

(2008) 05 SC CK 0208

In the Supreme Court Of India

Case No : Criminal Appeal No. 925 of 2008 (Arising out of SLP (Criminal) No. 6351 of 2006)

V.R. Dalal and Others

APPELLANT

Vs

Yogendra Naranji Thakkar and Another

RESPONDENT

Date of Decision : 16-05-2008

Acts Referred:

Constitution of India, 1950 — Article 142
Criminal Procedure Code, 1973 (CrPC) — Section 188
Penal Code, 1860 (IPC) — Section 120B, 405, 420

Citation : (2008) 3 ACR 2652 : AIR 2008 SC 2793 : (2008) AIRSCW 4634 : (2009) 1 ALD(Cri) 83 : (2008) 6 JT 564 : (2008) 40 OCR 947 : (2008) 8 SCALE 156 : (2008) 15 SCC 625 : (2008) 4 Supreme 374

Hon'ble Judges : S. B. Sinha, J;H. S. Bedi, J

Bench : Division Bench

Advocate : Suresh Kumar, J. Panikcker, Pravin Satale and Naresh Kumar, for the Appellant; Jatin Zaveri, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—Leave granted.

2. A complaint petition was filed by the respondent No. 1 herein in the Court of Metropolitan Magistrate, 30th Court at Kurla. It was registered as Case No. 271/M of 2002; Accused Nos. 1 to 6 thereof were partners of M/s. N.M. Raiji and Company and Accused No. 7 was its employee. Appellants herein who were arrayed as the Accused Nos. 8 to 13 were partners of another firm known as M/s. Gandhi Dalal and Shah. The said firm was earlier known as Dalal and Shah. Out of the said accused, Accused No. 8 Mr. Y.C. Amin has expired. In the aforementioned complaint petition, allegations were made that all the accused persons conspired with each other so as to deprive the complainant from deriving the benefits of a firm by dissolving the firm N.M. Raiji and Company behind his back.

3. It appears that the firm 'M/s. Gandhi Dalal and Shah' which was constituted with effect from 1.02.2000 was cancelled from the very inception as the same is said to have not been acted upon. The name M/s. Gandhi Dalal and Shah was surrendered to the Chartered Accountants of India. Indisputably, in the complaint petition itself, it has been accepted that the said M/s. Gandhi Dalal and Shah is no longer in existence. It has further not been disputed that one Mahendra Thakkar also signed in the original deed of partnership dated 10.02.2001. In relation to the cancellation of the said partnership, it is alleged:

The Complainant states that they have with some dishonest intention have not prepared any Deed of dissolution which is mandatory for cancellation of any Deed of partnership. Merely by canceling Deed on piece of paper has no meaning in the eyes of law and it is misguiding but in law the Deed of partnership will remain in force till it is dissolved by deed of dissolution. The Accused have again played fraud upon the complainant by misrepresenting him that they have cancelled the Deed of partnership. They have also filed false documents with Institute of Chartered Accountants in order to commit fraud.

4. The role of the appellants herein are said to be that of conspirators. The complainant stated:

The Accused persons in criminal conspiracy with each other intending to kicked out the complainant from the said firm by adopting intellectual tactics, which is evident from the conduct and act of the accused. The complainant is putting his full time for the prosperity of the said firm and he has contributed Lion Share in creating good reputation and goodwill of the said Firm among the Corporate Sector and other business communities. The Complainant is not having control over the income of the firm. In spite of the demand of the Complainant for giving him accounts of the firm the accused have failed and neglected to do so as such the complainant is not aware at present exact amount misappropriated by the Accused persons. The complainant states that it is not only misappropriates but it amounts to theft of the valuable property of the complainant.

5. The firm M/s. N.M. Raiji and Company is a firm of chartered accountants. Some business allegedly had been transferred. It is stated that the accused have committed criminal breach of trust in respect of income and goodwill of the firm. According to the complainant, his income from the said firm would have been 5% from the profit of the said firm which was estimated at 30% wherefrom he has allegedly been deprived, as he was not made a partner in the new firm.

6. Appellants filed a writ petition before the Bombay High Court which was marked as Criminal Writ Petition No. 315 of 2004. A separate writ application was also filed by Accused Nos. 1 to 7 which was marked as Writ Petition No. 542 of 2003. The said writ petition was dismissed. The High Court, by reason of the impugned judgment, dismissed the writ petition filed by the appellants also stating:

5 Mr. Panikar appearing for the petitioners, does not dispute that such an order is

passed. However, he submits that the case of the present petitioners stand on a slightly different footing, although they are accused in the same criminal case, as far as they are concerned, they are not the partners of M/s. N.M. Raiji & Company. This N.M. Raiji and Company was a partnership firm in which all accused 1 to 7 and the complainant were partners. The petitioners are partners of distinct firm which is known as "Dalal & Shah" and later on "M/s Gandhi Dalal & Shah". In such circumstances, it would not be proper to rely upon the order passed in the other writ petition. These are disputes between persons, who are partners, during the course of administration and management of the business of the firm. It is a purely civil dispute. Allowing criminal proceeding according to Shri Panikar would be abuse of process of the court.

7. Mr. Sureshkumar J. Panicker, learned Counsel appearing on behalf of the appellants, would submit that the dispute between the parties being a civil dispute, if the proceeding is allowed to continue, it would amount to an abuse of process of law.

8. Mr. Jatin Zaveri, learned Counsel appearing on behalf of the respondents, on the other hand, would contend that as allegations made in the complaint petition constitute an offence, this Court should not interfere with the impugned judgment.

9. The short question which arises for consideration is as to whether the complaint petition given its face value and taken to be correct in its entirety constitutes an offence.

M/s. Gandhi Dalal and Shah admittedly was constituted as a partnership firm on 1.12.2000. The said partnership firm was constituted on the premise that four partners of M/s. N.M. Raiji and Company were representing the firm Dalal and Shah. As indicated hereinbefore, an outsider was also included therein. Once the said partnership did not take off and the partnership deed was cancelled as it had never been acted upon, the question of any wrongful act on the part of the appellants did not arise. It is one thing to say that there exists a dispute amongst the partners inter se but it is another thing to say that by constituting another firm wherein two firms would be represented by their respective nominees together with an outsider would itself indicate an act of conspiracy. Once it has been accepted as of fact that the said partnership has been cancelled, the question of relying thereupon for any purpose would not arise.

10. The learned Counsel appearing on behalf of the respondents, however, has drawn our attention to a letter dated 28.02.2001 addressed by Arun R. Gandhi, Mahendra N. Thakkar, Jayesh M. Gandhi, Vinay D. Balse and Sujal A. Shah to Yogendra N. Thakkar wherein one of the sequence of events was stated to be as under:

(3) On getting you letter dated February 7, 2001, Mr. Arun Gandhi had discussed the matter with Mr. Mahendra Thakkar on 9th and 10th February, 2001 who had informed that Mr. Arun Gandhi that he need not worry about it and that

everything would be sorted out by meeting with you, and that we should go ahead with the signing of the partnership deed (of Gandhi Dalal & Shah). On that basis, the said partnership deed was signed on 10th February, 2001, by five signatories. Mr. Mahendra Thakker could not sign on that day as he had some urgent work to attend.

This letter does not take us anywhere. It merely shows that internal dispute leading to abandonment of the concept of starting a new firm.

11. Mr. Panicker has relied upon a decision of this Court in *Uma Shankar Gopalika v. State of Bihar and Anr.* (2005) 10 SCC 336 wherein it has been held that where the dispute is pure civil in nature an offence u/s 420 or Section 120B of Indian Penal Code cannot be said to have been made out.

12. It may be true that in the event the court finds that the dispute between the parties is civil in nature, it may not allow the criminal proceedings to go on. But, no law, in our opinion, as such can be laid down as in a given case both civil suit and criminal complaint would be maintainable although the cause of action for both the proceedings is the same.

13. We, however, in this case are satisfied that the appellants by no stretch of imagination can be said to have committed an offence particularly when admittedly the new firm has been cancelled from its very inception. If the new firm has not derived any income, the question of depriving the claimant therefrom does not arise. Whether the constitution of the said firm was illegal or mala fide, thus, need not be gone into as by reason thereof the respondent No. 1 cannot be said to have suffered any loss.

14. We may notice that as regards commission of an offence in terms of Section 405 of Indian Penal Code, this Court in *Indian Oil Corporation Vs. NEPC India Ltd. and Others*, held that where the first ingredient of criminal breach of trust, that is, entrustment is missing, the same would not constitute a criminal breach of trust.

As regards essential ingredients of the offence of cheating, it was stated:

(i) deception of a person either by making a false or misleading representation or by other action or omission (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

15. The aforementioned ingredients of Section 420 of Indian Penal Code are also absent in the instant case. [See also *Suryalakshmi Cotton Mills Ltd. Vs. Rajvir Industries Ltd. and Others*,

16. When a proceeding is found to be an abuse of the process of court, this Court

in exercise of its jurisdiction under Article 142 of the Constitution of India may not allow it to continue. For the said purpose, the fact of the matter can be looked into. It was so done recently in Sanapareddy Maheedhar and Another Vs. State of Andhra Pradesh and Another, wherein upon noticing a large number of decisions of this Court, it was held:

We are further of the view that in the peculiar facts of this case, continuation of proceedings of CC No. 240/2002 will amount to abuse of the process of the Court. It is not in dispute that after marriage, Shireesha Bhavani lived with appellant No. 1 for less than one and a half months (eight days at Hyderabad and about thirty days at New Jersey). It is also not in dispute that their marriage was dissolved by the Superior Court at New Jersey vide decree dated 15.12.1999. Shireesha Bhavani is not shown to have challenged the decree of divorce. As a matter of fact, she married Sri Venkat Puskar in 2000 and has two children from the second marriage. She also received all the articles of dowry (including jewellery) by filing affidavit dated 28.12.1999 in the Superior Court at New Jersey. As on today a period of almost nine years has elapsed of the marriage of appellant No. 1 and Shireesha Bhavani and seven years from her second marriage. Therefore, Page 0086 at this belated stage, there does not appear to be any justification for continuation of the proceedings in CC No. 240/2002. Rather, it would amount to sheer harassment to the appellant and Shireesha Bhavani who are settled in USA, if they are required to come to India for giving evidence in relation to an offence allegedly committed in 1998-99. It is also extremely doubtful whether the Government of India will, after lapse of such a long time, give sanction in terms of Section 188 Cr.P.C.

17. For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. The summons issued by the learned Magistrate against the appellants is quashed. The appeal is allowed.