

SUPREME COURT OF INDIA

Chunduru Siva Ram Krishna

Vs.

Peddi Ravindra Babu

CrI.A.No. 549 of 2009

(S.B. Sinha and Dr.M.K.Sharma JJ)

25.03.2009

JUDGEMENT

DR. MUKUNDAKAM SHARMA, J.

1. Leave granted.

2. Both these appeals are being taken up together and are being disposed of by this common judgment and order as these appeals have been preferred against the common judgment and order dated 01.03.2007 passed by the Andhra Pradesh High Court at Hyderabad. By the aforesaid common judgment and order the learned Single Judge of the High Court dismissed the petition filed by Accused Nos. 1 to 9 praying for quashing of the complaint filed against them by holding that the allegations made in the said complaint do not make out a case for quashing of the complaint.

3. In order to appreciate the contentions raised before us by the counsel appearing for the parties it would be necessary to set out the brief facts leading to filing of the aforesaid complaint dated 02.07.2005.

One Chunduru Subba Rao, Accused No. 1 was having a rice mill at Village Lakshmipuram in District Guntur, Andhra Pradesh under the name and style of "C.S.R. Rice Mills". He was the sole proprietor of the said rice mill. Accused Nos. 2 to Accused No. 5 are the family members of Accused No. 1 whereas Accused Nos. 6 to Accused No. 8 are son-in-law, the daughter of Accused No. 1 and the brother of the son-in-law of Accused No.1 respectively. Accused No. 9 has also been arrayed as one of the accused in the complaint filed and he is the younger brother-in-law of Accused No. 1. Accused No. 2 and Accused No. 3 are the two sons of Accused No. 1 who are aged about 28 and 25 years respectively. Accused No. 2 is stated to be doing his job after completing his graduation from Nagarjuna University, Guntur, Andhra Pradesh and his post graduation in Master of Computer Applications under University of Madras. On the other hand, Accused No. 3 is stated to be studying Engineering course in Bapatla, Guntur, Andhra Pradesh. It is, therefore, disclosed from the aforesaid facts that all the family members of Accused No. 1 have been arrayed as accused persons in the complaint filed.

4. It is disclosed from the records that Accused No. 1 had been into rice mill business for about 20 years and had been purchasing paddy from the local paddy growers in the village and that he issued vouchers to some of them while to others promissory notes ranging from Rs. 30,000/- to Rs. 3 lakh were executed as security towards the purchase of paddy. He had also obtained Rs. 30 lakhs as loan

from State Bank of India, Ponnur and remodeled the rice mill and fortified his goodwill. However, his business has declined and consequently he owed debts to the banks, several financial institutions and to public and that his liabilities aggregated to Rs. 89,51,600/-. Therefore, on 24.06.2005, he filed an insolvency petition bearing I.P. No. 11 of 2005 in the Court of Senior Civil Judge, Bapatla, Guntur District, Andhra Pradesh in which Page 3 of 19 he stated that he was sustaining loss for 5-6 years and his aggregated liabilities was approximately Rs. 89,51,600/-. He also got published in the newspaper regarding the factum of filing of the said insolvency petition.

5. Consequent upon filing of the aforesaid insolvency petition several representations were made to the District Collector by the villagers making allegations against Accused No. 1 and his family members. The said representations were endorsed by the District Collector to the police for investigation. The paddy suppliers, who are respondents herein, also lodged a report dated 2.7.2005 against Accused No. 1 and his family members with the Station House Officer, Kakumanu Police Station in Kakumanu Mandal, District Guntur for offences punishable under Sections 406 and 420 read with Section 34 of the Indian Penal Code.

6. On 18.9.2006, the Station House Officer, Kakumanu filed a charge sheet bearing C.C. No. 110 of 2006 in the court of the learned Judicial Magistrate First Class, Ponnur under Sections 406, 420 and 424 read with Section 37 IPC against Accused No. 1 to Accused No. 9 which included both the appellants herein. In the said charge sheet the police stated that Accused No. 1 to Accused No. 9, who are inter related, developed an evil idea by colluding themselves and fraudulently directed the loans and gold secretly in benami names in order to defraud the persons who supplied paddy to them. It was further stated in the charge sheet that during the year 2005 Accused No. 1 purchased paddy crop from several farmers saying that he would pay the cost of paddy as per the existing market value. They blindly believed Accused No. 1 and unloaded huge quantities of paddy produced by them and entrusted the same with Accused No. 1. But Accused No. 1 diverted part of the paddy to Accused No. 5 who was running rice mill under the name and style of 'C.S.R. Industries' opposite to Sivalayam, Old Ponnur, on the ground of inadequate power supply and secretly sold it for his own use. It has been further stated that 10 days before that he had also diverted huge quantities to 'NRI Industries', Ponnur. Eventually, Accused No. 1 gained unlawfully to the tune of Rs. 1,20,00,000/- by cheating the abovementioned paddy suppliers. He surrendered before the learned Judicial Magistrate First Class, Ponnur on 19.7.2005. Vide order dated 19.7.2005 in the petition for grant of anticipatory bail, the Hon'ble High Court of Andhra Pradesh directed release of A-6 to A-8 and A2 to A-4 including the appellants herein.

Page 5 of 19

7. On 25.11.2006 all the accused i.e. Accused Nos. 1 to Accused No. 9 including the appellants herein (Accused No. 2 and Accused No. 3) jointly filed a Criminal Petition No. 5618 of 2006 under Section 482 of the Criminal Procedure Code (for short 'CrPC') before the High Court of Judicature, Andhra Pradesh at Hyderabad seeking quashing of the Criminal Complaint No. 110/2006 and the charge sheet which were pending in the Court of learned Judicial Magistrate First Class, Ponnur on the ground that it was only a civil liability arising out of breach of contract by Accused No. 1 in payment of price of paddy and, therefore, it was improper on the part of the police to come to their aid to recover the money under a transaction by filing criminal cases and that the said criminal complaint itself was a counter blast to the insolvency petition filed by Accused No. 1. However, the learned Single Judge of the High Court vide impugned order dated 01.03.2007 observed that they

collected paddy from various agriculturists worth Rs. 1,20,00,000/- by making them to believe that the cost of paddy would be paid immediately but after having collected the paddy, they failed to pay the amount to the agriculturists and thereby they cheated those persons. So, it was held that there was prima facie material against all the accused i.e. Accused Nos. 1 Page 6 of 19 to Accused No. 9. Accordingly, the High Court dismissed the criminal petition.

8. Being aggrieved by the aforesaid order passed by the High Court two special leave petitions were filed in this Court which are registered as SLP (C) No. 2991 of 2007 and SLP (C) No. 5072 of 2007.

SLP (C) No. 2991 of 2007 was filed by Accused Nos. 2 and 3 who are sons of Accused No. 1 and they are aged about 28 years and 25 years respectively. In this special leave petition notice was issued by this Court vide order dated 18.05.2007 and while doing so interim stay of the further proceedings in C.C. No. 110 of 2006 was also passed so far as appellants herein are concerned. Similarly, SLP (C) No. 5072 of 2007 was preferred by Accused Nos. 6 to Accused No. 8 who are son-in-law, the daughter of Accused No. 1 (a housewife) and the brother of the son-in-law of Accused No. 1. Similar orders were passed in their special leave petition also. Both the aforesaid petitions were listed before us for hearing when we heard the learned counsel appearing for the parties.

9. Mr. G. Ramakrishna Prasad, learned counsel for the appellants submitted that when a sole proprietary firm had allegedly cheated some suppliers, the members of the family of such sole proprietor cannot be roped into a criminal prosecution especially in the light of the facts that the criminal complaint itself has been lodged as a counter blast to the insolvency petition filed by the owner of the sole proprietary mill and the Investigation Officers were not justified in roping-in the innocent appellants herein despite the fact that there was no substantive allegation made against them. It was further submitted that the matter is essentially having a civil profile and merely because many people have lodged criminal complaints, criminal prosecution was launched against Accused No. 2 and Accused No. 3 (appellants herein) without any basis or an iota of evidence which has gone to the extent of spoiling the bright career and future of Accused No. 2 and Accused No. 3. He also submitted that the appellants herein have nothing to do with the daily conduct of the business, income derived therefrom or with regard to alleged selling of paddy stock and in view of this the High Court ought to have taken into account the hardship and damage of future/career of the appellants herein.

10. Learned counsel for the appellant submitted that the High Court had dismissed the petition of the appellant herein due to total non-application of mind as it failed to see that the rice mill was being run by Accused No. 1 as sole proprietary concern and Accused No. 2 and Accused No. 3 had nothing to do with the said sole proprietary concern and therefore the offences against Accused No. 2 and Accused No. 3 had not at all sustainable. He further submitted that due to illegal actions of the investigating officers and being hand in glove with the farmers the police made Accused No. 3 to lose one precious academic year as he could not attend the classes and thereby rendered himself liable to be disqualified for appearing in the examination due to shortage of attendance.

According to him, although these facts were brought to the notice of the learned Advocate who appeared in the matter in High Court, unfortunately the same were not placed on record.

11. Mr. C.K. Sucharita, learned counsel for the appellants submitted that the essential ingredients of offence under Section 406 IPC is entrustment of the property and essential ingredient of offence

under Section 420 IPC is that it must be proved that the complainant had parted with his property acting on a representation which is false to the knowledge of the accused and that the accused had dishonest intention from the onset are not satisfied even as per the allegations made in the complaint. He further submitted that the High Court erred in not invoking its inherent power Page 9 of 19 under Section 482 CrPC to quash the criminal complaint against the appellants herein as the complaint does not even vaguely suggest that the appellants herein, who belong to a distinct family, were concerned in any manner with the business run by Accused No. 1 or with the collection of paddy. In support of such contentions the learned counsel has relied on various judgments pronounced by this Court.

12. In the light of the aforesaid submissions we may now proceed to appreciate and analyse the contentions raised before us.

The scope and ambit of Section 482 of the Code of Criminal Procedure have been the subject matter of consideration by the courts in India. A number of decisions have been rendered by this Court on the aforesaid issue wherein the law relating to quashing of a complaint has been succinctly laid down. In the case of *Drugs Inspector v. Dr. B.K. Krishna* [1981 (2) SCC 454] it was held by this Court that in a quashing proceeding, the High Court has to see whether the allegations made in the complaint petition, if proved, make out a prima facie offence and that the accused has prima facie committed the offence. In the said decision this Court refused quashing of the complaint on the ground that there were enough allegations in the complaint and that the accused persons were responsible for the Page 10 of 19 management and conduct of the firm and, therefore, the extent of their liability could be and would be established during trial. In *Municipal Corporation of Delhi v. Ram Kishan Rohtagi* [1983 (1) SCC 1] it was held that when on the allegation made in the complaint, a clear case was made out against all the respondents (accused persons), the High Court ought not to have quashed the proceedings on the ground that the complaint did not disclose any offence.

13. In *Municipal Corporation of Delhi* (supra), this Court observed as follows in para 8:

"8. Another important consideration which is to be kept in mind is as to when the High Court acting under the provisions of Section 482 should exercise the inherent power insofar as quashing of criminal proceedings are concerned. This matter was gone into in greater detail in *Smt Nagawwa v. Veeranna Shivalingappa Konjalgi*, (1976) 3 SCC 736 where the scope of Sections 202 and 204 of the present Code was considered and while laying down the guidelines and the grounds on which proceedings could be quashed this Court observed as follows:

[SCC para 5, p. 741 : SCC (Cri) pp. 511-12] Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can Page 11 of 19 ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and (4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings."

14. However, the most famous case on the subject, decided by this Court, was the case of State of Haryana & Ors. v. Bhajan Lal, [1992 Suppl.

(1) SCC 335] wherein this Court laid down the law as to when the High Court acting under the provisions of Section 482 CrPC should and would exercise the inherent power in so far as quashing of criminal proceedings are concerned. In the said decision this Court categorized the cases by way of illustration wherein such power should be exercised either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. It observed in para 102 as follows:- "102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power Page 12 of 19 could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act,

providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

15. The above decision was followed by this Court in Pepsi Foods Ltd. v.

Special Judicial Magistrate [1998 (5) SCC 749]. In paragraph 28 of the said judgment this Court held thus :

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

16. Further, this Court observed in S. W. Palanikar v. State of Bihar [2002 (1) SCC 241] that every breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of a mental act of fraudulent misappropriation. It observed as follows:

"8. Before examining respective contentions on their relative merits, we think it is appropriate to notice the legal position.

Every breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of a mental act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person wronged may seek his redress for damages in a civil court but a breach of trust with mens rea gives rise to a criminal prosecution as well.

9. The ingredients in order to constitute a criminal breach of trust are: (i) entrusting a person with property or with any dominion over property, (ii) that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.

10. The ingredients of an offence of cheating are: (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

11. One of us (D.P. Mohapatra, J.), speaking for the Bench, in *Hridaya Ranjan Prasad Verma v. State of Bihar*, (2000) 4 SCC 168 on facts of that case, has expressed thus: (SCC p. 177, para 15)

15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed.

Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

Page 15 of 19 (emphasis supplied)

17. The aforesaid discussion clearly pin-point the legal position on the subject which is by now well settled. The principle that could be culled out is that when at an initial stage a prosecution is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made in the complaint filed prima facie establish the offence. It is also for the court to take into consideration any special feature that may appear in a particular case while considering whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose. The tests that are laid down in the case of *Bhajan Lal* (supra) are required to be applied very carefully and minutely when a prayer for quashing is laid before the court.

18. When the facts of the present case are tested in the backdrop of the aforesaid legal position, the position that emerge is as to whether or not in the report submitted with the Station House Officer, Kakumanu Police Station in Kakumanu Mandal, District Guntur on 02.07.2005 and the charge sheet which was filed by the Station House Officer, whether there Page 16 of 19 is any substantial allegation against the appellants which would prima facie establish the offence alleged against the appellants. While examining the said aspect this Court is required to keep in mind the allegations made in the aforesaid report and in the charge sheet which must be considered uncontroverted.

19. We have carefully examined the charge sheet which is a part of the record and which was prepared on the basis of the aforesaid report dated 02.07.2005 and also on the basis of the investigation carried out by the police thereafter in which they had gathered certain information. We have read those allegations made in the charge sheet against all the appellants herein. Most of the allegations in the aforesaid charge sheet are mainly directed against Accused No. 1.

20. The allegations made against other accused are that Accused No. 1 diverted huge quantities of paddy to NRI industries, Ponnur and made it disappear with the active assistance of Accused Nos. 2 to Accused No. 9 and that Accused No. 1 purchased lands at Nethaji Nagar, Nidubrolu in the name of benamies with the assistance of Accused No. 6 and that Accused No. 1 also purchased valuable properties at Bangalore with the help of Accused No. 2. These are the only allegations made against the Page 17 of 19 role of the present appellants namely Accused Nos. 2 and 3 and Accused Nos. 6, 7 and 8. No specific role is ascribed to any of the aforesaid persons except for stating that the huge quantities of paddy was diverted by Accused No. 1 and made to disappear with the active assistance

of Accused No. 2 to Accused No. 9. Without ascribing any specific role to any one of them the aforesaid allegation appear to us to be very bald and vague. Similarly the allegations made against Accused No. 2 and Accused No. 3 that they had helped their father in purchasing some property is also very vague as no specific role is ascribed to them.

21. In our considered opinion, no useful purpose would be served by allowing the prosecution against aforesaid accused persons (the appellants herein). There is no concrete and direct allegation against all these persons ascribing any definite role to each one of them in the offence alleged. The statements shown to us as allegations amounting to prima facie evidence against them, according to us, are very bald and vague statements on the basis of which no case could be made out.

22. We are of the opinion that such allegations do not make out a case of prima facie evidence. Consequently, we have no other option but to Page 18 of 19 quash the proceedings as against the appellants herein i.e. Accused Nos.

2 and 3 and Accused Nos. 6 to 8. While doing so, however, we make it clear that we express no opinion so far as the allegations made in the said charge sheet against Accused No. 1 and other accused persons are concerned. We also make it clear that the observations made herein by us are only with respect to the criminal proceedings and none of these observations shall be construed as an opinion of ours so far civil liability, if any, is concerned.

23. Both the appeals are allowed to the aforesaid extent. There shall be no order as to costs.