calcutta passed an order directing the Investigating Officer being respondent No. 2 to continue with the investigation and to submit report. It has been contended by the petitioners that the said order is without jurisdiction as the proceeding in Hare Street P.S. Case No. 689/97 (G. R. Case No. 2799/97) is an abuse of the process of the Court since such order could not be passed as respondent No. 3 had already submitted final report u/s 173 Cr. PC and that the allegations made in the complaint is substantially the verbatim reproduction of the company proceeding arising out of the petition filed by G.S. Jain and R.K. Shethi on 05.08.97.

4. Being aggrieved by, and dissatisfied with, the initiation and continuation of the said criminal proceeding, the petitioners have come up before this Court.

5. Mr. Banerjee, Id. Counsel for the petitioners, assailed the impugned criminal proceeding mainly on three-fold grounds viz (1) the complaint does not prima facie disclose any offence, as the allegation of forgery of signature of G.S. Jain followed by intimation to the Official Liquidator for assignment in respect of the company in liquidation falsely is fully dependent on the fact as to whether the order dated 28.07.97 was obtained by criminal conspiracy and fraudulently, (2) no complaint can be entertained as the Division Bench of this Court is in seisin of the entire matter including the legality of the order dated 28.07.97 and as to the assignment of Sahibabad Unit in favour of Ontime Cargo & Courier (P) Ltd. and (3) order dated 09.12.98 for reinvestigation passed by the Id. Chief Metropolitan Magistrate, Calcutta is bad in law as reinvestigation has been directed merely on perusal of the case diary without giving any reason therefor. Mr, Ashim Roy, Id. Counsel for the State, on the other hand, submitted that before the Appellate Court the issue involved is whether the words "nominee or nominees" will be retained and not whether the letter purported to bear the alleged signature of G. S. Jain showing assignment of the company in liquidation in favour of nominee or nominees was forged or not which is a matter for decision by the Criminal Court, and as such the question of quashing the proceeding does not arise at all. Mr. Roy further contended that FRT was submitted by the Investigating Officer on the ground of "mistake of fact" as the complainant despite reminders failed to produce any document which is completely misconceived since the forged letter was with the Official Liquidator on the basis of which he executed the conveyance in favour of Ontime Cargo & Courier (P) Ltd, Mr. Ranabir Roy Chowdhury, Id. Counsel for 0. P. No. I/Complainant, on referring to the order dated 11.07.97 passed by the Hon''ble Mr. Justice Shyamal Kumar Sen in C. P. 302/89 striking out the words "or its nominee or nominees" in his own hand, contended that without any resolution of the Board, accused Nos. 1 & 2 being aided and abetted by other accused persons hatched up a conspiracy, obtained an order from other Bench of this Court and sent the letter with forged signature of G. S. Jain for assignment of the company in liquidation in favour of nominee or nominees, to Official Liquidator who by virtue of the said letter executed the conveyance in

favour of Ontime Cargo & Courier (P) Ltd.

6. Quashing of proceeding to prevent abuse of the process of the Court or otherwise to secure the ends of justice may be done where : (1) it appears that there is a legal bar against the institution or continuance of criminal proceeding in respect of the offence alleged e.g. absence of requisite sanction, or (2) the allegations in the FIR or the complaint even if they are taken at their face value and accepted in their entirety do not constitute the offence alleged, or (3) the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. That apart, the power to quash a criminal proceeding by this Court can be exercised very sparingly and with circumspection and that too in the rarest of the rare cases. In this connection, reference may be made to the cases of R.P. Kapur Vs. The State of Punjab, State of Haryana and others Vs. Ch. Bhajan Lal and others, and M. Narayandas v. State of Karnataka reported in 2004 SCC (Cri) 118.

7. So far as the first ground above is concerned, the genesis of the offence is criminal conspiracy, forgery and cheating. It is the specific case of the prosecution that pursuant to the order of this Court on 11.07.97 the Official Liquidator made over possession of Sahibabad Unit to G. S. Jain on 14.07.97, that the previous Advocte-on-Record who was appointed by accused No. 1, under the instructions of accused No. 1 obtained an order from another Bench of this Court on 28,07.97 directing the Official Liquidator to execute necessary conveyance in respect of all immovable properties of the company in liquidation in favour of purchaser and its nominee or nominees against original terms and conditions of order of sale of the company in liquidation without any resolution of Board of Directors to that effect and on the following date i.e. 29.07.97 accused Nos. 1 & 2 in conspiracy with other accused persons forged the signature of G. S. Jain and sent a letter to Official Liquidator showing assignment of Sahibabad Unit of the company in liquidation in favour of M/s. Ontime Cargo & Courier (P) Ltd. and by virtue of such letter conveyance was executed in favour of Ontime Cargo & Courier (P) Ltd. by Official Liquidator on 01.08.97 at Dadri Registry Office. The said forgery is completely a separate and independent act and does not at all hinge upon the order of this Court passed on 28.07.97 though the former may be used for the purpose of showing that it was issued in pursuance of the order of this Court. A glance to the above fact prima facie discloses commission of cognizable offence, and as such this ground does not at all stand.

8. In regard to the second ground, merely because an appeal is pending against the said order dated 28.07.97 before a Division Bench of this Court, it is no ground for holding the complaint not maintainable, since the question of forgery is a subject of decision by Criminal Court in the above criminal proceeding. It is well-settled that facts may give rise to a civil claim and also may amount to an offence. Merely because a civil claim is maintainable it does not mean that a criminal complaint cannot be maintained, as was held in the case of Lalmuni Devi

v. State of Bihar reported in 2001 SCC (Cri) 275. Similar is the holding of this Court in the case of Monoranjan Mondal v. Union of India reported in 2004 (4) CHN 234, that one action might give rise to different kinds of liabilities. It might envisage a civil liability as well as a criminal liability. There can be no embargo in pursuing both the remedies simultaneously. In the case of Medchl Chemicals and Pharma Pvt, Ltd. v. Biological E. Ltd. reported in AIR 2000 SC 1869, it was observed that simply because of the fact that there is a remedy provided for breach of contract, that does not by itself clothe the Court to come to a conclusion that civil remedy is the only remedy available to the appellant. Both criminal law and civil law remedy can be pursued in diverse situations. They are not mutually exclusive but clearly co-extensive and essentially differ in their content and consequence. The object of criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect civil remedies at all for suing the wrongdoer in cases like arson, accidents etc. It is anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and impart. Accordingly, this ground too fails.

9. As regards the third ground above, there cannot be any doubt that a Magistrate has power to direct, if he finds on consideration of the police report that the opinion formed by the Investigating Officer seeking discharge of accused person is not based on full and complete investigation, for further investigation. Reference may be made to the case of State v. Rajkumar Jain reported in 1998 SCC (Cri) 1485, so referred to by the Id. Counsel for the petitioners. Here, the Id. Magistrate on perusal of the protest petition filed by the de facto complainant, hearing the Id. Public Prosecutor as also Id. Advocate for the de facto complainant and after perusing the case diary passed the order for further investigation. The reason for submission of FRT is "mistake of fact" on the ground that the complainant despite reminders failed to produce any document, and there appears to be enough force in the above contention of Mr. Roy that the said ground is totally misconceived as necessary document was with the Official Liquidator and not with the complainant. The above reason is sufficient as the question of further investigation depends upon the subjective satisfaction of the Magistrate derived from the materials on record before him including the case diary and this Court cannot go into the question of said satisfaction of Id. Magistrate. Accordingly, this ground is also not sustainable.

10. In the premises, in the light of the above discussion, the present application being devoid of any merit be dismissed.

11. Interim orders, if any. stand vacated.

12. Let a copy of this order be sent down at once to the Id. Court below.

13. Urgent xerox certified copy of this order, if applied for, be supplied to the

parties as expeditiously as possible.

