
(2007) 12 UK CK 0048

In the Uttarakhand High Court

Case No : Criminal Appeal No. 859 of 2005

Vijendra Kumar and Others

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 12-12-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 250, 482
Penal Code, 1860 (IPC) — Section 120B, 420, 465, 467, 468

Citation : (2007) NCC 456

Hon'ble Judges : B.C.Kandpal, J

Bench : Single Bench

Advocate : B.S. Adhikari, Lernd, for the Appellant; Nandan Arya, Learned A.G.A, for the Respondent

Final Decision : Allowed

Judgement

B.C. Kandpal

1. By way of this petition U/S 482 of the Cr.P.C., the petitioners have challenged the summoning order dated 27.8.2005 as well as the entire proceedings of criminal case No. 904 of 2005 Dhan Prakash Vs. Vijendra Kumar and others, U/S 465 I.P.C., pending in the Court of Chief Judicial Magistrate Dehradun. Brief facts of the case, as per the records are that the respondent No. 3, Dhan Prakash filed a criminal complaint against the petitioners, alleging therein that in the ancestral property the complainant along with his three other brothers, are the joint owners of equal shares. According to the complaint, father of the complainant Bhagwat Prasad died on 16.12.1995 and long before his death he was not capable to move from the bed. It was further been alleged in the complaint that the accused persons Vijendra Kumar and Ram Kumar petitioners 1 and 2, in connivance with petitioner No. 3, Rajesh Mittal, prepared a forged Will on 15.12.1995 in order to get the illegal gain from the ancestral property. It has also been averred in the complaint that the signature of Bhagwat Prasad was not in a position to make his signature over the documents. As per the complaint the

accused have thus committed the offence U/Ss 420, 467, 468 and 120-B I.P.C.

2. The trial court after making enquiry and recording the statements of the complainant as well as the witnesses took cognizance in the matter and summoned the accused/petitioners to face the trial U/S 465 I.P.C., vide order dated 27.8.2005.

3. The petitioners have challenged the impugned order summoning them as well as have prayed to quash the entire proceedings of the criminal case by way of this petition.

4. The respondent No. 3 filed counter affidavit denying the allegations made in the petition. Thereafter the petitioners have filled the rejoinder affidavit.

5. Heard Sri S.C. Tyagi, learned counsel for the petitioners, Sri Nandan Arya, learned A.G.A. for the State and Sri Ashok Agarwal, learned counsel for the respondent No. 3 and perused the record.

6. Learned counsel for the petitioners has argued that this matter relates to the family dispute between the real brothers and father of the petitioners 1 and 2 executed the will before his death which has also been challenged in the competent court of jurisdiction by respondent No. 3, therefore, this criminal prosecution launched against the petitioners is absolutely bad in the eyes of law.

7. The learned counsel for the respondent No. 3 has made rival contention by submitting that the report of the finger print expert is available which clearly indicates that the signature over the alleged Will does not belong to Bhagwat Prasad, therefore, in the light of this factor that the signatures of Bhagwat Prasad are fake and forged, the cognizance against the petitioners has rightly been taken by the trial Court.

8. The record available before me shows that Annexure-4 contained along with the petitioner is the copy of the suit No. 199/2004, which indicates that Dhan Prakash, respondent No. 3 has filed a suit before Civil Court, Dehradun against the petitioners for partition as well as permanent injunction. This suit was filed on 11.8.2001. Annexure-6 contained with the petition shows that the petitioners have filed their written statement in the aforesaid suit. Annexure-8 further indicates that the issues in the aforesaid suit were framed by the Addl. Civil Judge-II, Dehradun on 24.7.2005 and that suit is still sub-judice. The aforesaid documents clearly reveal that the dispute with regard to the property in question was pending long before the institution of the criminal complaint filed by the respondent No. 3. In case if the complainant alleges that the forged Will was got executed by the petitioners in their favour in order to make a wrongful gain then the remedy with respondent No. 3 is available to file a suit for cancellation of the alleged will but the respondent No. 3 by launching the criminal prosecution has exceeded his limits. Once there is remedy to petitioner No. 3 to approach the civil court in order to redress his grievance then he by filling criminal prosecution has put the petitioners to unnecessary embarrassing situation. The criminal

prosecution is although not barred but when the respondent No. 3 had civil remedy available with him then the criminal prosecution is a harassment to the petitioners and in these circumstances I am of the view that in case if the criminal prosecution is permitted to continue against the petitioners, the same would amount to abuse of process of Court.

9. The Hon''ble Supreme Court in the case of Indian Oil Corporation Vs. NEPC India Ltd. and others reported in (2006) 3 Supreme Court Cases (Cri.) 188 has opined as under:-

However, here is a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interest of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.

While no one with a legitimate cause or grievance should be prevented from, seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions are harassment of innocent parties, is to exercise their power u/s 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant.

10. The Hon''ble Supreme Court has quoted in the same judgment the decision of G. Sagar Suri Vs. State of U.P. reported in (2003) 2 SCC 636 in which it has been observed:-

It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction u/s 482 of the Code. Jurisdiction under this section to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.

Coming to the facts of this case, it is no doubt true that IOC has initiated several civil proceedings to safeguard its interests and recover the amounts due. It has filed CS No. 425 of 1997 in the Madras High Court and OS No. 3327 of 1998 in the City Civil Court, Chennai seeking injunctive reliefs to restrain NEPC India from removing its aircrafts so that it can exercise its right to possess the aircrafts. It has also filed two more suits for recovery of the amounts due to it for the

supplies made, that is, CS No. 998 of 1999 against NEPC India (for recovery of Rs. 5,28,23,501.90) and CS No. 11 of 2000 against Skyline (for recovery of Rs. 13,12,76,421.25) in the Madras High Court IOC has also initiated for winding up NEPC India and filed a petition seeking initiation of proceedings for contempt for alleged disobedience of the orders of temporary injunction. These acts show that civil remedies were and are available in law and IOC has taken recourse to such remedies. But it does not follow therefrom that criminal law remedy is barred or IOC is estopped from seeking such remedy.

11. In view of the above observations of the Hon'ble Apex Court and the reasons stated above, I come to the conclusion that the criminal prosecution against the petitioners pending in the Court of C.J.M. Dehradun U/S 465 I. P.C. in criminal case No. 904 of 2005, Dhan Prakash Vs. Vijendra Kumar and Others, is liable to be quashed.

12. Accordingly, the proceedings of the Criminal Case No. 904 of 2005, Dhan Prakash Vs. Vijendra Kumar and Others, U/S 465 I. P.C. pending before the C.J.M. Dehradun, are hereby quashed. The petition is accordingly allowed.