

(2008) 01 MAD CK 0038

In the Madras High Court

Case No : Criminal O.P. No. 32369 of 2007 and M.P. No's. 1 and 3 of 2007

Shyam Kumar Shrivastava and Others

APPELLANT

Vs

The State and Thaika Ahmed Nubail

RESPONDENT

Date of Decision : 22-01-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Penal Code, 1860 (IPC) — Section 406, 420, 506

Citation : (2008) 1 LW(Cri) 710

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Advocate : R. Shanmugasundaram for R. Murali, for the Appellant; Hasan Mohamed Jinnah, Government Advocate (Crl. Side) for R1 and P. Jayaraman for K. Sakthivel, for R2, for the Respondent

Final Decision : Dismissed

Judgement

M. Jeyapaul, J.—The petition is filed seeking quashment of the criminal proceedings in Crime No. 401 of 2007 on the file of the Sub

Inspector of Police, Central Crime Branch/I, Egmore, Chennai.

2. Petitioners 1 to 4 are the Directors of M/s. Deccan Minerals Private Limited. Petitioners 5 and 6 are the Directors of M/s. Vidarbha Mining

Private Limited and Goldstar Metal Solutions Private Limited.

3. The private complaint given by the second respondent referred u/s 156(3) of the Code of Criminal Procedure by the XIV Metropolitan

Magistrate, Egmore, Chennai and registered in Crime No. 401 of 2007 would read as follows:

During the month of September 2004, A1 to A3 approached the complainant and represented that they were owners of certain mines and they

intended to lease out the said mines to the second respondent for raising iron ore and selling the same. Believing the representation of the accused to be true, the complainant and the accused entered into an agreement on 1.10.2004 for development of the mines and sales of the iron ores from the said mines in collaboration with the accused company by name Deccan Minerals Private Limited. The complainant paid a sum of Rs. 1,75,00,000/- on 23.9.2004 and Rs. 25,00,000/- on 15.12.2004 to the accused company as security deposit and irrevocable power of attorney was given for ten years to the complainant company on 15.12.2004 by the accused company. The complainant started extracting iron ore from the above mines by engaging workers, having invested a total sum of Rs. 8,00,00,000/- for extracting and raising iron ore. Within a short span of time, the accused started giving trouble to the complainant by preventing the complainant from extracting iron ore from the said mines. A memorandum of understanding was entered into between the accused and the complainant on 5.9.2005. But, the complainant, all of a sudden on 13.1.2007, with an evil intention to cheat and defraud the complainant, obstructed the mining operation carried on by the complainant, with the help of goondas. Though the complainant questioned the illegal activities of the accused, A2 to A6 came down to the company of the complainant on 7.4.2007 and threatened the complainant that they would do away with the life of the complainant. All the accused, with an evil intention to defraud and cheat the complainant, induced the complainant to part with huge money and committed criminal breach of trust. They have committed offences punishable under Sections 406, 420 and 506(ii) of the Indian Penal Code.

4. The petition seeking quashment is filed by the accused on the following grounds:

a) During the course of business, there were breach of agreements entered into between petitioners 1 to 3 and the complainant. A sole arbitrator was appointed by the High Court, Mumbai in A.P. No. 259 of 2005 to resolve the dispute between petitioners 1 to 3 and the complainant. As a consensus was reached and all the disputes were resolved by executing a memorandum of understanding dated 5.9.2005, the complainant started removing ores in the mines belonging to the area of the first petitioner illegally and therefore, the petitioners cancelled the memorandum of

understanding by their letter dated 13.1.2007. Even as against the cancellation of the agreements and the memorandum of understanding, the

complainant has raised civil dispute before the High Court, Mumbai in Chamber Summons No. 1637 of 2006. This is an attempt made by the

complainant to corner the petitioners by invoking the criminal jurisdiction.

b) The complaint, even if it is taken at its face value and accepted in its entirety, does not constitute any offence or make out a case as against the

petitioners. The entire cause of action arose at Maharashtra and the learned Metropolitan Magistrate at Chennai has no jurisdiction to issue any

direction u/s 156(3) of the Code of Criminal Procedure. There has been a delay of seven months in registering the FIR. The complaint has been

lodged with a mala fide intention to wreak vengeance and to cause harm to the petitioners. Since the High Court, Mumbai has not granted any

interim relief to the complainant in the suit filed for attachment of mines and for injunction, the complainant has converted the civil dispute into a

criminal case. The alleged threat wielded by the petitioners at Chennai is a figment of the imagination of the complainant. The petitioners have

sought for quashment in the above facts and circumstances.

5. The short point that arises for consideration is whether the complaint reflects commission of cognizable offences warranting reference u/s 156(3)

of the Code of Criminal Procedure by the learned Metropolitan Magistrate.

6. Learned Senior Counsel for the petitioners would vehemently submit that the entire dispute between the petitioners and the second respondent

relates to mining rights. The parties had also resorted to civil forum seeking relief. The civil dispute has been mischievously converted into a criminal

case just to punish the petitioners against the spirit of the judgment of the High Court of Mumbai. In a catena of cases, this Court has held that a

civil dispute between the parties cannot be dragged to the criminal court abusing the process of law.

7. Learned Government Advocate (Criminal Side) would submit that the investigation could not be proceeded further on account of stay granted

by this Court.

8. Learned Senior Counsel appearing for the second respondent would submit that all the allegations constituting the offence of cheating have been

clearly set out in the complaint. Further, the threat wielded by the petitioners to

do away with the life of the second respondent has been alleged in the complaint. The second respondent has sufficient material to substantiate the evil design of the petitioners to cheat the second respondent who are adopting the very same modus operandi as against some other companies also, he would further contend.

9. The complaint discloses a serious charge of cheating as against the petitioners. The second respondent has also detailed about the misrepresentation made to him to enter into an agreement with the petitioners. The inducement made by the petitioners to the complainant to part with huge money and the criminal breach of trust committed by the petitioners have been unambiguously stated in the complaint. Further, it is found that there is a specific allegation that petitioners 2 to 6 came down to Chennai and threatened the complainant that they would do away with his life on being questioned by the complainant about the illegal activities of the petitioners. The aforesaid details found in the complaint reflects unerringly the allegation of commission of various offences by the petitioners.

10. The fact remains that on account of certain dispute between the petitioner and the second respondent who entered into an agreement for raising ores and for sale of the same, a memorandum of understanding was entered into between the parties. A civil dispute was also raised before the High Court of Mumbai by the second respondent challenging the cancellation of the agreements and the memorandum of understanding entered into between the parties. The question that arises for consideration is whether in such circumstances, the second respondent can invoke the criminal jurisdiction to book the petitioners for various criminal offences.

11. The Supreme Court in *Medchl Chemicals and Pharma Private Limited v. Biological E. Limited* AIR 2000 SC 1869 has held that a complaint cannot be quashed merely on the ground that a civil remedy is available for the complainant.

12. The Supreme Court in *Trisuns Chemical Industry Vs. Rajesh Agarwal and others*, has observed as under:

We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach

of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of tis own. Pre-emption of such investigation would be justified only in very extreme cases as indicated in State of Haryana and others Vs. Ch. Bhajan Lal and others,

13. In the instant case, it is true that an arbitrator was appointed and on account of some amicable settlement, a memorandum of understanding was entered into between the parties. But, that cannot be a ground to quash the criminal proceedings when the investigation has just begun for the charges of criminal breach of trust, cheating and criminal intimidation effectively alleged in the complaint.

14. Only in a case where the complaint is bereft of material particulars necessary for making out the offence, the court may think in terms of quashing the complaint.

15. The complaint, as stated earlier, makes out, prima facie, commission of offences by the petitioners. Therefore, it is not fair to quash the very complaint even before the investigation reaches its logical end.

16. Of course, the court should not permit the prosecution without any basis against innocent persons as instrument of harassment or to mount pressure on the accused to toe the line of the complainant. But, the court should not throw away the complaint when serious charges are levelled in the complaint and the same requires thorough investigation.

17. This Court in Purushothaman, S. v. Associated Trading Corporation Private Limited (2006) 1 MLJ (Crl.)589 has held that for a breach of contract or for non-compliance of the terms of conditions of memorandum of understanding, no criminal prosecution can be launched. In the instant case, it is found that though there is civil dispute between the petitioners and the second respondent, specific allegation of cheating, breach of trust and criminal intimidation have been set out in the complaint. Therefore, the ratio laid down in the aforesaid authorities does not apply to the facts and circumstances of this case.

18. In a commercial transaction, criminal proceedings were initiated to intimidate and harass the accused in order to get back the dues at a faster

phase. Such an attitude of the complainant was deprecated and the criminal proceedings were quashed in Bellary Steels and Alloys Limited v. Man

Takraf (India) Private Limited (2006) 1 MLJ (CRL.) 264.

19. The Supreme Court in Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, , has held that initiation of criminal

proceedings based on a dispute of purely civil in nature amounts to abuse of the process of court. It is found that breach of contractual obligations

in the said case has given rise to the initiation of criminal proceedings. But, in the instant case, apart from the civil dispute between the parties,

cogent allegation of cheating, criminal intimidation and breach of trust have been alleged.

20. It is found that the investigation has been stopped at a nascent stage. The serious charges levelled against the petitioners will have to be

thoroughly probed into by the investigating agency.

21. In view of the above, the petition seeking quashment stands dismissed. Miscellaneous Petition No. 1 of 2007 for interim stay is also dismissed

vacating the stay already granted. As the main criminal original petition seeking quashment has been dismissed, Miscellaneous Petition No. 3 for

vacating the stay stands closed.