

Rashmi Jain

v.

State of U.P. & Another

(Supreme Court Of India)

HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR HON'BLE MR.
JUSTICE A.K. SIKRI

Criminal Appeal No. 139 Of 2014 | 13-01-2014

1. Leave granted.

2. This appeal, by special leave, has been filed by the appellant impugning the order passed by the High Court in Criminal Misc. Application No.15057 of 2010, filed under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C."). By the impugned order, the High Court has declined to quash the proceedings initiated against the appellant on the ground that all the submissions relate to disputed questions of fact which cannot be adjudicated upon by the Court under Section 482, Cr.P.C. It is further observed that, at this stage, only prima facie case is to be seen in the light of the law laid down by the Supreme Court in a number of judgments, namely, R.P. Kapur v. State of Punjab, AIR 1960 SC 866; State of Haryana v. Bhajan Lal, I (2006) CCR 209 (SC)=1992 SCC (Cr.) 426; State of Bihar v. P.P. Sharma, 1992 SCC (Cr.) 192; and Zandu Pharmaceutical Works Ltd. v. Mohd. Saraful Haq and Another, VI (2004) SLT 513=IV (2004) CCR 220 (SC)=2005 SCC (Cr.) 283. Relying upon the aforesaid judgments, but without culling out the ratio of any of the aforesaid judgments, it has been observed by the High Court that the defence of the accused cannot be considered at this stage. It has further been observed that "the applicants have got right of discharge under Sections 239, 245(2) or 227/228, Cr.P.C., as the case may through a proper application for the said purpose and the accused persons are free to take all the submissions in the said discharge application before the Trial Court."

3. We have heard learned Counsel for the parties at length. Ms. Indu Malhotra, learned Senior Counsel appearing for the appellant, has submitted that the High Court has dismissed the petition for quashing of the proceedings without actually considering the factual position. She points out that the appellant and

the respondent No.2-complainant have entered into a business transaction. The respondent No. 2 - complainant had approached the appellant, who is engaged in the business of sale and distribution of handicrafts including indigenous artificial jewellery, with a proposal to provide wooden bracelets. The respondent No. 2 showed some samples to the appellant, from amongst which the appellant picked one and placed an order for 9693 pieces of wooden bracelets with the respondent. The appellant also admittedly made an advance payment of Rs.1 lakh by cheque to the respondent.

4. The goods supplied by the respondent were of inferior quality material and, also, were not in conformity with the specification provided by the appellant. Therefore, the appellant raised a debit note on 20th October, 2008 on the respondent, with the consent of the respondent. It is also brought to our notice by Ms. Indu Malhotra, learned Senior Counsel , that the respondent No.2 had been working with the appellant for quite some time and had an on-going business relationship with the appellant. It was in consideration of the established relationship that the respondent No.2 had agreed to accept the goods supplied as deficient and had promised to adjust the amount mentioned in the debit note against future orders. But on 28th January, 2009 the respondent No. 2 sent a legal notice demanding payment of balance amount of Rs. 1,52,018. The appellant replied to the respondent No. 2's legal notice on 4th February, 2009, denying the liability for the reason stated above. She submits that the criminal complaint has been filed to harass the appellant who is a widow and only earning member of her family. She submits that criminal complaint has been filed maliciously. It being abuse of the process of law was required to be quashed.

5. We have perused the complaint, which has been made by the respondent No. 2, in which it is stated that the respondent No. 2 had delivered 9693 finished wooden bracelets to the appellant at the agreed price of Rs. 26/- per piece. Total price of the aforesaid merchandise was Rs. 2,52,018/-. It is also admitted that the appellant issued a cheque on 21st December, 2008 for an amount of Rs. 1 lakh. The complaint further mentions that the appellant assured the respondent No.2 to pay the balance of balance amount of Rs. 1,52,018/-. The complaint further goes on to narrate that the appellant subsequently failed to make the payment of the balance amount. The respondent No.2 claimed that due to non payment by the appellant, the respondent No. 2 has suffered monetary loss. Consequently, a notice was served through registered post on the appellant but

the appellant did not pay the balance amount. To take the complaint out of the realm of a purely civil dispute, it is maliciously alleged in the complaint that when the respondent No. 2 approached the appellant for payment, the appellant stated as follows:

“On 22.3.09, the applicant met the accused in the market of Bazarganj Saraitareen and asked for his balance amount, but accused in the presence of two other persons flatly refused to pay the same and threatened the applicant that if he ever asked for the payment again he will be killed and stated that you don't know me. I have not paid to the high and mighty people, who are you. I had to usurp your money and I had done so. Thereafter she went in a car.”

In our opinion, the aforesaid averment has been made only to foist criminal liability on the appellant by converting a purely civil dispute into criminal act, alleged to have been committed by the appellant. The allegations are absurd and outlandish on the face of it; firstly, the appellant is a lady, a widow, who was not accompanied by anybody else at the time of the alleged occurrence; secondly, she, though being a resident of Delhi, misbehaved with number of high and mighty parties, with whom she had earlier transacted business, at Moradabad. In our opinion, these are allegations which on the face of it, can not be taken seriously by any reasonable person. The High Court, in our opinion, has committed jurisdictional error in dismissing the criminal petition filed by the appellant on the ground that it involves disputed questions of fact, which can only be gone into by the trial Court.

6. The fact that the dispute involved between the parties is purely civil in nature and has, in fact, been admitted in the counter affidavit filed on behalf of respondent No. 2. In Paragraph 5.1, it has been stated as follows:

“5.1 That the contents of the para No. 5.1 are wrong. Hence denied. The complaint clearly disclose the commission of criminal offence. It is correct that the dispute was initially pertaining to commercial one, however this commercial dispute has been converted into criminal one later on.”

7. Clearly, it is evident that the utterances which are attributed to the appellant have been inserted in the complaint with a malicious intent to convert a purely civil dispute into a criminal offence. In the case of *Anil Mahajan v. Bhor Industries Ltd. & Anr.*, (2005) 10 SCC 228, examining similar fact situation, this Court observed as follows:

“6. The order of the Magistrate was challenged before the Court of Session. The learned Additional Sessions Judge, Pune, by order dated 19.10.2001 has set aside the order of the Magistrate issuing process. It has been stated by the learned Additional Sessions Judge in the order that:

‘In this case there is no allegation that the accused made unlawful representation. Even, according to the complaint, they entered into memorandum of understanding. Grievance seems to be that the accused failed to discharge obligations under the MOU. In the complaint, there was no allegation that there was fraud or dishonest inducement on the part of the applicant and thereby the opponent parted with the property.’

Reliance has been placed, in that order, on various decisions of this Court holding that from mere failure of a person to keep up promise subsequently, a culpable intention right at the beginning, that is, when he made the promises cannot be presumed. A distinction has to be kept in mind between mere breach of contract and the offence of cheating. It depends upon the intention of the accused at the time of inducement. The subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction.”

8. In the case of *S.W. Palanitkar & Ors. v. State of Bihar & Anr.*, VII (2001) SLT 439=IV (2004) CCR 204 (SC)=(2002) 1 SCC 241, this Court again 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.

11. One of us (D.P. Mohapatra, J.), speaking for the Bench, in *Hridaya Ranjan Prasad Verma v. State of Bihar*, 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.’

21. It is clear from the allegations made in the complaint and the sworn statements that Appellant 1 Company entered into an agreement with Respondent 2 on certain terms and conditions. It is alleged that Appellant 7 went to Patna and contacted Respondent 2 and induced him to enter into an agreement assuring him of huge profit. At the time of arriving at such an agreement, none of the other appellants either met Respondent 2 or induced him to enter into any agreement with a view to cheat him. The agreement was further renewed for a period of one year. It is not the case that there was no supply of goods at all as it has come on record that there was supply of 400 tons of fertilizer, may be it was far less than the required quantity. The allegations made against the appellants other than Appellant 7 are very vague and bald. From the material that was placed before the Magistrate, even prima facie, it cannot be said that there was conspiracy or connivance between the other appellants and Appellant 7. If the appellants have committed breach of agreement, it is open to Respondent 2 to seek redressal in a competent Court or forum to recover damages, if permissible in law in case he had sustained any loss. In order to constitute an offence of cheating, the intention to deceive

should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating.”

9. Again in *G. Sagar Suri & Anr. v. State of U.P. & Ors.*, I (2000) SLT 499=I (2000) CCR 138 (SC)=I (2000) BC 273 (SC)=(2000) 2 SCC 636, this Court observed as follows:

“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.”

10. In *Bhajan Lal's* case (*supra*), this Court enumerated the categories of cases, by way of illustration, wherein the High Court would be justified in exercising its inherent power under Section 487, Cr.P.C. or Article 226 of the Constitution of India to prevent abuse of the process of Court or to otherwise secure the ends of justice. In paragraph 102, these categories of cases are listed as under:

“(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.”

11. In our opinion, the case pleaded by the petitioner, and as argued by Ms. Indu Malhotra, squarely falls within the ambit of propositions 5 and 7.

12. In view of the above, we are unable to uphold the order passed by the High Court, the same is hereby set aside. The appeal is allowed. The petition filed by the appellant under Section 482 is allowed and the proceedings initiated based on the complaint are hereby quashed. The bail bonds of the petitioner are discharged. Although this is a fit case where heavy costs should be imposed on the respondent No.2, we refrain from doing so.