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Court : Karnataka Dharwad

Decided On : Mar-19-2014

Judge : K.N. Phaneendra

Appeal No. : CrI. P. No. 100106 of 2014 c/w CrI. P. No. 8207 of 2013

Appellant : Prabhakar and Others

Respondent : K. Manjunath Irkal and Others

Judgement :

(Prayer: This Criminal Petition Is Filed Under Section 482 Of Code Of Criminal Procedure, Praying To Allow This Petition And Quash The Order Dated 27.11.2013 Passed In C.C. No. 285v 2013 By The Learned PrI. Civil Judge and J.M.F.C., Hubli Thereby Taking Cognizance For The Offences Punishable Under Sections 120(B), 204, 420, 465, 468, 471 R/W 34 Of I.P.C. As Against The Petitioners Who Are Accused Nos.5 And 6 Are Concerned.)

(Prayer: This Criminal Petition Is Filed Under Section 482 Of Code Of Criminal Procedure, Praying To Allow This Petition And Quash The Order Dated 27.11.2013 Passed In C.C. No. 28^4/2013 By The Learned PrI. Civil Judge and J.M.F.C., Hubli Thereby Taking Cognizance For The Offences Punishable Under Sections 120(B), 204, 420, 465, 468, 471 R/W 34 Of I.P.C. As Against The Petitioners Who Are Accused Nos.1, 2, 3, 4 And 7 Are Concerned.)

1. The petitioners in Crl.P. No.8207/2013 were arrayed as Accused Nos. 1 to 4 and 7 respectively wherein the petitioners in Crl.P. No, 100106/2014 are arrayed as Accused Nos.5 and 6 in C.C. No.2854/2013 on the file of the JMFC II Court at Hubli. The petitioners have sought for quashing of the entire proceedings in the said C.C. No.2854/2013 wherein the learned Magistrate has taken cognizance against them for the offences under Sections 120(B), 204, 420, 465, 468, 471 r/w 34 of I.P.C.

2. The brief factual matrix which are undisputed between the parties are that, the respondent No.1 herein is the person who has taken loan from the Vijaya Bank at Broadway Branch, Hubli in the year 1979 and 1981. In order to recover the loan due amount, the Bank has filed suits in O.S. No.38/ 1985 and 233/ 1986. The said suits came to be decreed vide decree dated 22.07.1994 for recovery of the suit claims along with 12% interest. It is also undisputed fact that the final decree proceedings were initiated before the Civil Court. After the constitution of the Debt Recovery Tribunal (DRT), the said final decree proceedings were transferred to the D.R.T. in the year 1999-2001. It is also not disputed that the Debt Recovery Tribunal has issued recovery certificates after coming into force of SARFESI Act. It is the case of the petitioners that a notice was issued on 10.08.2002 to the respondent No.1 and symbolic possession was taken pertaining to the disputed property and even a sale notice was issued on 25.07.2004. It is the case of the petitioners that respondent No.1 did not turn up to pay the dues in spite of repeated requests and notice issued to him on 25.07.2004. Therefore, the Bank Authorities have brought the property for auction sale excluding the property leased to HPCL. The reserved rate of the said property was fixed at Rs.75.00 lakhs and add and the said property was auctioned at a highest bid rate of Rs.77.22 lakhs. Even though the auction was conducted, it is the contention of the petitioners that in order to provide a final chance to the complainant (respondent No. 1 herein) and on humanitarian grounds though not there was any legal obligation to issue any notice. Bank issued a notice requesting the respondent No. 1 before confirmation of the sale to pay an amount of Rs.77.22 lakhs within seven days from the date of service of said notice. According to the petitioners, though the said notice was served and original notice was received by the respondent No. 1 he did not care to approach the Bank Authority to discharge the loan in order to

save his auctioned property. Therefore, they have confirmed the sale and sale certificates were issued on 22.09.2008 in favour of the auction purchasers who are arrayed as accused Nos.5 and 6 in the case.

3. It is the further contention of the petitioners that the respondent No.1 has also filed several suits i.e. O.S. No.96/2009, 25/2010 and 237/2010 making allegations against the petitioners that he has not received any notice from the Bank. However, the notice was created by the Bank authorities as if it was served on the 1st respondent by forging the signature of the respondent No. 1, but for the reasons best known to the 1st respondent those suits were withdrawn. According to the learned Counsel for the 1st respondent, it is stated that in order to clear off the loan amounts so far as the other properties are concerned, the Bank authorities have put a rider to the 1st respondent to withdraw all the suits so that they can enter into a compromise so far as the other debts are concerned. Therefore, he was forced to withdraw the same. However, he came to know about the forgery of the documents subsequently. Therefore, he filed one more suit in O.S. No. 13/2012 wherein he has sought for declaration of the sale certificate issued in favour of accused Nos.5 and 6 as illegal and not binding on the 1st respondent and for setting aside the entire sale proceedings and also pleaded that those sale transactions were made in collusion amongst the petitioners and also by forging the signature of the 1st respondent. In fact, these are all the proceedings pending before the Civil Court are not at all disputed by either of the parties. Again, having filed the suit for the same relief, the 1st respondent has also filed a private complaint in P.C. No.35/2012 making allegations that the property which was sold by the Bank in collusion with the petitioners amongst themselves though the property worth more than rupees one crore 24 lakhs. The sale transaction was shown to have been held for Rs.77.22 lakhs. The said property was alleged to have been sold for a throwaway price. It is also contended by the respondent No.1 that by means of forging his signature on the letter dated 23.08.2008 the Bank authorities have concocted all the subsequent documents in order to sell the said property in favour of accused Nos. 5 and 6. It is also alleged that the conduct of the petitioners that though according to law the auction purchasers have to pay 25% of the bid amount immediately after the auction sale. But, the said amount was not deposited, apart from that, the petitioners have also

permitted the purchasers accused Nos. 5 and 6 to pay the said amount of bid amount by way of installments. These are all the conducts alleged against the petitioners by the respondent No. 1 to show that the Bank Officials have colluded with each other in order to defeat the rights of the respondent No. 3 and if possible to defraud him from getting his property back or getting the market value to his property. This is the sum and substance of the rival contentions of the parties. After the complaint referred to the jurisdictional Police i.e. Hubli Sub-Urban Police, the Police have registered the case in Crime No.269/2013 and investigated the matter and finally submitted the charge sheet.

4. It is also seen from the charge sheet papers and as well from the oral submissions of the Counsels at the time of submitting the arguments, it is gathered that during the course of investigation the alleged forged document was sought to be produced before the concerned Police, the Investigating Officer in fact requested accused No.7, the present Manager of Hubli Branch to produce the original document of the alleged forged letter dated 23.08.2008 which bear the forged signature of the complainant (1st respondent). It is the argument of the 1st respondent by showing a letter addressed to the Investigating Officer that the accused No.7 has furnished the xerox copy of the said document and stated that the original was not at all available with him. There is no independent and specific allegations so far as accused No.7 is concerned, except stating that he has not assisted the investigation by producing the original document before the Investigating Officer. But, here itself I can say that it is not the case of the complainant that the original was with accused No.7 and in spite of having the custody of the said document purposely and deliberately he has not produced the said document before the Investigating Officer. Therefore, it is not disclosed as to prior to the investigation what exactly the offence committed by accused No. 7. Further, added to that the accused Nos.5 and 6 were not at all there in the picture as on 23.08.2008 when the alleged forged document according to the 1st respondent came in to existence. The 1st respondent's case is that on the basis of this forged document the entire sale transactions have been concocted and for the purpose of having wrongful gain the Bank authorities have conducted the sale proceedings. But there is no specific allegations so far as accused Nos. 5 and 6 are concerned, how they were indulged themselves in committing any fraudulent

act so far as the 1st respondent is concerned. When their participation was not at all there as on 23.08.2008, the subsequent conduct or specific role of the purchasers have to be shown to the Criminal Court in order to attract or in order to proceed against accused Nos. 5 and 6 under any of the Penal provisions invoked in the complaint.

5. The further allegation against accused Nos. 5 and 6 is that, after the sale proceedings the auction purchasers have not deposited 25% of the bid amount within the stipulated period and that the Bank authorities have given installments to the auction purchasers for payment of the bid amount. These allegations however do not attract any Penal provisions, for the simple reason that may be on the request of the auction purchasers stating that they were not in a position to pay the entire amount in one lumpsum and if they have sought for any installments and according to their request if the installments were given by the Bank authorities the blame should be on the Bank authorities only and not on the auction purchasers, they are only the beneficiaries of the installments and that will not constitute any offence against them. Therefore, for all these reasons, I am of the opinion, there is no specific allegations in the complaint or in the charge sheet so far as accused Nos.5 to 7 are concerned constituting any offence as alleged in the complaint or found in the charge sheet papers. If the allegations are bald, vague or even broadly considered incapable of providing sufficient facts to constitute any offence, in such an event Criminal prosecution should not be allowed to continue otherwise it would amounts to abuse of process of the Court.

6. Now, coming to the allegations made against the accused Nos.1 to A, accused No.4 according to the petitioners is the Branch Manager wherein the entire loan transactions took place. Accused No.1 - Mr. K. Sudhakar Shetty was the Chief Manager, the person who was there throughout in the helm of affairs. The accused Nos. 3 and 4 are the Officers who have to certify and approve the acts of accused No.1 according to the respondent No.1. So, therefore, the accused Nos. 1 to 4 who were in the helm of affairs with respect to the custody of this alleged forged document dated 23.08.2008 and as well as on the basis of such document, the transaction pertaining to the sale being taken place, they have been monitoring and they have been conducting the said sale transactions. Therefore, in my

opinion, when the custody of this particular document dated 23.08.2008 is not clarified before this Court, as to who were involved and with whom this document was actually during that time, in such an eventuality, in my opinion, the complainant has to be provided an opportunity to establish this before the Criminal Court. The respondent No.1 - complainant has taken up the contention that in order to make wrongful gain and cause wrongful loss to the complainant as the property had been sold for a poultry amount of Rs.77.22 lakhs instead of Rupees One crore twenty four lakhs as the value fixed by the Bank Authorities themselves much earlier to the sale transaction.

7. Now, having recorded the contentions of the parties, before adverting to the legal impact of these allegations, it is just and necessary to have some of the decisions cited by the learned Counsels in this regard. The learned Counsel for the petitioners relied on a Ruling reported in (2009) 9 SCC 682 between M.N. Ojha and others Vs. Alok Kumar Srivastav and another, wherein the Hon'ble Supreme Court has held that :

"Where the averments and allegations made in the complaint do not disclose the commission of any offence by the appellants or any one of them. They were merely discharging their duties to realise and recover the amounts due to the Bank from the borrower as well as the guarantors. The complaint obviously has been filed as a counterblast to the proceedings already initiated by the Bank including the first information report lodged by the first appellant against the complainant and the borrower for the offences of cheating and misappropriation.

Sequence of events undoubtedly suggests that the criminal proceedings have been maliciously instituted with an ulterior motive of wreaking vengeance on the appellants and with a view to spite them due to personal grudge. It was clearly intended to prevent the public servants from discharging their duties. The criminal law has been set in motion by the learned SDJM on mere asking to do so by the complainant.

The High Court almost abdicated its duty in refusing to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure".

What the above said Ruling indicate is that depending upon the facts and circumstances of the case, the Court has to come to a definite conclusion that the complaint was filed only with regard to wreaking vengeance against the opposite party and that even if the complaint is continued it will be of a futile attempt on the part of the complainant in getting the conviction of the accused persons. Then also the Court is very well within its power to quash the proceedings. Therefore, this decision did not lay down any absolute law as to decide the matter. In this case it is alleged that the petitioners not merely involved in recovery process, but they have done something more to infringe the valuable right of the respondent by forging his signature, and that has to be tried by the Criminal Court.

8. In another Ruling which is reported in (2013) 6 SCC 740 the Apex Court between Chandran Ratanswami Vs. K.C. Palanisamy and others held that :

"Quashment of proceedings, when warranted -Abuse of process of court - Criminal proceedings initiated to avoid civil liability/ to convert purely civil dispute into criminal case - "Access jurisprudence held, requires courts to deal with legitimate litigation, but equally also requires quashment of proceedings where such litigation is abuse- of process of court - Criminal proceedings against appellants being abuse of process of court but courts below allowing them to continue - unsustainability"

In this particular case also if the Court is of the opinion that, the complaint is filed by the party in order to avoid civil liability and he has resorted to the criminal proceedings and such criminal proceedings are being abuse of process of court, then the court's interference is absolutely required. The said situation, in my opinion, is not available because of the simple reason the complainant has not filed any complaint in order to avoid his liability, as his property has already been sold and amount has already been recovered. It is also brought to my notice so far as the conduct of the complainant regarding discharging of his liabilities are concerned, the complainant has already compromised the matter pertaining to another part of the loan with the petitioners' Bank and paid as much as an amount of Rs.80.00 lakhs. A suit has been filed by the complainant before the Civil Court in O.S. No. 13/2004 challenging the illegal acts of the Bank authorities in respect

of the present dispute on the allegations that petitioners by creating his forged signature on the alleged document sold his properties in the auction. Therefore, it cannot be at any stretch of imagination said that to avoid his civil liability, the criminal complaint has been filed. Therefore, the said Ruling also does not come to the aid of the petitioners.

9. Another Ruling cited by the learned Counsel of Kerala High Court in the case of A. Nalinkshan Vs. Abulaise in Op (Crl.) No.4322/2012 wherein the Court held that :

"Even assuming that there was some mistake made by the Officers in making calculation, of the amount, that cannot be said to be a false evidence given. If the first respondent was aggrieved by the calculation made, he could have filed objection under Section 13(3) which would have given an opportunity to the Bank to give a reply to that objection as provided under Section 13(4) of the SARFAESI Act. On the other hand, unthoui filing any objection to the notice issued under Section 13(2) of the Act after getting an adverse order under Section 14 of the Act from the Chief Judicial Magistrate Court, he moved this Court for quashing the proceedings and obtained Ext. P6 order in which also this Court has observed, that there was no dispute regarding the liability to pay or the quantum of amount mentioned in the proceedings. It is on that basis and at the request of the petitioner the installment facilities were given to clear all the debts. It cannot be said that if any bona fide mistake has been made in the calculation if at all, though not admitted by the Counsel for the petitioner, it will not amount to offence under Section 191 of Indian Penal Code".

10. The above said Ruling is applicable only on the basis of the specific facts narrated pertaining to the said case, the mistake in calculation was taken note of by the complainant and it has been made as a big issue before the Court in order to bring the Bank authorities under the provisions of Section 191 of I.P.C. In that context, the Court has said that the mistake in calculation does not amount to any offence. In this particular case, it is altogether different facts are involved serious allegations of forging of a document by the Bank authorities is made, the same cannot be treated on par with a mistake in calculation. Here, the signature of the complainant, if it is proved to the satisfaction of the Criminal Court as a forged

document it will have a serious consequences. If the complainant is not able to prove that, his signature has been forged by the Bank authorities then also it is a serious allegations against the Bank authorities. Then in such an event the complainant also has to face a serious consequence at the hands of the Bank authorities. Therefore, the facts and circumstances of that particular case is altogether different from the facts of this particular case.

11. Yet another Ruling relied upon by the learned Counsel reported in (2010) 8 SCC 775 between Kishan Singh (dead) through LRs Vs. Gurpal Singh and others so far as the delay in FIR is concerned, the learned Counsel contended that though the document dated 23.08.2008 came to the knowledge of the complainant during the proceedings before the Debt Recovery Tribunal in the year 2008 itself, but he has not taken any action till the present complaint is filed. But the learned Counsel for the respondent No.1 strenuously contended that earlier he has filed so many suits. Further, added to that, he came to know about the forgery of such document recently he has also brought to my notice that the objections filed by the Bank Authorities before the Debt Recovery Tribunal in the year 2008 which does not disclose the date on which the notice has been served upon the complainant and on which particular date the endorsement was given by the complainant on the said document. Therefore, after coming to know about this forgery of the document he filed this case. Even otherwise, the delay alone according to the Supreme Court cannot be taken into consideration as a decision factor to come to a definite conclusion that there was an abuse of process of law the delay may be one of the segment. But on that delay ground itself the entire proceedings cannot be quashed. The delay even at the time of evidence can be explained by the complainant and the said evidence if he put forth before the Criminal Court is again subject to cross-examination by the petitioners.

12. Last decision cited by the learned Counsel for the petitioners, which is reported in (2013) 11 SCC 673 between Paramjeet Batra. Vs. State of Uttarakhand and others. At paragraph 7 the Hon'ble Supreme Court laid down that :

"While exercising its jurisdiction under Section 482 of Code of Criminal Procedure the High Court has to be cautious. This power is to be used sparingly and only for

the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court".

13. Again this Ruling gives some guidelines to the High Courts as to under what circumstances the Court can definitely come to the conclusion that the lis pending between the parties is essentially of a civil in nature. The Court must give a finding that the matter between the parties is essentially of civil in nature, if the Court smells something criminal intention on either of the parties with regard to the dispute between them and it not only disclose the case of civil in nature but also it is having texture of criminal offence being committed by the parties, then the Court has to look into the matter and find out whether even the civil remedy is available to the party, whether they can also resort to criminal remedy. Here, in this particular case, as I have already narrated in O.S. No. 13/2012 the entire sale transactions have been challenged before the Civil Court and simultaneously alleging forgery of the document dated 23.08.2008 a complaint is also lodged. Nevertheless the complainant in the said suit is merely concentrated with regard to the sale transactions to set aside. Further, added to that, as I have opined that the forgery of a particular document is a serious offence, it cannot be at any stretch of imagination said that it is merely a civil wrong of the accused and purely of civil action lies. It cannot be said that the forging of a document is a civil wrong. Though consequentially it ;may be argued in the Civil Court, this Court cannot come to a definite conclusion that it is essentially of a civil dispute. Therefore, I don't find any strong reasons to come to the conclusion that the complainant has filed a false complaint and the complaint has been filed in order to abuse the process of the Court, in order to harass the petitioners. However, I have observed in the body of the above said order that there is no specific allegations against the accused Nos. 5 to 7 are concerned. Therefore, it goes without saying the criminal

proceedings against accused Nos. 5 and 6 are without any basis and amounts to abuse of process of the Court. Hence, the proceedings in the Criminal Court deserves to be quashed so far as accused Nos.5 to 7 are concerned.

14. Accordingly, I proceed to pass the following Order : Criminal Petition No. 100106/2014 is hereby allowed and so far as Criminal Petition No.8207/2013 is concerned, the same is partly allowed so far as it relates to petitioner No.5 is concerned (accused No.7) and dismissed so far as other petitioners are concerned. The proceedings in C.C. No.2854/2013 for the offences under Section 120(B), 204, 420, 465, 468 and 471 r/w 34 of I.P.C. so far as it relates to accused Nos.5 to 7 therein are concerned are hereby quashed. However, the petitioners whose petitions are dismissed are at liberty to approach the Trial Court making necessary applications for discharge if advised. In that event, the Trial Court has to look into the entire materials on record and after hearing both the parties pass appropriate orders in accordance with law.

In view of the disposal of the main petitions, IAs filed in both petitions does not survive for consideration.

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