(2003) 11 GAU CK 0028

In the Gauhati High Court

Case No : Criminal Revision No. 74 of 1995

Vijay Kumar Gupta and Others APPELLANT

Vs

Assam State Weaving and Manufacturing Company Ltd. RESPONDENT

Date of Decision : 12-11-2003

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2004) 2 GLR 34

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : A.S. Choudhury and R. Ali, for the Appellant; J.M. Choudhury and H. Deka, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Roy, J.—This application u/s 482 of the Criminal Procedure Code (hereinafter referred to as the "Code") is for quashing the proceedings of complainant case No. 1078C/93 u/s 406/420/68/120B of the IPC pending in the court of the learned Additional Chief Judicial Magistrate, Kamrup, Guwahati. By the order dated 22.11.1995, Rule was issued by this court and the proceedings of the case referred to above had been stayed.

2. I have heard Mr. A. S. Choudhury, learned senior counsel for the petitioner and Mr. J.M. Choudhury, learned Senior counsel for the opposite party.

3. The background of facts leading to the filing of the instant petition has to be set out. A complaint petition was filed by the opposite party in the court of the learned court below, wherein it was, inter alia, stated that in response to a notice inviting tender for supply/erection and commissioning of the plants and machineries of the Effluents Treatment Plant for the Textile Process House Project of ASWMC Limited at Jabjabkuchi, Ghagrapar Circle in the Nalbari District, M/s. Vinny Engineering Enterprises -- O.P. No. 1 along with others submitted their tenders and the said contract was settled with M/s. Vinny Engineering

Enterprises. A formal agreement was made on 22.6.1992 between the O.P. and the said firm, whereupon a back guarantee for the amount of Rs. 2,62,940 was deposited by it. On a demand made by it, advance payment of Rs. 2,64,940 was made by the O.P. to the tendered M/s. Vinnay Engineering Enterprises. M/s. Gherzy Eastern Limited was appointed as the Technical Consultant at Calcutta of the Complainant Company. On 4.9.1992 M/s. Vinnay Engineering Enterprises informed the aforesaid Technical Consultant that some equipments to be supplied to the Complainant company were ready for inspection. The Technical consultant issued instructions to M/s. Vinnay Engineering Enterprises to despatch the materials at the site of the Complainant Company. It has been alleged in the complaint petition that the petitioner/accused persons hatched a conspiracy in pursuance whereof, a letter dated 30.9.1992 was issued to the complainant company informing it that another batch of equipments were ready for despatch. Thereafter the Complainant Company received a bank intimation about a bill sent by M/s. Vinnay Engineering Enterprises for Rs. 1,09,196 for releasing the documents purportedly covering materials despatched by the accused firm. The Complainant Company made payment and released the relevant documents. Thereafter on 29.10.1992 another set of documents were sent by the accused firm for an amount of Rs. 8,11,094. Thereafter Sri Shankar Ghosh, the petitioner No. 2 personally visited the office of the Complainant Company and insisted for release of the amount of bank guarantee representing that it was permissible as the supplies have been made. At the instance of the said petitioner, the petitioner company also issued a post dated cheque towards the supply. The bank guarantee was also released. Later on the amount of the post dated cheque was also paid by the company.

4. The allegation of the Complainant Company is that in spite of full payments made against the invoices, the accused persons did not in fact supply the equipments to its project and on enquiry it was found that the documents despatched through the bank and represented to cover the materials claimed to have been despatched were fake and the same were prepared in collusion with the transporters M/s. Sunrise Transport Corporation. It was, however, admitted in the complaint petition that after repeated demands thereafter a negligibly small quantity of equipments were received. The Complainant Company alleged that the accused firm and its officers arrayed as accused Nos. 2 and 3 as well as the proprietor of the Transport Company had in conspiracy cheated the Complainant Company. The complaint was therefore filed.

5. After recording the initial deposition of the Managing Director of the Complainant Company and the evidence of another witness cognizance of offences u/s 406/420/468/471/120-B of the IPC was taken by the learned trial court and process was issued to the accused persons. It is the initiation of the criminal proceeding and the continuance thereof which is in question in the instant proceeding.

6. The learned counsel for the petitioner has strongly argued that the allegations

made in the complaint are unfounded and reading the same as a whole, no offence was made out against the petitioners and therefore the impugned proceedings is not maintainable in law as well as on facts. The allegations made in the complaint petition at best give rise to a liability and therefore on that ground also the continuance of the criminal proceedings against the accused petitioners is clearly an abuse of the process of court. Referring to the agreement between the parties, the learned counsel has argued that any dispute pertaining thereto is arbitrable and therefore the criminal proceeding, on the basis of the complaint, being opposed to the terms and conditions of the agreement, it is liable to be quashed as not maintainable in law. The decision in K. Srinivas Petitioner v. State of Andhra Pradesh, Respondent, reported in 1997 Cri LJ 3997 was relied upon in support of the above submissions.

7. Mr. Choudhury learned counsel for the opposite party to the contrary has argued that the allegations made in the complainant petition disclose commission of offences of which the learned trial court has taken cognizance and asserted that at this stage of the proceeding while entertaining an application for quashing this court has to confine its attention only to the complaint petition and the statements in the initial deposition of the complainant. This court has to proceed on the basis that the allegations made in the complaint petition are correct and if the same disclose a cognizable offence, this court in the exercise of its power u/s 482 Cr.PC would refrain from quashing the proceeding.

8. The state of law with regard to the quashing of a criminal proceedings is well settled. It has been held by the Apex Court as well as this court on umpteen occasions that when called upon to exercise its powers u/s 482 Cr.PC, the High Court is to take note of the allegations made in complaint and the materials on record as it is and would not endeavour to weigh the materials on record in the golden scales as would be required at the time of trial. If the allegations made in the complaint petition as well as in the initial deposition taken on their face value disclose a cognizance offence, this court should stay its hands in the matter and allow the court below to conduct and complete the trial of the proceeding.

9. Applying the above test, reading between the lines, I am of the view that the complaint petition cannot be said to be one which does not disclose any cognizance offence. The initial deposition of the Managing Director of the Complainant Company as well as the testimony of the other witness substantially support the allegations made in the complaint. The submissions made on behalf of the petitioners that the dispute portrayed in the complaint petition is of civil nature also does not appeal to this Court, inasmuch as though the transaction involved is of commercial in nature, it is the alleged conduct of the accused persons that would be relevant for the purpose of adjudging as to whether the impugned criminal proceedings should be allowed to continue or not. It is no longer res integra that the same conduct in a given fact situation may give arise to both civil and criminal liabilities and only because a controversy give rise to a civil liability it cannot be concluded that no criminal liability exists. On a

consideration of the complaint petition as well as the deposition of the complaint and his witness, I am of the view, that the same prima facie disclose the offences for which the accused petitioners have been charged. The decision rendered in K. Srinivas v. State of Andhra Pradesh (supra) turns on its own facts which are distinguishable from those in the present case. There a complaint was lodged against the petitioner accused alleging offence u/s 406 and 420 IPC on the ground that he had retained some raw materials supplied by the Complainant Company. Their Lordship of the Andhra Pradesh High Court held that the charge sheet submitted did not on the face of it, disclose any of the ingredients of the said offences. It was held in the facts of that case that the dispute was of civil nature and thus the criminal proceeding was quashed.

10. The plea of availability of a remedy of arbitration is also of no avail, inasmuch as, in my opinion the dispute contemplated to be referred to arbitration has to be of civil nature and if the conduct of the petitioners give rise to a criminal liability it would be idle to contend that a criminal prosecution would not be sustainable only because of the arbitration agreement.

11. In view of the above discussion, I am of the considered opinion that the accused petitioners have failed to make out a case warranting interference by this court u/s 482 Cr.PC and hence the revision petition stands dismissed accordingly. The stay order passed by this court earlier stands vacated.

12. It has been submitted at the bar that the accused petitioner No. 2 has since expired on 29.11.1995. The learned trial court would take note of the above fact and proceed in accordance with law.