

SUPREME COURT OF INDIA

Rajeswar Tiwari

Vs.

Nanda Kishore Roy

Crl.A.No.779 of 2007

(P.Sathasivam Dr. B.S.Chauhan JJ.)

19.08.2010

JUDGEMENT

P. SATHASIVAM, J.

1) This appeal is directed against the final order dated 31.01.2007 passed by the High Court of Calcutta in C.R.R. No. 2774 of 2005 with C.R.R. No. 2772 of 2005 whereby the High Court dismissed the applications filed under Section 482 of the Criminal Procedure Code (hereinafter referred to as 'the Code') by the appellants to quash the criminal proceedings pending before the Judicial Magistrate, 2nd Court, Asansol, being Case No. C/438 of 2003 under Section 406/120B of IPC corresponding to T.R. No. 167 of 2003.

2) The facts leading to the present appeal are as under:

a) In 1973, the respondent joined the Indian Iron and Steel Company Ltd., (renamed IISCO Steel

Plant), a unit of Steel Authority of India Ltd., at Burnpur, near Asansol in West Bengal. In 1989, he was appointed as Assistant Foreman. In 1991 he filed a writ petition being C.O. No. 9954(W) of 1991 before the High Court of Calcutta 1 seeking direction for considering his claim for promotion to the post of Senior Mechanic alleging that he was superseded by his juniors. On 19.01.1995, the respondent filed another writ petition praying for interim order restraining the appellants from filling up the post of Assistant Foreman. The High Court, in the said writ petition, directed for maintaining status quo. In June 1996, the respondent filed a contempt petition on the ground of violating the said status quo order by the appellants herein. In the said contempt petition, the High Court directed for personal appearance of the concerned officers of the Company and ultimately after hearing them, dismissed the contempt petition.

b) On 06.12.2003, the respondent filed a private complaint being C/438 of 2003 before the Additional Chief Judicial Magistrate, Asansol under Sections 461/468/406 read with Section 120B of IPC against the appellants herein alleging discrimination by unduly deducting Rs.1,640/- p.m. from the monthly salary as Income Tax. It was also stated in the complaint that the amount so deducted was not deposited with the Income Tax Authority and should be refunded back.

It was also mentioned in the complaint about the wrongful deduction of the amount on account of cooperative loan issued by the appellants/Company. On examination of the witnesses under Section 200 of the Code of Criminal Procedure, the Magistrate directed the Officer-in-Charge P.S. Hirapur to cause an inquiry into the allegations made in the complaint. On 30.04.2004, the appellants informed that the amount of income tax deducted in consonance with Section 192 of the Income Tax Act being deposited in due course as tax to the credit of employee/respondent in terms of Section 199 of the Income Tax Act as uniformly done in respect of every employee and also produced Form No-16 of the respondent for the period from 01.04.2003 to 31.03.2004. On 15.07.2004 & 30.01.2005, the police submitted two inquiry reports, inter alia, stating the previous conduct of the respondent and also stated that the complaint in issue is civil in nature. On 31.01.2005, after taking into consideration the inquiry reports of the police, the Judicial Magistrate, Asansol directed issuance of summons against the appellants for an offence under Section 406/120B of the Indian Penal Code. In response to the summons, the appellants made an application under Section 205 of the Code before the Judicial Magistrate and the same was rejected by an order dated 26.07.2005.

Subsequently, vide order dated 12.09.2005, the Judicial Magistrate issued warrant of arrest against the appellants. The appellants filed application being C.R.R. No. 2774 of 2005 before the High Court of Calcutta under Section 482 of the Code for quashing of the complaint and prayed for staying of proceedings in the complaint bearing No. C/438 of 2003. The appellants also filed another application under Section 482 being C.R.R. No. 2772 of 2005 seeking quashing of the order dated 12.09.2005. The High Court, by order dated 31.01.2007, rejected the prayer for quashing the criminal proceedings and disposed of both the applications with a direction to the trial Court to dispose of the matter within a period of six months. Aggrieved by the same, the appellants have preferred this appeal by special leave before this Court.

3) Heard Mr. Ranjit Kumar, learned senior counsel for the appellants and Mr. Yashank Adhyaru, learned senior counsel for the respondent.

4) In order to test the claim of both the parties as well as the correctness of the impugned order of the High Court, it is useful to refer the details of the complaint dated 06.12.2003 filed by the respondent. He described himself as an employee of ME Steel, IISCO, Burnpur and he made the following officers as accused persons:

1. A.K. Jaiswas EDI/C.Cum M.D. IISCO Ltd. Burnpur Works

2. Rajeswar Tiwari GM [P&A]

3. Robin Roy DGM (MM) SMS Deptt.

4. P. Karmakar, AGM [MM] SMS Deptt.

5. Sukumar Mukherjee, Manager Finance

6. Shivaji Roy DGM [PL]

7. Tarit Pal GM [IS] All are of IISCO Burnpur PS Hirapur Distt. Burdwan In the complaint, he mentioned about the filing of writ petition in 1991 before the High Court of Calcutta and the order passed therein in 2003. He also referred to his contempt petition before the High Court. He alleged that due to the direction of the High Court, which was issued at his instance, the abovesaid officers entered into a criminal conspiracy and with a view to pressurize him for withdrawing the said contempt, starting giving threats to him in various manners. According to him, due to such attitude towards him, the accused persons with a view to get their object fulfilled, started illegal deduction of Rs. 1640/- per month from his monthly salary as income tax w.e.f. May 2003. In this way, the accused persons had deducted an amount of Rs. 13,120/- from his salary on account of income tax and the said amount had not been deposited with the income tax authority. The appellant also stated that he does not fall within the category of taxable income, and in any event, not to the tune of Rs. 1640/. He also claimed that he sent a notice under registered post with acknowledgement due on 17.11.2003 to accused Nos. 1 to 5 requesting them to return the money so deducted illegally from his salary. On receipt of the notice, the accused persons abused him in the presence of witnesses and others and also threatened him with dire consequences. He also pointed out that a sum of Rs. 3050/- had been deducted from his salary illegally on account of cooperative loan although, on the previous month, deduction was only to the extent of Rs. 50. With these allegations, he claimed that accused persons have committed offence under Sections 467, 468, 403 and 406 read with Section 120B IPC and prayed for issuance of summons.

5) We have adverted to almost all the averments/allegations made by the respondent herein in respect of accused nos. 1 to 5 who are appellants before us. From this, we are able to understand that the respondent has grievance against the management in respect of his non promotion at the relevant time, moving to the High Court of Calcutta, obtaining certain orders, filing of contempt

petition etc.

It is also alleged that the appellants have deducted income tax to the extent of Rs. 1,640/- per month from his monthly salary as income tax but according to the respondent, he was not liable to pay income tax.

6) Mr. Ranjit Kumar, learned senior counsel for the appellants has pointed out that there is no lapse on their part in respect of the allegation relating to non promotion of the respondent. In fact, according to him, the respondent had been held guilty by the CBI in a case for using fabricating documents for the purpose of promotion.

He also pointed out that though the High Court has permitted to take action against him according to law, the management did not take any action against him. He also pointed out that in view of statutory provisions of the Income Tax Act, particularly, Sections 192, 200, 206, 271C and 276B-BB, like other employees, the respondent was liable to pay income tax and the appellant as an employer statutorily bound to deduct an amount from his salary as per the above provisions. Whatever may be, inasmuch as appellants have performed their statutory obligation, it is not a case for adjudication by the Magistrate on criminal side. He further contended that the High Court also failed to exercise its jurisdiction under Section 482 for quashing the summoning order. On the other hand, Mr. Yashank Adhyaru supported the order of the Magistrate based on the complaint of the respondent and also submitted that the High Court has not committed any wrong in rejecting the petition under Section 482 of the Code.

7) At the relevant time, i.e on 06.12.2003, when the respondent made a complaint to the Magistrate, he was an employee of IISCO, Burnpur. There is no dispute about the same.

8) Chapter XVII of the Income Tax Act deals with Collection and Recovery of Tax. Section 192 speaks about deduction at source from Salary.

"192. (1) Any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax [***] on the amount payable at the average rate of income-tax [***] computed on the basis of the [rates in force] for the financial year in which the payment is made, on the estimated income of the assessee under this head for that financial year."

Section 200 relates to duty of person deducting tax.

"200. (1) Any person deducting any sum in accordance with [the foregoing provisions of this Chapter shall pay within the prescribed time, the sum so deducted to the credit of the Central Government or as the Board directs.

(2) Any person being an employer, referred to in sub-section (1A) of section 192 shall pay, within the prescribed time, the tax to the credit of the Central Government or as the Board directs.

(3) Any person deducting any sum on or after the 1st day of April, 2005 in accordance with the foregoing provisions of this Chapter or, as the case may be, any person being an employer referred to in sub-section (1A) of section 192 shall, after paying the tax deducted to the credit of the Central Government within the prescribed time, [prepare such statements for such period as may be prescribed] and deliver or cause to be delivered to the prescribed income-tax authority or the person authorised by such authority such statement in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed."

Section 206 mandates persons deducting tax to furnish prescribed returns.

"206. (1) The prescribed person in the case of every office of Government, the principal officer in the case of every company, the prescribed person in the case of every local authority or other public body or association, every private employer and every other person responsible for deducting tax [before the 1st day of April, 2005] under the foregoing provisions of this Chapter [shall, within the prescribed time after the end of each financial year, prepare and deliver or cause to be delivered] to the prescribed income-tax authority [or such other authority or agency as may be prescribed, such returns in such form and verified in such manner and setting forth such particulars as may be prescribed:"

Section 271 C deals with penalty for failure to deduct tax at source.

" 271C. [(1) If any person fails to-- (a)deduct the whole or any part of the tax as required by or under the provisions of Chapter XVII-B; or (b)pay the whole or any part of the tax as required by or under-- (i)sub-section (2) of section 115-O; or (ii)the second proviso to section 194B, then, such person shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such person failed to deduct or pay as aforesaid."

Section 276 B and 276 BB speaks about failure to pay tax to the credit of Central Government and failure to pay the tax collected at source.

"276B. If a person fails to pay to the credit of the Central Government,-- (a)the tax deducted at source by him as required by or under the provisions of Chapter XVII-B; or (b)the tax payable by him, as required by or under-- (i)sub-section (2) of section 115-O; or (ii)the second proviso to section 194B, he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine.

276BB. If a person fails to pay to the credit of the Central Government, the tax collected by him as required under the provisions of section 206C, he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine."

9) A glance of these provisions make it clear that it is obligatory on the part of the persons responsible for paying any income chargeable under the head "salaries", at the time of payment, deduct income tax computed on the basis of the rates in force for the financial year on the estimated income of the assessee and pay the same to the authority concerned. It also make clear that failure to deduct tax at source shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such person failed to deduct or pay. It also shows that failure to pay tax to the credit of Central Government in certain cases or pay the tax collected at source under Section 276 BB shall be punishable with imprisonment.

10) In the case on hand, it is the categorical stand of the appellants-management that the amount of tax that has been deducted from the respondent's salary as TDS under the head "Salaries" in terms of Section 192 is uniformly done in respect of each and every employee of the company. It is also asserted that the amount of tax so deducted, deposited to the credit of the employees including the respondent in terms of Section 199. They also produced a copy of Form No-16 being the certificate under Section 203 of the Income Tax Act, 1961 for the tax deducted at source from the income chargeable under the head "salaries" in respect of the respondent relating to period from April 1st, 2003 to March 31st, 2004.

11) In the light of the factual scenario, let us see the initial direction of the Judicial Magistrate, Asansol to the IO concerned, the report of the police officer as well as ultimate order dated 31.01.2005 by the Additional Chief Judicial Magistrate issuing summons upon the appellants/accused persons for offence under Section 406 read with 120B IPC in terms of Section 204 of the Code.

When the complaint was forwarded to the SI Hirapur, Police Station, he conducted an inquiry, recorded statements of IISCO officials, perused the documents concerned and also noted that the tax was deducted as per their company norms. After making such a note, the SI Hirapur has concluded

that "the matter is civil in nature" and forwarded the same to Additional CJM with a request to clarify the same. On the basis of the said report, by order dated 31.01.2005, the Additional CJM, after recording the stand of the complainant about illegal deduction of Rs. 1640/- per month from his salary as income tax and the same had not been deposited by the accused persons to the income tax authority month by month, has concluded "on perusal of the same, it appears to me that there is sufficient ground for proceeding against the accused persons under Section 406/120 B IPC." First of all, it is not clear how the Additional CJM has concluded that "there is sufficient ground for proceeding against the accused under Section 406/120 B IPC", more particularly, when the inquiry report by the SI Hirapur shows that the issue raised in the complaint is civil in nature.

12) We have already adverted to the relevant provisions from the Income Tax Act, particularly, duty of the employer in deducting tax at source and forwarding the same to the authority concerned i.e. to the credit of Central Government as well as failure to do so results in prosecution. From the materials placed, particularly, the contents of the complaint, relevant statutory provisions of the Income Tax Act, report of the SI Hirapur, we are of the view that the complaint does not disclose any case to proceed against the accused persons as arrived by the Additional CJM. Even if the respondent had some grievance with the appellants about non- promotion, direction of the High Court, pendency of contempt etc. it is not a case for criminal prosecution. If he is very much interested to vindicate his grievance, the respondent could have very well approached the officer concerned of the IISCO or to the IT authority concerned. Though in the complaint, it is stated that the respondent had sent a notice under registered post with acknowledgment due on 17.11.2003, admittedly, no such proof had been placed before the Court. In fact, the appellants stoutly denied the receipt of such a notice.

13) In spite of all the details and materials since the Additional CJM issued summons, the appellants approached the High Court under Section 482 of the Code for quashing the same. The High Court, by the impugned order, without adverted to any of the above mentioned relevant materials passed a cryptic order in one line "I am not inclined to quash the criminal proceeding pending before the Additional CJM, Asansol". No doubt, after dismissing the petition issued certain directions for protection relating to personal appearance of the appellants before the Magistrate.

14) This Court, in a series of decisions, has emphasized the inherent power of the High Court to pass appropriate orders to prevent the abuse of process of court or to secure the ends of justice. Though, inherent jurisdiction under Section 482 has to be exercised sparingly, carefully and with caution when adequate materials are available which clearly shows that the proceeding is either of civil nature, cannot be adjudicated by the criminal court or if it is an abuse of process of court, the High Court is well within its power to exercise its inherent jurisdiction and quash the same.

15) Contours of the power under Section 482 CrPC have been explained in a series of decisions by this Court. In *Nagawwa v. Veeranna Shivalingappa Konjalgi*, (1976) 3 SCC 736, it was held that the Magistrate while issuing process against the accused should satisfy himself as to whether the

allegations in the complaint, if proved, would ultimately end in the conviction of the accused. It was held that the order of Magistrate issuing process against the accused could be quashed under the following circumstances:

"(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 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."

16) In *State of Haryana vs. Bhajan Lal*, 1992 Supp. (1) SCC 335, a question came up for consideration as to whether quashing of the FIR filed against the respondent Bhajan Lal for the offences under Sections 161 and 165 IPC and Section 5(2) of the Prevention of Corruption Act was proper and legal. Reversing the order passed by the High Court, this Court explained the circumstances under which such power could be exercised. Apart from reiterating the earlier norms laid down by this Court, it was further explained that such power could be exercised where allegation 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. No doubt, at the stage of quashing an FIR or complaint the High Court is not justified in embarking upon an inquiry as to the probability, reliability or genuineness of the allegation made therein.

17) In *Sardar Trilok Singh and others vs. Satya Deo Tripathi* (1979) 4 SCC 396, when the financier seized the truck in question due to default in payment of instalment, buyer of the vehicle launched criminal prosecution, this Court held it as an abuse of process of the court since the dispute was essentially of a civil nature and quashed the entire proceedings.

18) In *G. Sagar Suri and another vs. State of U.P. and others*, (2000) 2 SCC 636, this Court has held:- "8. Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a

matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

19) In *Alpic Finance Ltd. vs. P. Sadasivan and another* (2001) 3 SCC 513, this court reiterated that the complaint must disclose essential ingredients of the offence. After advertng to *Nagawwa* (supra), and *State of Haryana vs. Bhajan Lal* (supra), and after finding that in the complaint there is no allegation that there was fraud or dishonest inducement on the part of the respondents and thereby the respondents parted with the property, it is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception, upheld the order of the High Court quashed the proceedings and dismissed the appeal.

20) In *Indian Oil Corporation vs. NEPC India Ltd. and Others*, (2006) 6 SCC 736, the following paragraphs are relevant:- "13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.

"It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence.

Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance

with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant."

21) In the light of the above mentioned well established principles, we are of the view that the High Court has committed an error, firstly, in not assigning any reason and passing a cryptic order and secondly, failed to exercise its jurisdiction under Section 482 when the complaint does not disclose any offence of criminal nature. For the sake of repetition, we reiterate, though the respondent had some grievance about his non promotion, certain orders passed by the High Court including filing of contempt etc., in view of the statutory provisions of the Income Tax Act, the assertion of the appellants that deductions were being made for all the persons who are liable to pay tax in terms of the Income Tax Act, the proper remedy for the respondent is to approach the authority/officer concerned and not by filing complaint as mentioned above. We have already adverted to the report of SI Hirapur holding that the matter in issue is civil in nature.

22) Considering all these materials and in the light of the various principles enunciated, we hold that the High Court committed an error in not exercising its jurisdiction and dismissing the petition filed under Section 482. Consequently, we quash the criminal proceedings pending before the trial Court being Case No. C/438 of 2003 initiated against the appellants. The criminal appeal is allowed.