

SUPREME COURT OF INDIA

Maratt Rubber Ltd.

Vs.

J.K. Marattukalam

(G.B. Pattanaik and R.P. Sethi JJ.)

27.01.2000

JUDGMENT

1. This appeal is directed against the judgment of Karnataka High Court quashing a criminal proceeding instituted by the complainant-Company alleging that the accused-respondent, who was former Director of the Company committed offence under Section 630 of the Indian Companies Act by continuing to utilise the property, that was given to him as a Director notwithstanding the fact that he has ceased to be a Director of the Company since 1991. It transpires from the records of this proceeding that in 1992, the respondent - accused filed a civil suit for a declaration that he continues to be the Director of the Company Maratt Rubber Ltd. and obtained an interim order therein, but the same suit ultimately was dismissed for default on 2.1.1995. An application for restoration also has dismissed. There is no material to indicate as to whether the respondent has taken any further steps in that proceeding. The present complaint was filed after the dismissal of the said suit of 1992, and on the basis of the allegations made in the complaint, cognizance had been taken under Section 630 of the Companies Act. The accused-respondent appeared before the learned Magistrate and filed an application under Section 245 praying for discharge. The gravamen of the allegations in the application for discharge was that civil suit being pending in different forums it would not be appropriate for the criminal court to proceed with the complaint case. The Magistrate, however, came to the conclusion that pendency of civil suit will not be a bar either in institution or proceeding with the criminal complaint. Once, the allegations made in the complaint petition make out an offence in which cognizance has been taken, we fail to understand as to how an application could be filed under Section 245 of the CrPC. When a complaint is filed, the Magistrate after examining the complainant on oath and the witnesses produced by him, if comes to the conclusion that a prima facie case is made out, then he takes cognizance of the offence and directs issuance of process. If the magistrate thinks that further enquiry is necessary, he can postpone issuance of process and either enquire into the case himself or direct further investigation to be made for the purpose of deciding whether or not there is sufficient ground for proceeding, as provided in Section 202 Cr.P.C. If ultimately on consideration of the statements of the complainant and his witnesses and the result of inquiry or investigation (if any) under Section 202 Cr.P.C. the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint as provided under Section 203 Cr.P.C. Obviously, in the case in hand, the Magistrate did not think it proper to dismiss the complaint on the materials produced by the complainant and took cognizance of the offence and issued process. That apart, we are in agreement with the view of the learned Magistrate that mere pendency of a civil proceeding before any civil court will not be a ground for quashing of the criminal proceeding or not to frame a charge against an accused, even if the assertions in the

complaint petition together with the materials produced by the complainant would constitute an offence. After the Magistrate rejected the prayer of the accused, the matter was carried to the High Court by invoking the powers of the High Court under Section 482 of the CrPC. The High Court by a very lengthy judgment went into civil suits filed by the parties as well as the observations/directions given by the civil court in some of those cases and came to the conclusion that this is a fit case where the inherent power of the High Court should be invoked, as otherwise it would be a case of miscarriage of justice. In exercising the power under Section 482, the High Court considered some observations made by the civil court in a suit for injunction filed by the company complainant, to the effect that the property in question had not been delivered to the accused as a Director of the company and on that basis quashed that proceeding. It has been repeatedly held by this Court that the power of High Court under Section 482 Cr.P.C. should be sparingly and cautiously exercised and only when the Court on consideration, comes to a conclusion that otherwise it would be a case of abuse of process of Court or that there will be gross miscarriage of justice. In a case instituted on complaint, the High Court was possibly not entitled to look to the several documents purported to have been filed by the accused in several civil proceedings, and rely on some orders/observations made thereunder. A bare scrutiny of the impugned judgment would indicate that the High Court has thought, as if it is trying the case, and then after weighing the materials it has come to a conclusion one way or the other. This is certainly in excess of the jurisdiction conferred on the High Court under Section 482 of the CrPC. In that view of the matter, we have no hesitation to come to the conclusion that the High Court by the impugned order has exceeded its jurisdiction vested under Section 482, Cr.P.C. in quashing the criminal proceeding. We, therefore, set aside the impugned order of the High Court and direct that the complaint proceeding should proceed in accordance with law. The appeal is disposed of. Needless to mention, we have not expressed any opinion on the merits of the C.C. No. 1254/1995.