

(2001) 04 OHC CK 0014

In the Orissa High Court

Case No : Criminal Revision No. 355 of 2000 and Criminal Miscellaneous Case No"s. 5923 of 2000 and 888 of 2001

Suman Naik and Satyananda Das

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 24-04-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 239, 482
Penal Code, 1860 (IPC) — Section 120
Prevention of Corruption Act, 1988 — Section 13(1)

Citation : (2001) 92 CLT 274 : (2001) CriLJ 3091

Hon'ble Judges : P.K. Patra, J

Bench : Single Bench

Advocate : M/s Y. Das, B.K. Mohanty and N.K. Praharaj, for the Appellant; Mr. Sanjit Mohanty, S.C. (C.B.I.), for the Respondent

Final Decision : Dismissed

Judgement

P.K. Patra, J.—These three cases arise out of the same case, i.e. T. R. No. 88/20 of 1999/96, pending before the Special Judge (C.B.I.), Bhubaneswar and were heard together and this judgment disposes of all the three cases.

2. In Criminal Revision No. 355 of 2000, petitioner Suman Naik has prayed for quashing the order dated 2-6-2000 passed by the learned Special Judge (C.B.I.), Bhubaneswar rejecting his prayer u/s 239 of the Code of Criminal Procedure for discharging him of the accusation.

In Criminal Misc. Case No. 5923 of 2000, the same petitioner Suman Naik has prayed for quashing the order dated 29-3-1996 passed by the learned Special Judge (C.B.I.) taking cognizance against him under sections 120B/420 of the Indian Penal Code (hereinafter referred to as "I.P.C.") and u/s 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the "P. C. Act") as also the entire criminal proceeding against him.

In Criminal Misc. Case No. 888 of 2001, petitioner Satyananda Das has prayed for quashing the order dated 29-3-1996 passed by the learned Special Judge (C.B.I.), Bhubaneswar taking cognizance against him of offences under sections 120B/420, I.P.C. and section 13(2) read with section 13(1)(d) of P. C. Act as also the order dated 18-9-2000 framing charge against him.

3. Mr. Y. Das, learned counsel for the petitioner in Cri. Revision No. 355 of 2000 and Cri. Misc. Case No. 5923 of 2000, Mr. D. Das, learned counsel for the petitioner in Cri. Misc. No. 888 of 2001 and Mr. Sanjit Mohanty, learned Standing Counsel for C.B.I. were heard at length.

4. Briefly stated, it is alleged by the prosecution that accused No. 1 in T. R. No. 88/20 of 1999/96, the Branch Manager of UCO Bank, C. R. P. Branch, Bhubaneswar; accused No. 2 Suman Naik and accused No. 3 Satyananda Das, an employee under accused No. 2, entered into a criminal conspiracy and a loan of Rs. 10,00,000.00 (ten lakhs) was sanctioned from the aforesaid Branch of UCO Bank in favour of accused No. 3 Satyananda Das, on the recommendation and guarantee of accused No. 2 Suman Naik, The said amount was disbursed to accused No. 3 in two instalments of Rs. 5,00,000.00 (five lakhs) each, on 6-11-1990 and 15-11-1990 and thereby accused No. 1 abused his official position and caused wrongful gain to accused Nos. 2 and 3. Accused No. 2 has four firms, namely, (1) M/s. Coastal Exports, (2) East Coast Exports, (3) M/s. Bssanta Food and (4) M/s. S. L. Textiles, and one of the said firms, namely, M/s, Coastal Exports, had already availed of loan of Rs. 40, lakhs and another loan of Rs. 19 lakhs from the UCO Bank and the said loan amounts along with interest thereon amounted to Rs. 63,79,970 which was outstanding against him. Besides, the other firms belonging to accused No. 2 had also availed loan of Rs. 1 crore from State Bank of India and Rs. 60 lakhs from Andhra Bank, which were also outstanding against him. Accused Nos. 1 and 2 had full knowledge about the said outstanding loans against accused No. 2 for which they were sure that further loan would not be granted in favour of accused No. 2. Therefore, they set up accused No. 3, an employee of accused No. 2 in the firm M/s. East Exports Court Private Limited, for the purpose of availing another loan of Rs. 10 lakhs from the UCO Bank. Pursuant to the said conspiracy among the three accused persons, accused No. 3 Satyananda Das filed a loan application on 3-11-1990 along with a letter of M/s. Coastal Exports dated 3-11-1990 before accused No. 1, but prior to that, i. e. on 1-11-1990, accused No. 1 had prepared a credit report. In the loan application of accused No. 3, he had given his address fraudulently to show that he was a resident of Balugaon in the district of Puri, though he was not a resident of that village, but was resident of Bhubaneswar and was an employee of accused No. 2. The letter dated 3-11-1990 of M/s. Coastal Exports stated that an agreement had been entered into between the firm and accused No. 3 that materials would be lifted from accused No. 3. The application of accused No. 3 as well as letter of the firm had been typed out in one and the same typewriter found in the premises of accused No. 2. The first cheque for Rs.5,00,000.00 (five lakhs) vide cheque No. 049376 dated 6-11-1990 was honoured and the amount

was paid to one J. Pallamuttam, an employee of accused No. 2, and the second cheque for Rs.5,00,000.00 (five lakhs) was honoured on 15-11-1990 and paid to accused No. 2 and it was found that both the cheques had been filled up by accused No. 2. The said loan amount of Rs.10,00,000.00 (ten lakhs) along with interest thereon, amounting to Rs. 8,00,000.00 was not repaid by petitioner No. 3. Receiving information about such fraud, one Dy S. P., C. B. I., S. P. E., Bhubaneswar drew up first information report on 14-2-1994 and the law was set in motion. After completion of investigation, chargesheet was submitted against the three accused persons on 26-2-1996.

5. Learned counsel for the petitioners in all the three cases strenuously urged for quashing the orders taking cognizance and framing charge against the petitioners contending that the dispute is of civil nature for which the Bank has instituted T. M. S. No. 27 of 1996 against the petitioners and as such criminal proceeding against the petitioners is not maintainable. It was also contended that petitioner Satyananda Das has already repaid a sum of Rs 8,00,000.00 (eight lakhs) out of the loan amount of Rs.10,00,000.00 (ten lakhs) to the Bank and as such there was no semblance of fraud or intention to cheat the Bank. Accused No. 2 was enjoying the benefit of personal credit loan facility to the extent of Rs. 59 lakhs from the UCO. Bank and the Zonal Manager of the Bank had sanctioned the loan amount in favour of accused No. 3 after being satisfied about the formalities for sanction of the said loan and that the materials on record, even if accepted to be correct, would not establish the charge levelled against the petitioners for their conviction.

6. In support of their contention, learned counsel for the petitioners placed reliance on the following decisions :

In 2000 18 O. C. R. 67 (Sunil Kumar v. M/s. Escorts Yamaha Motors Ltd. & ors.), the Apex Court upheld a decision of the Delhi High Court quashing the criminal proceeding being of the opinion that the informant having resorted to civil remedy, initiation of criminal proceeding would be an abuse of the process of law.

In 2000 18 O. C. R. 335 (G. Sagar Suri v. State of U. P.), the Apex Court referring to its earlier decision reported in State of Karnataka Vs. L. Muniswamy and Others, held that in the exercise of the wholesome power u/s 482, Cr. P. C., High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the criminal proceedings to continue would be an abuse of the process of the Court or that the ends of justice require that the proceedings are to be quashed.

In Ram Sumer Puri Mahant Vs. State of U.P. and Others, , the Apex Court held that when a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, initiation of a parallel criminal proceeding u/s 145 Cr. P. C, would not be justified. The parallel proceedings should not be permitted to continue and in the event of a decree of the civil court, the criminal court should not be allowed to invoke its jurisdiction.

In Narendra Chand Mehta Vs. State of Orissa, this Court has held that unfounded presumption is not to be regarded as a valid presumption so as to frame a charge. Magistrate is required to apply his mind and not to make a superficial analysis of the materials on record while framing a charge and satisfaction of trial court regarding existence of a prima facie case is necessary during framing of charge.

7. Learned Standing Counsel for C. B. I. contended that the materials on record disclose a prima facie case against all the three petitioners and hence the orders taking cognizance and framing charge against the petitioners are in accordance with law and cannot be interfered with. In support of his contention, he placed reliance on the following decisions ;

State of Maharashtra, Etc. Etc. Vs. Som Nath Thapa, Etc. Etc., (1999) 17 O.C.R. 200 (State Anticorruption Bureau, Hyderabad and another v. P. Suryaprakasam) (2000)18 O.C.R. 477 (Kanti Bhadra Shah and another v. The State of West Bengal) (2000) 18 O C.R. 696 (Mrs, Purnima Pattnaik v. Republic of India) AIR 2000 S.C. 1369 (M/s. Medchi Chemicals and Pharma Pvt. Ltd. v. M/s Biological E. Ltd. and others) AIR 2000 S.C. 1589 (State of Tamil Nadu v. J. Jayalalitha) and A. I. R 2001 S.C. 40 (State of Delhi v. Gyan Devi and others).

8. In the case reported in 2000 18 O.C.R. 477 (supra) it has been held by the Apex Court that if the trial court decides to frame a charge there is no legal requirement that he should pass an order specifying the reason as to why he opted to do so and that framing of charge itself is prima facie case that the trial judge has formed the opinion upon considering the police reports and other documents and after hearing both sides, that there is ground for presuming that the accused has committed the offence concerned.

The said decision has been followed by this Court in Purnima Patnaik, reported in 2000 18 O. C. R. 696 (supra).

In the decision reported in AIR 2000 S. C. 1869 (supra) it was held as follows :--

"In the matter of exercise of High Court's inherent power, the only requirement is to see whether continuance of the proceeding would be a total abuse of the process of court. The Criminal Procedure Code contains a detailed procedure for investigation, charge and trial and in the event the High Court is desirous of putting a stop to the known procedure of law, the High Court must use a proper circumspection and as noticed above, very great care and caution to quash the complaint in exercise of its inherent jurisdiction." It has been further held "

"In the instant case the ingredients of the offences under sections 415, 418 and 420 were not totally absent on the basis of the allegations in the complaint. However, whether or not the allegations in the complaint are otherwise correct has to be decided on the basis of the evidence to be led at the trial in the complaint case but 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 therein. Both criminal law and civil law remedy can be pursued in diverse situations. As a matter of fact 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 wrong-doer in case like arson, accidents, etc. . It is anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred."

9. In the facts and circumstances of the case and in view of the principles enunciated by the Apex Court in the case of M/s. Medchi Chemicals (supra) no illegality or irregularity is found in the orders of the learned Special Judge (C. B. I.) taking cognizance and framing charges against the petitioners as well as rejecting the prayer of accused No. 2-Suman Naik for discharging him u/s 239, Cr.P.C. . The impugned orders are legally sustainable and cannot be interfered with. Hence all the three petitions are devoid of any merit and are liable to be rejected.

10. In the result, all the three cases dismissed being devoid of any merit and the impugned orders are affirmed. Stay granted in the case stands vacated. Communicate the order to the court below.

11. Petitions dismissed.