
(1983) 04 MP CK 0031

In the Madhya Pradesh High Court

Case No : Miscellaneous Cri. Case No. 335 of 1982

Shyam Sunder Banka and others

APPELLANT

Vs

State of M. P. and others

RESPONDENT

Date of Decision : 15-04-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 34, 406, 420

Citation : (1984) JLJ 284 : (1983) MPLJ 869 : (1983) 2 RCR(Criminal) 187

Hon'ble Judges : C.P. Sen, J

Bench : Single Bench

Advocate : B.B.L. Shrivastava with R.N. Tiwari, for the Appellant; Anoap Choudhary, for the Respondent

Final Decision : Allowed

Judgement

C.P. Sen, J.

This is an application u/s 482 of the Code of Criminal Procedure for quashing the order dated 8-8-1978 of the trial Magistrate taking cognizance under sections 406 and 420 read with section 34, Indian Penal Code against the applicants on a complaint being filed by the non-applicants 2-4.

The non-applicants 2 and 3 of partners of the Firm Nandkishore Mohanlal which is doing business in grains in Azad Chouk, Raipur. The firm sells grains at different places of India through Commission Agents. The applicants 1-3 are partners of the Firm Banka Trading Company and doing business in grains on commission in Mansoorgunj, Patna. On 16-2-1978 non-applicant No. 2 negotiated on telephone with the applicants for selling their grains in their Adat. It was stipulated that the complainants would despatch grains by rail and the railway receipt would be sent through the Bank which can be obtained by the applicants on honouring the Hunds drawn for an amount equal to 3/4th price of the grains. After taking delivery, the grains to be sold by the applicants and the balance remitted to the complainants after deducting the 3 /4th of the price, the

commission of the applicants and other expenses. On 28-2-1978 the applicants informed the complainants that the prevailing rate of Khesari Dal was Rs. 220 per quintal at Patna. Accordingly, the complainants despatched 227 quintals of Khesari Dal by rail on 1-3 1978 under 3 railway receipts for lots of 80, 67 and 80 bags. There is no dispute about the first consignment of 80 bags. The dispute is regarding 147 bags valued at Rs. 32,340. The Hundi was drawn for Rs. 22,000 but the applicants did not take delivery and instead informed the complainants to send an indemnity bond so that they could take delivery without producing the railway receipt by honouring the Hundi. This was to dupe the complainants but they did not agree. When the complainants' partner went to Patna on 13-3-1978 he was told that the applicants were short of Rs. 3,000 for honouring the Hundi so the amount was paid by the partner. The Hundi was not honoured and they again demanded Rs. 5,000 more for honouring the Hundi which was sent by telegraphic transfer. Then the applicants honoured the Hundi of Rs. 22,000 and took delivery of 147 bags but still today they have not furnished any account nor even remitted the balance amount of Rs. 18,340. The complainants again sent 240 bags of Khesari Dal at the same rate to the applicants valued at Rs. 52,000 and the applicants by honouring the Hundi of Rs. 36,000 have taken delivery but they have not furnished any account, nor remitted the balance amount of Rs. 16,800 so there is a criminal breach of trust and the complainants have been cheated for the amount of Rs. 35,140. After recording statement of the partner, Nand Kishore the trial Magistrate registered a complaint under sections 406 and 420 read with section 34, Indian Penal Code and issued process to the applicants. It appears that the process has not been served on these applicants but on learning about the complaint they approached this Court for quashing the proceedings by saying that it is a civil dispute and the prosecution of the applicants amounts to abuse of the process of the Court.

After having heard the parties I am of the opinion that this application has to be allowed and the criminal proceeding the applicants launched by the complainants has to be quashed. The Supreme Court in *Sardar Trilok Singh and Others Vs. Satya Deo Tripathi*, has held that "To prevent abuse of the process of any Court Section 482 invoked-purchase of truck under hire-purchase agreement-Default clause-Seizure of truck, on default by financier-Purchase launching criminal prosecution against financier-Dispute raised was purely of civil nature and criminal proceeding initiated was an abuse of the process of the Court and deserved to be quashed." In the present case it appears that there have been several transactions between the complainants and the applicants. The applicants have been taking delivery of the consignment of grains sent by the complainants by honouring the Hundi towards the 3/4th price of the consignment. There is no dispute so far as the consignment of 80 bags sent on 1-3-1978 is concerned. The dispute is relating to remaining 147 bags and further consignment of 240 bags sent afterwards. Consignment of 147 bags was taken delivery by the applicants after honouring the Hundi of Rs. 22,000 though the complainant alleged that out of this amount Rs. 8000 were advanced by them as the applicants were short of

money and the next consignment of 240 bags were taken delivery by applicant by honouring the Hundi of Rs. 36,000. Though it is mentioned in the complaint that the consignment was dispatched after the applicants informed that the prevailing price was Rs. 220 per quintal for Khesari Dal but it has not been stated at what price these two consignments were sold by the applicants. On the other hand, the applicants contend that there was no agreement to send these two consignments to be sold at the rate of Rs. 220 per bag. In fact the complainants have thrust these two consignments on the applicants to be sold in their Adhat and they have furnished account and in fact they have to recover Rs. 2,561-89 from the complainants and in order to defeat their complaint this false complaint has been filed. The applicant did not demand or receive from the complainant Rs. 8,000 for honouring the Hundi. The Supreme Court in Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Birendra Chandra Chakravarty, , has held that "Where there was long and intimate relation between the accused and the complainant and there were numerous transactions between them it would be difficult to determine the extent to which the complainant was duped or persuaded by misrepresentation to part with her rights in certain properties alleged to be the subject-matter of breach of trust. It was a dispute of an essentially civil nature which had to be decided between the parties before any question of criminal liability could be adjudicated upon." Again Supreme Court in Mohd. Sulaiman Vs. Mohd. Ayub and Another, has held that "the real dispute between the parties, therefore as to the nature of the agreement between them when the car was entrusted to the appellant. The appellant saying it to be an outright sale while the complainant contended that it was given on hire. That dispute was clearly of a civil nature." Further the Supreme Court in Hari Prasad Chamaria Vs. Bishun Kumar Surekha and Others, has held that "Even assuming prima facie all the allegations in the complaint to be true they merely amount to a breach of contract and could not give rise to criminal prosecution. There was nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with the money nor did the complaint indicate that the respondents had induced the appellant to pay them the amount parted with. The appellant also did not allege the respondents making any representation to him for parting with the money. Mere fact that they did not abide by their commitment as to starting of the business in complainant's name as agreed to would not fasten them with criminal liability". Therefore, in view of these decisions the dispute between the complainants and the applicants is of a civil nature and the remedy of the complainants is to file a civil suit to recover dues, if any. The prosecution of the applicants amounts to abuse of the process of the Court.

However, reliance has been placed by the complainants on two decisions of this Court in M/s Shyamsunder Bikalkumar and other v. Mjs Nandkishore Misc Cri. Case No. 771/76 decided on 18-11-1977 and M/s Yogesh Kumar and Co. and others v. Nandkishore Mohanlal Misc. Cri. Case No 325/78 decided on 4-7-1979. It appears that the complainants are in the habit of filing criminal complaints to

recover their dues from their commission agents as is evident from these two cases which were initiated on the complaints of the very same firm. In the first case the complaint was u/s 409, Indian Penal Code. On the allegation that the grains and Tilhan despatched between the period from 1-12-1973 to 28-7-1974 were misappropriated as sale-proceeds amounting to Rs. 25,598.30 were not remitted to the complainant. It does not appear from the order that in that case the railway receipt was sent through bank and Hundi was honoured by the accused before taking delivery. This Court observed that the discretion exercised by the trial Magistrate in issuing process cannot be said to be improper. In the second case the transactions were similar to the transactions in the present case. There also the grains were despatched and the railway receipts were sent through bank and the same were retired after honouring the Hundi towards the 3 /4th price of the consignment and it was alleged that the amount of Rs. 76,477.84 were not remitted by the accused being the value of the grains sold through them and they furnished false accounts, inflating the rate of commission, demurrage charges and the amount paid as bribes and other charges not agreed between the parties. This Court refused to interfere u/s 482, Code of Criminal Procedure by saying that a revision ought to have been filed against the impugned order taking cognizance and the same was barred by limitation and inherent powers cannot be invoked. There is no consideration in these cases that the disputes were of a civil nature or not. The applications u/s 482 of the Code were rejected in the first case as this Court thought it not proper to interfere with the discretion exercised by the trial Magistrate and in the second case on technical ground of limitation. It may be mentioned that there is no limitation prescribed for involving inherent jurisdiction u/s 482 of the Code.

Accordingly, the application is allowed. The order of the trial Magistrate dated 8-8-1978 registering the complaint under sections 406 and 420 read with section 34, Indian Penal Code and issuing process to the applicants is quashed and the applicants are discharged from the case.