

**SUPREME COURT OF INDIA**

Sunil Kumar

Vs.

Escorts Yamaha Motors Ltd.

(G Pattanaik and M Shah JJ.)

27.10.1999

**ORDER**

**PATTANAİK, J.**

1. Leave granted.

2. The decision of the Division Bench of Delhi High Court, quashing the F.I.R. No. 285 of 1998 at P.S. Rajouri Garden for offence under Sections 420/406/468 IPC is under challenge in this appeal by the informant. The informant-appellant filed the F.I.R. alleging therein that the respondents by an act of conspiracy committed criminal breach of trust by presenting blank cheques, signed by the appellant for withdrawing money for a purpose for which it had not been given and by so doing, they have caused a loss of Rs. 8, 982/- inasmuch as this was the commission which the appellant had to bear. The gravamen of the appellant's case in the F.I.R. is that certain cheques had been given to the respondents more particularly the Commercial Manager with the specific understanding that these cheques can be presented against delivery of future vehicles and not for any past liability or dues, but the respondents presented the same which of course could not be encashed in view of the directions given by the appellant-drawer. However the appellant had to sustain the loss of Rs. 8982/- as commission charges. The respondents filed application in Delhi High Court for quashing of F.I.R. inter alia on the ground that the averments in the F.I.R. do not make out the offence of either Section 406 or Section 420 as the necessary ingredients under Sections 405 and 415 of the IPC have not been indicated. The respondents also took the ground that the criminal proceeding pursuant to the F.I.R. has been initiated with an ulterior motive and thereby there has been a gross abuse of process of law and as such the F.I.R. should be quashed. The High Court on consideration of the case of the parties and on the materials was of the opinion that the informant himself has already resorted to civil remedy for adjudication by an arbitrator and thereafter having lodged the complaint

must be held to have the abuse of the process of law and, therefore, the F.I.R. should be quashed in the interest of justice.

3. Mr.P.C. Jain, learned Senior Counsel, appearing for the appellant contended before us that the assertions made in the F.I.R. do constitute a cognizable offence and as such the same could not have been quashed in the light of the judgment of this Court in State of Haryana and Ors. v. Bhajan Lal and Ors. 1992 Supp. (1) SCC 335 and judgment of this Court in Rajesh Bajaj v. State NCT of Delhi and Ors. JT 1992(2) SC112.

4. Mr.H.N. Salve and Mr. Arun Jaitley, learned senior counsel appearing for different accused persons on the other contended that the assertions made in the FIR even taken on face value do not satisfy the ingredients of the offence alleged to have been made and on the other hand it manifestly indicates that the complainant has instituted the criminal proceedings with an ulterior motive for wreaking vengeance and to pre-empt the filing of the criminal complaint against him under Section 138 of the Negotiable Instruments Act and, therefore, the High Court rightly came to the conclusion that allowing the criminal proceedings to continue would result in manifest injustice and as such quashed the FIR and this Court, therefore, would not be justified in interfering with the same in exercise of power under Article 136 of the Constitution. According to the learned Counsel, issuance of process should not be allowed to be an instrument of oppression or needless harassment. Responsibilities and duties on the Magistracy lie in finding out whether the alleged accused would be legally responsible for the offence charged for. The Court at that stage could be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration lest it would be an instrument in the hands of the private complaint as vendetta to harass the person needlessly. The learned Counsel relied upon the decision of this Court in Punjab National Bank and Ors. v. Surendra Prasad Sinha 1993 Supp (1) SCC 499.

5. Bearing in mind the law laid down by this Court in the cases referred to earlier and the contentions raised by the learned Counsel appearing for the parties and on examining the allegations made in the FIR, we are persuaded to accept the submission of Mr. H.N. Salve and Mr. Arun Jaitley, appearing for the respondents that necessary ingredients of the offence of cheating or criminal breach of trust have not been made out and on the other hand the attendant circumstances indicate that the FIR was lodged to pre-empt the filing of the criminal complaint against the informant under Section 138 of the Negotiable Instruments Act. The High Court, therefore, was well within its power in quashing the FIR as otherwise it would tantamount to an abuse of process of Court. We, therefore, see no justification for our interference with the impugned decision of the High Court in exercise of power under Article 136 of the Constitution.

6. This appeal accordingly fails and is dismissed.