

Ashok Chaturvedi and Others

Vs

Shitul H. Chanchani and Another

Criminal Appeal No. 811 of 1998

(Sujata V. Manohar, G. B. Pattanaik JJ)

13.08.1998

JUDGMENT

G. B. PATTANAIAK J.

1. Leave granted.

2. The appellants have been arrayed as the accused persons along with others in a complaint petition filed by Respondent 1 alleging offences committed by the appellants under Sections 406, 420, 467, 468 and 120-B of the Indian Penal Code, in respect of transfer of shares effected by Flex Engineering Ltd., a public limited company. The learned Magistrate on receipt of the petition of complaint, examined the complainant on oath and also the witnesses produced by the complainant. On the basis of those materials, the Magistrate took cognizance of the offence under Sections 406, 420, 467, 468 and 120-B IPC by his order dated 5-2-1996 and directed issuance of process against the accused-appellants. The appellants then moved the High Court under Section 482 of the Code of Criminal Procedure for quashing the cognizance, inter alia, on the ground that the allegations made in the petition of complaint even being accepted on their face value, no offence can be said to have been made out against them. The High Court by the impugned judgment, however, being of the opinion that allegations having been made that shares have been transferred on the basis of forged and fabricated signatures, a prima facie case has been made out, and therefore, it would not be appropriate to quash the order of cognizance in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, rejected the prayer of the appellants.

3. Mr. Ashok Desai, the learned Senior Counsel appearing for the appellants submitted that Accused 1 to 9 are Chairman, Directors and Secretary of the Company and no allegation whatsoever having been made against them earlier in the petition of complaint or in the evidence adduced before the Magistrate, the High Court committed serious error in not quashing the cognizance merely because there is an allegation of forgery and being of the opinion that the same could be substantiated only during trial. Mr. Desai also contended that in a company having share capital of 5 crores of 50 lakh shares of Rs. 10 each at the point when the alleged transfer of share of the complainant took place, it is unimaginable that the 100 equity shares of the complainant could be transferred against the wishes of the complainant at the connivance of the Director to the Company. Mr. Desai also contended that the dispute, if at all any, is a dispute of civil nature and the complainant himself has already filed a claim petition before the Consumer Forum and the criminal proceedings, therefore, cannot be permitted to be continued as that would amount to an abuse of the process of court. The learned counsel appearing for the complainant-respondent on the other hand contended that on the materials on record, the High Court was fully justified in coming to the conclusion that a prima facie case has been made out, and therefore, it is not a fit case for quashing the order of cognizance

in exercise of the inherent jurisdiction of the Court under Section 482 of the Code which has to be exercised sparingly and only when a conclusion is arrived at that non-exercise of the power would ultimately lead to abuse of the process of court.

4. Having examined the rival submissions and the averments made in the petition of complaint as well as the evidence of the complainant and the witnesses before the Magistrate, we are not in a position to accept Mr. Desai's contention that the dispute essentially is a civil dispute, and therefore, the order of cognizance should be quashed. A mere filing of a claim before the Consumer Forum could not make the dispute a civil dispute. The aforesaid submission of Mr. Desai has to be rejected.

5. But the question that yet remains for consideration is whether the allegations made in the petition of complaint together with statements made by the complainant and the witnesses before the Magistrate taken on their face value, do make the offence for which the Magistrate has taken cognizance of? The learned counsel for the respondent in this connection had urged that the accused had a right to put this argument at the time of framing of charges, and therefore, this Court should not interfere with the order of the Magistrate taking cognizance, at this stage. This argument, however, does not appeal to us inasmuch as merely because an accused has a right to plead at the time of framing of charges that there is no sufficient material for such framing of charges as provided in Section 245 of the Criminal Procedure Code, he is debarred from approaching the court even at an earliest (sic earlier) point of time when the Magistrate takes cognizance of the offence and summons the accused to appear to contend that the very issuance of the order of taking cognizance is invalid on the ground that no offence can be said to have been made out on the allegations made in the complaint petition. It has been held in a number of cases that power under Section 482 has to be exercised sparingly and in the interest of justice. But allowing the criminal proceeding to continue even where the allegations in the complaint petition do not make out any offence would be tantamount to an abuse of the process of court, and therefore, there cannot be any dispute that in such case power under Section 482 of the Code can be exercised. Bearing in mind the parameters laid down by this Court in several decisions for exercise of power under Section 482 of the Code, we have examined the allegations made in the complaint petition and the statement of the complainant and the two other witnesses made on oath before the Magistrate. We are clearly of the opinion that the necessary ingredients of any of the offences have not been made out so far as the appellants are concerned. The petition of complaint is a vague one and excepting the bald allegation that the shares of the complainant have been transferred on forged signatures, nothing further has been stated and there is not an iota of material to indicate how all or any of these appellants are involved in the so-called allegation of forgery. The statement of the complainant on oath as well as his witnesses do not improve the position in any manner, and therefore, in our considered opinion, even if the allegations made in the complaint petition and the statement of the complainant and his witnesses are taken on their face value, the offence under Sections 406, 420, 467, 468 and 120-B of the Indian Penal Code cannot be said to have been made out. This being the position, the impugned order of the Magistrate taking cognizance of the offence dated 5-2-1996 so far as it relates to the appellants cannot be sustained and the High Court also committed error in not invoking its power under Section 482 of the Code. In the aforesaid premises, the impugned order of the High Court as well as the order of the Magistrate dated 5-2-1996 taking cognizance of the offence as against the appellants stand quashed.

6. It is true that out of 9 officials of the Company who are the accused persons in the criminal case, only 7 of them have preferred this special leave petition and R.K. Sharma, Whole-time Director, as well as Capt. G. P. S. Choudhary, Director of the Company have not preferred the special leave petition. But in view of our conclusion that the allegations in the complaint petition do not make out

any offence against any of the officers of the Company, it would be futile to allow continuance of the criminal proceedings so far as the said two officers of the Company are concerned.

7. In the premises, as aforesaid, we quash not only the cognizance taken by the Magistrate of the offences as against the 7 appellants but also against the said two officers of the Company, namely, Shri R. K. Sharma and Capt. G. P. S. Choudhary. This appeal is accordingly allowed.