

(1996) 10 GUJ CK 0022
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 1770 of 1996

United India Phosferous Ltd. and Others	APPELLANT
Vs	
Vinodhbhai Mohanbhai Patel and Another	RESPONDENT

Date of Decision : 16-10-1996

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 20
Penal Code, 1860 (IPC) — Section 463

Citation : (1998) 1 CivCC 542 : (1997) 89 CompCas 764 : (1997) 1 GLR 84

Hon'ble Judges : S.D. Pandit, J

Bench : Single Bench

Advocate : Sejal K. Mandavia, for the Appellant; M.J. Trivedi and H.F. Mehta, for the Respondent

Judgement

S.D. Pandit, J.

Rule.

1. The accused in Criminal Case No. 568 of 1996 on the file of the Judicial Magistrate, First Class, Ahmedabad Rural, have filed the present petition u/s 482 of the Code of Criminal Procedure, 1973, for quashing and setting aside the proceeding of the said criminal case.

2. The petitioners are a private limited company manufacturing agro-climatic and pesticides. Respondent No. 1 was a customer of the petitioner company and admittedly there were transactions of respondent No. 1 purchasing the petitioner company's produce on credit. It is the claim of the petitioner that on October 5, 1995, respondent No. 1 was owing an amount of Rs. 6,71,115.26 and towards the said dues, they gave a cheque bearing No. 168896 on January 30, 1996. The said, cheque presented by the petitioner for encashment to their bank and the cheque was dishonoured with an endorsement of insufficient funds. Thereafter, the petitioners had issued statutory notice u/s 138 of the Negotiable Instruments Act, 1881, and then getting a reply from respondent No. 1 and non-payment of

the full amount of the cheque within 15 days of the receipt of the said notice, they lodge a complaint in the Court of the Judicial Magistrate, First Class, Ahmedabad Rural, u/s 138 of the Negotiable Instruments Act, 1881. It is the case of the petitioners that after respondent No. 1 was served with the said notice, respondent No. 1 has filed this private Criminal Case No. 568 of 1996 in the Court of Judicial Magistrate, First Class, Ahmedabad Rural, alleging that respondent No. 1 had given this cheque and four other cheques by merely signing them and there was no writing of the name of the person to whom the cheque was issued. Similarly, the figure of the amount also were not in the said cheque and the petitioner used one of the said cheques, namely, bearing No. 168896 and wrote his own name as holder of the cheque and also inserted the figures of Rs. 6,71,115.26 and by doing the said act, the petitioners have committed the offence punishable under sections 175, 406, 409, 420, 427, 465, 467, 120B and 114 of the Indian Penal Code, 1860, and on the strength of the same, a process has been issued against the present petitioners. It is their claim that it is clear abuse of the process of law, and, therefore, the said criminal proceedings should be quashed.

3. Notice was issued to respondent No. 1 and respondent No. 1 has contested the claim of the petitioners. The petitioners as well as the respondents are heard at length, and, therefore, I proceed to decide this petition finally.

4. It is true that at this stage, I am considering the question as to whether the criminal proceeding in question is to be quashed by exercising the discretionary power u/s 482 of the Code of Criminal Procedure 1973. At this stage, it is not my duty to find out as to whether the accused will be ultimately convicted or acquitted. If from the material on record it is found that the criminal proceeding in question is a clear abuse of the process of law, then alone, I can quash the same. In the case of Punjab National Bank and others Vs. Surendra Prasad Sinha, , it is observed by the Supreme Court as under :

"Judicial process should not be an instrument of oppression or needless harassment. The court should be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complainant as vendetta to harass the persons needlessly." In that case, the complainant has some fixed deposits with the Punjab National Bank. Similarly, the complainant has also taken some loans from the Punjab National Bank. The claim of the Punjab National Bank to recover the said amount of loans by filing a suit in the civil court had become time barred. Thereafter, the Punjab National Bank had deducted the amount which was due to the Punjab National Bank from the complainant on his loan account from his fixed deposit and in that case it was the claim of the complainant that the amount of deposit was an entrustment with the Punjab National Bank and their act is not returning the amount of deposit and the act of deducting the amount of their dues and recovering from the fixed deposit was criminal act of misappropriation, and,

therefore, he had filed a private complaint. The said complaint was quashed by the Supreme Court by laying down the above principle.

5. In the instant case, there is no dispute of the fact that the complaint had taken goods on credit from the petitioners. It is also an admitted fact that the petitioners have filed a criminal case u/s 138 of the Negotiable Instruments Act, 1881, against the present complainant, i.e., respondent No. 1 by saying that the cheque in question was issued by respondent No. 1 complainant towards his debt due to the petitioners and the said cheque has been dishonoured and on account of the same, respondent No. 1 has committed the offence alleged against him. Therefore, the question as to whether the cheque in question is issued by the present respondent No. 1 or whether it is a forged cheque as claimed by respondent No. 1 could not be considered and contested in a separate criminal proceeding. The contention which the complainant respondent No. 1 is raising will have to be raised in that criminal proceeding and there could not be a separate prosecution for his alleged contention for the alleged commission of offence. Therefore, in view of the nature of the complaint itself, it is quite obvious that the prosecution in question is a clear abuse of the process of law.

6. The learned advocate for the respondent urged before me that the cheque in question was given by the complainant respondent No. 1 by merely signing. It was blank as regards the name of the payee as well as the amount and when the petitioners have written the name of the payee and the figure, the act is covered by section 463 of the Indian Penal Code, 1860. He urged that it is covered by illustration "C" to section 463. The illustration "C" to section 463 runs as under :

"A picks up a cheque on a banker signed by B payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery."

7. If the above illustration is carefully read and considered, then it would be quite clear that B drawer of the cheque has not handed over the cheque to A in that case. In addition A had fraudulently inserted the figure ten thousand rupees. But, in the instant case, respondent No. 1 complainant has himself handed over the cheque to the petitioners and it could not be said that the figure in question was fraudulently inserted by the petitioners because there is no dispute of the fact that the complainant was owing the amount mentioned or inserted in the cheque. Then section 20 of the Negotiable Instrument Act, 1881, empowers and authorises the petitioners to write the name of the payee and the amount. Therefore, even assuming and accepting the claim of respondent No. 1 the action of the petitioner could not amount to any criminal offence.

8. As per the averments made by the complainant in his complaint, as a matter of fact, respondent No. 1 had given five cheques which were blank cheques with the only signature of respondent No. 1 and those five cheques were lying with the petitioner before me and one of the cheques has been misused by forging and fabricating the same. But the petitioners have produced the material on

record that out of the alleged five cheques mentioned in the complaint, three cheques, bearing Nos. 168889, 168900 and 168898, were already presented by the petitioners to their bankers and were encashed for the amount of Rs. 1,50,000, Rs. 2,81,124.05 and Rs. 2,48,244. This fact also will have to be taken into consideration while considering the question as to whether the prosecution in question is an abuse of the process of law or not. This fact of the encashment of the three earlier cheques by the petitioner indicates that the allegations made by the complainant respondent No. 1 in his complaint could not be believed by a prudent man. It is one of the settled principles as regards the quashing of proceedings that if the allegations made by the petitioners could not be accepted and believed by the prudent man, then it is a fit case for quashing of the proceeding.

9. No doubt, the learned advocate for respondent No. 1 has cited before us the cases of *Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another*, *State of Maharashtra and others Vs. Ishwar Piraji Kalpatri and others*, and *State of Orissa Vs. Bansidhar Singh*, . If the facts of all the three cases are considered, then it would be quite clear that none of them is applicable to the facts before me. In the case of *State of Orissa Vs. Bansidhar Singh*, , the offence which was punishable u/s 302 of the Indian Penal Code, 1860, was registered on the strength of a dying declaration and the said offence registered was quashed by the High Court and the said order of the High Court has been quashed and set aside by the Supreme Court by holding that whether on a perusal of material available, namely, the dying declaration and statements of another witness cognizance was taken by the court against the accused for the offence u/s 300 of the Indian Penal Code, 1860, and hence the order of the High Court quashing the criminal proceeding by brushing aside the dying declaration on certain grounds and taking the view that the deceased person was of unsound mind was improper. In the case of *State of Maharashtra and others Vs. Ishwar Piraji Kalpatri and others*, , the High Court of Bombay had quashed the proceeding under the Prevention of Corruption Act on the allegation that the complainant was quality of mala fides and that setting aside and quashing by the High Court has been set aside by the apex court by holding that if the complaint which is made is correct and an offence committed which is alleged specifically, it is of on consequence that the complainant was guilty of mala fides. In the case of *Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another*, , there was a question of consideration of the quashing of the proceeding by the High Court in a complaint lodged for the alleged offences punishable under sections 352 and 354 of the Indian Penal Code, 1860, and the complainant herself has narrated the whole incident in her first information report and in view of the details in the first information report, the quashing of the proceedings by the High Court was set aside by the apex court. Thus, none of the cases cited by the learned advocate for respondent No. 1 are complaint itself and the background in which the complaint in question has been filed, it is quite obvious that the complaint in question is clear abuse of the process of law. I therefore, hold that the

discretionary powers u/s 482 of the Criminal Procedure Code, 1973, will have to be exercised in favour of the petitioner in this case.

10. I, therefore, allow this petition and quash and set aside the proceeding of Criminal Case No. 568 of 1996 on the file of the Judicial Magistrate, First Class, Ahmedabad Rural. Rule is made absolute.

11. The learned advocate for respondent No. 1 prays to stay the operation of this order for two weeks, but, in the circumstances of the case, I do not find any reason to accept his request. Request is rejected.