

Sardar Trilok Singh and Others

Vs

Satya Deo Tripathi

Criminal Appeal No. 283 of 1977

(N. L. Untwalia, Syed M. Fazal Ali JJ)

11.01.1979

JUDGMENT

UNTWALIA, J. –

1. On May 1, 1976 the respondent in this appeal by special leave filed a complaint against 10 persons, including the three appellants, under Sections 395, 468, 465, 471, 412, 120-B/34 of the Penal Code in the court of the Chief Judicial Magistrate, Kanpur. An inquiry under Section 202 of the Code of Criminal Procedure, 1973, hereinafter called the Code, was held by the Magistrate. Thereafter on January 17, 1977 the Magistrate passed an order directing the issue of summons against nine accused only under Section 395 of the Penal Code. He dismissed the complaint against accused 10, Smt. Ram Misra, wife of Shri B. C. Misra, accused 9. Before the summonses were actually issued, on the same day i.e. January 17, 1977 the appellants moved the Allahabad High Court to quash the criminal proceeding in question in exercise of its inherent power under Section 482 of the Code. The High Court by its order dated February 21, 1977 has refused to quash the said proceeding and dismissed the appellant's application. Hence this appeal.

2. We do not consider it necessary to state and discuss all the points involved in this case in any detail. Only a few of them, may, however, be mentioned for the purpose of allowing this appeal and quashing the criminal proceeding initiated which was clearly and abuse of the process of the Court.

3. The dispute between the parties relates to the purchase of a truck from Sardar Harbans Singh, accused 5. The total cost incurred in the purchase of the truck was in the neighbourhood of Rs. 60,000. We do not mention the exact amount as there is some difference between the parties in regard to the same. On March 29, 1973 an agreement was entered into between the respondent and his then partner one Bhagwati Prasad, accused 6 on the one hand and M/s. Sardar Finance Corporation, Kanpur on the other, which firm was represented by appellant 1 as its partner, in accordance with which about half the money was advanced by the said firm which enabled the complainant and his partner to acquire the truck. According to the complainant's case the amount advanced by the said firm was by way of loan while according to the case of the appellants it was on the basis of a hire-purchase agreement entered into between the parties in support of which formal agreement in writing was also executed. The complainant's case is that only a blank form was got signed by him along with other several papers bearing stamps and the form had not been duly filed up. The complainant's case further was that he had paid back two monthly installments the total of which was Rs. 3566 and the third instalment was payable on July 31, 1973. But before that all the accused in a High-handed manner during his absence came to his house and in spite of protest by his wife forcibly under threat of arms removed the truck and thus they are said to have committed the various offences including the offence of dacoity. The case of the appellants was that according to

the hire-purchase agreement a sum of Rs. 1783 was to be paid every month by the 15th day of the month. The first instalment payable was on May 15, 1973, second on June 15, 1973 and the third on July 15, 1973 and so on. The entire sum due was to be cleared in twenty-three installments. On default of any one monthly instalment the financier had the right to terminate the hire-purchase agreement even without notice and seize the truck. Since the July instalment was not paid by the 15th of that month the complainant and his partner surrendered the truck on July 24, 1973. Some more events happened thereafter which are not necessary to be mentioned here. In a nutshell the case of the appellants was that the respondent's case against them and others that they committed any offence on July 30, 1973 was absolutely false.

4. It ought to be stated here that the respondent had previously lodged a first information report with the police on August 20, 1973 in respect of the alleged occurrence. There was prolonged investigation by the various police officers for a long time and ultimately a final report was submitted by the investigating agency. The respondent filed objection petition before the Magistrate who dealt with the final report. But the Magistrate accepted the report by his order dated April 28, 1975. The respondent filed a revision before the Sessions Judge from the order of the Magistrate accepting the final report. The revision was dismissed by the Sessions Court. The respondent then went to the High Court under Section 482 of the Code. The respondent then went to the High Court under Section 482 of the Code. The High Court by its order dated April 16, 1976 summarily dismissed the same. Thereafter the present complaint was filed on May 1, 1976.

5 We are clearly of the view that it was not a case where any processes ought to have been directed to be issued against any of the accused. On the well-settled principles of law it was a very suitable case where the criminal proceeding ought to have been quashed by the High Court in exercise of its inherent power. The dispute raised by the respondent was purely of a civil nature even assuming the facts stated by him to be substantially correct. Money must have been advanced to him and his partner by the financier on the basis of some terms settled between the parties. Even assuming that the agreement entered on March 29, 1973 was duly filled up and the signature of the complainant was obtained on a blank form, it is to be noticed that the amount of the two monthly instalments were paid. In the first information report which he had lodged he had not stated that the third monthly instalment was payable on July 31, 1973. Rather, from the statement in the first information report it appears that the instalment had already become due on July 28, 1973 when the complainant went out of Kanpur according to his case. The question as to what were the terms of the settlement and whether they were duly incorporated in the printed agreement or not were all question which could be properly and adequately decided in a civil Court. Obtaining signature of a person on blank sheet of papers by itself is not an offence of forgery or the like. It becomes an offence when the paper is fabricated into a document of the kind which attracts the relevant provisions of the Penal Code making it an offence or when such a document is used as a genuine document. Even assuming that the appellants either by themselves or in the company of some others went and seized the truck on July 30, 1973 from the house of the respondent they could and did claim to have done so in exercise of their bona fide right of seizing the truck on the respondent's failure to pay the third monthly instalment in time. It was, therefore, a bona fide civil dispute which led to the seizure of the truck. On the face of the complaint petition itself the highly exaggerated version given by the respondent, the appellants went to his house with a mob armed with deadly weapons and committed the offence of dacoity in taking away the truck was so very unnatural and untrustworthy that it could take the matter out of the realm of civil dispute. Nobody on the side of the respondent was hurt. Even a scratch was not given to anybody.

6. In our opinion on the facts and in the circumstances of this case criminal prosecution deserves to

be quashed. On behalf of the respondent it was argued that the appellant's filing a petition in the High Court for quashing the proceeding before issuance of the summons were premature and the High court could not have quashed it. In our opinion the point is so wholly without substance that it has been stated merely to be rejected. Since the parties during the course of the hearing in this appeal showed their inclination to settle up and end all their disputes and quarrels in relation to the matter in question after we indicated our view that we are going to allow the appeal and quash the proceedings, we have not thought it necessary to elaborately give others reasons in support of our order.

7. In the result we allow the appeal, set aside the order of High Court as also of the Magistrate and quash the criminal proceeding in question initiated by the respondent against the appellants and others.

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