

Rishipal Vs. State of U.P. and anr.

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Court : Supreme Court of India

Decided On : Jul-02-2014

Judge : Ranjana Prakash Desai and N. V. Ramana

Appellant : Rishipal

Respondent : State of U.P. and anr.

Judgement :

REPORTABLE IN THE SUPREME COURT OF INDIA CRIMINAL APPELLATE JURISDICTION CRIMINAL APPEAL No.1300 OF 2014 ARISING OUT OF SPECIAL LEAVE PETITION (CRL) No.2447 OF 2013 RISHIPAL SINGH APPELLANT VERSUS STATE OF U.P. & ANR. RESPONDENTS

JUDGMENT

N.V. RAMANA. J.

Leave granted.

2. This appeal arises out of order dated 6th November, 2012 of the High Court of Judicature at Allahabad refusing the prayer of the appellant for quashing the proceedings in Complaint Case No.2397 of 2012 under Sections 34, 379, 411, 417, 418, 420, 457, 458 and 477 IPC pending on the file of Additional Chief Judicial Magistrate, Ghaziabad.

3. The facts relevant for the disposal of this appeal, in a nutshell, are that on 21st March, 2005, respondent No.2 herein filed a private complaint (Annexure P/2) in the Court of Judicial Magistrate, Ghaziabad, Uttar Pradesh under Section 156(3) Cr.P.C. against the appellant herein and three other accused who are not parties before us, invoking Sections 34, 379, 411, 417, 418, 420, 467, 458 and 477 IPC. According to the said complaint, the complainant was holding a Bank Account in the Ghaziabad District Co-operative Bank, Maliwada, Ghaziabad where the appellant was the Branch Manager. It was alleged in the complaint that taking advantage of the innocence of the complainant and his brother, the accused, mischievously obtained their signatures on blank cheques and committed theft of their hand bag in which the signed cheque book was kept. When they came to know that their bag containing signed cheques and other papers was missing, not knowing the misdeed of the accused, a search has been undertaken for the lost bag containing signed cheques and also lodged a written report on 17th May, 2004 at Sihani Gate Police Station to that effect. The Bank was also informed in writing on 17th May, 2004 itself that duly signed cheque book of Account No.1132 has been lost, hence no payment on the lost cheques be made to any person and all those cheques may be cancelled (Annexure P/1). It was further stated by the complainant that when he received a notice dated 6th October, 2004 under Section 138 of the Negotiable Instruments Act from Neelam Rani (co-accused, not party before us) stating that Cheque No.083697 (one of the lose cheques) for Rs.5,00,067/- as if issued by him towards the purchase of Kachi bricks and coal from Neelam Brick Field, then he realized that there was some planned conspiracy and the cheque book was not actually lost but was stolen and being misused by the accused for drawing various amounts from his bank account. In the said complaint, the complainant - respondent No.2, has totally denied any such transaction with Neelam Brick Field and alleged that the accused cooked up that transaction, hatched a conspiracy with the bank employees for cheating him, and accordingly all the amounts of the complainant and his family have been looted.

4. The main allegation levelled against the appellant was that when a written information had already been given on 17th May, 2004 to the appellant who was the Branch Manager of the Bank not to honour the lost cheques and cancel them, he should have performed his duties with utmost responsibility and when the

stolen/lost cheque was presented, he should have given the information of its presentation to the police as well as to the complainant. On the contrary, the appellant neither handed over the person who presented the cheque, to the police, nor brought to the notice of the complainant about its presentation. It is because of the involvement of the appellant in the conspiracy he has not discharged his duties as Branch Manager with responsibility and acted against the instructions in the letter dated 17th May, 2004 only to harass the complainant and his family financially and mentally. Thus the appellant played a role in the conspiracy, and therefore, the complainant lodged the complaint under the aforesaid sections of IPC against the appellant as well as other accused.

5. After registering the Complaint Case, the learned Magistrate recorded statements under Sections 200 and 202 Cr.P.C. and issued summons against the accused under Section 204 Cr.P.C. Two other co-accused challenged the summoning order before the High Court in a Criminal Miscellaneous Application No.6334 of 2006 and the Allahabad High Court has stayed further proceedings in the Complaint Case. Subsequently, the High Court dismissed the Criminal Miscellaneous Application, and hence, non-bailable warrant has been issued against the appellant on 3rd October, 2012.

6. Then the appellant moved the High Court under Section 482 Cr.P.C. to quash the proceedings against him. It was the case of the appellant that he came to know about the criminal complaint only when the non-bailable warrant has been issued against him because from August 2004 to January 2007, during which period the proceedings in the criminal complaint were going on, he was posted at Dhaulana Branch, therefore, the summons were never served upon him. But, by the impugned order dated 6th November, 2012 the High Court refused to quash the criminal proceedings against the appellant.

7. Before us, the main contention of the learned senior counsel for the appellant is that the appellant has nothing to do with the alleged offence and his name was unnecessarily dragged into the criminal complaint. When Cheque No.083697 was presented in the Bank on 2nd August, 2004, it was not cleared by the Bank in view of the written instruction given by the complainant and no loss was caused to the

complainant at the hands of the appellant. Afterwards, the appellant was transferred from Maliwara Branch to Dhaulana Branch on 21st August, 2004 and he was again transferred to Maliwara Branch in January 2007 where he remained till August 2011. He further contended that the complainant in his letter dated 17th May, 2004 (Annexure P/1) addressed to the appellant has nowhere asked him to inform to the police or to give communication to him when the cheque is presented. The entire reading of the said letter does not disclose any case against the appellant and his name was included into the criminal complaint only to malign and defame him because the complainant has received some notices under Section 138 of the Negotiable Instruments Act from the other accused. Only to create a defence against those cases under the Negotiable Instruments Act, the complaint has been filed by the complainant with mala fide intention. Hence, the complaint filed by respondent No.2 is misconceived and it does not attract any of the offences alleged against the appellant as it was filed only with vexatious and oblique motive. But the High Court, without going into the merits and facts of the case, merely relying on the provisions of Section 245 Cr.P.C. directed the appellant to file application for his discharge before the trial Court. This approach of the High Court is erroneous and contrary to the law laid down by this Court. The High Court ought to have allowed the application of the appellant under Section 482 Cr.P.C. as the complaint does not attract the ingredients of Sections 34, 379, 411, 417, 418, 467, 468, 471 and 477 IPC. He, therefore, prayed to set aside the impugned order passed by the High Court and quash the proceedings in the Complaint Case qua the appellant.

8. On the other hand, the learned counsel for respondent No.2/complainant while supporting the order passed by the High Court submitted that the appellant has not properly discharged his responsibilities as Branch Manager and acted in a casual manner due to which respondent No.2 had to suffer financial loss as well as put to lot of hardship. Particularly, he contended that in the light of the letter dated 17th May, 2004 when a lost/stolen cheque was presented for clearance, it is expected from a responsible officer of the Bank that instead of passing the cheque for payment, he should inform the account holder about its presentation and also to bring to the notice of police such mala fide presentation of cheque by the presenter, but the appellant has totally failed in performing his duties. So, therefore

is no reason for this Court to interfere with the order of the High Court.

9. Having heard the learned counsel for the parties and after perusing the entire material available on record, including the complaint, now the issue for consideration before us is whether in the light of the letter dated 17th May, 2004 (Annexure P/1), the appellant has made out any case to quash the proceedings in Complaint Case No.2397/2002 under Sections 34, 379, 411, 417, 418, 467, 468, 471 and 477 IPC on the file of the Additional Chief Judicial Magistrate, Ghaziabad.

10. Before we deal with the respective contentions advanced on either side, we deem it appropriate to have thorough look at Section 482 Cr.P.C., which reads:

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any orders of this Code or to prevent abuse of process of any Court or otherwise to secure the ends of justice. A bare perusal of Section 482 Cr.P.C. makes it crystal clear that the object of exercise of power under this section is to prevent abuse of process of Court and to secure ends of justice. There are no hard and fast rules that can be laid down for the exercise of the extraordinary jurisdiction, but exercising the same is an exception, but not a rule of law. It is no doubt true that there can be no straight jacket formula nor defined parameters to enable a Court to invoke or exercise its inherent powers. It will always depend upon the facts and circumstances of each case. The Courts have to be very circumspect while exercising jurisdiction under Section 482 Cr.P.C.

11. This Court in *Medchl Chemicals & Pharma (P) Ltd. v Biological E. Ltd and Others* 2000 (3) SCC269 has discussed at length about the scope and ambit while exercising power under Section 482 Cr.P.C. and how cautious and careful the approach of the Courts should be. We deem it apt to extract the relevant portion from that judgement, which reads:

Exercise of jurisdiction under inherent power as envisaged in Section 482 of the Code to have the complaint or the charge sheet quashed is an exception rather than rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution with the lodgement of First

Information Report. The ball is set to roll and thenceforth the law takes its own course and the investigation ensures in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither practicable nor warranted. In the event, however, the Court on a perusal of the complaint comes to a conclusion that the allegations levelled in the complaint or charge sheet on the fact of it does not constitute or disclose any offence alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situations as is required under the law. Frustrated litigants ought not to be indulged to give vent to their vindictiveness through a legal process and such an investigation ought not to be allowed to be continued since the same is opposed to the concept of justice, which is paramount.

12. This Court in plethora of judgments has laid down the guidelines with regard to exercise of jurisdiction by the Courts under Section 482 Cr.P.C. In *State of Haryana v. Bhajan Lal* 1992 Supp(1) SCC335 this Court has listed the categories of cases when the power under Section 482 can be exercised by the Court. These principles or the guidelines were reiterated by this Court in (1) *Central Bureau of Investigation v. Duncans Agro Industries Ltd.* 1996 (5) SCC592 (2) *Rajesh Bajaj v. State NCT of Delhi* 1999 (3) SCC259 and; (3) *Zandu Pharmaceuticals Works Ltd. v. Mohd. Sharaful Haque & Anr* (2005) 1 SCC122 This Court in *Zandu Pharmaceuticals Ltd.*, observed that:

The power under Section 482 of the Code should be used sparingly and with to prevent abuse of process of Court, but not to stifle legitimate prosecution. There can be no two opinions on this, but if it appears to the trained judicial mind that continuation of a prosecution would lead to abuse of process of Court, the power under Section 482 of the Code must be exercised and proceedings must be quashed. Also see *Om Prakash and Ors. V. State of Jharkhand* 3012 (12) SCC72 What emerges from the above judgments is that when a prosecution at the initial stage is asked to be quashed, the tests to be applied by the Court is as to whether the uncontroverted allegations as made in the complaint prima facie establish the case. The Courts have to see whether the continuation of the complaint amounts to abuse of process of law and whether continuation of the criminal proceeding results in miscarriage of justice or when the Court comes to a conclusion that

quashing these proceedings would otherwise serve the ends of justice, then the Court can exercise the power under Section 482 Cr.P.C. While exercising the power under the provision, the Courts have to only look at the uncontroverted allegation in the complaint whether prima facie discloses an offence or not, but it should not convert itself to that of a trial Court and dwell into the disputed questions of fact.

13. In the backdrop of the legal position, well settled by this Court through catena of judgements, we would like to deal with the facts of the present case which lead to filing of the present complaint against the appellant under Sections 34, 379, 411, 417, 418, 420, 467, 458 and 477 I.P.C. on the file of the Additional Chief Judicial Magistrate, Ghaziabad.

14. The facts of the case which are not in dispute, for better appreciation of the facts and arguments advanced on behalf of the appellant, it is necessary for us to have a thorough look at the letter dated 17th May, 2004 addressed to the appellant/Branch Manager by respondent No.2. Sir, It is requested that the Applicant has issued Cheque Book in which from Cheque No.083691 to 083700 were 10 cheques in Account No.1132, out of which, payment up to Cheque No.083696 has been received and on rest of the cheques are signature of the applicant/account holder. The above cheque book and other necessary payers were in my hand bag and I by Bus from Pikhwa was coming to Ghaziabad then in the bust itself by mistake that bag was left and even on making to much search could not found. Its information immediately I have given at the police station, Sihani Gate. Therefore, it is requested that you may treat the above cheques as cancelled and on that may not kindly make payment to any person. It will be very kind of you. A reading of the above letter makes it very clear that the complainant has instructed the appellant/Branch Manager not to pass cheques bearing Nos. 083697 to 083700, the four cheques which were already signed. There is no dispute that after submitting the above letter to the appellant, when Cheque No.083697 was presented in the Bank on 2nd August, 2004, the same was not cleared by the appellant/Branch Manager in view of the letter of the complainant. Subsequently, the appellant was transferred from that Branch to Dhaulana Branch on 21st August, 2004, there was any instruction to the Bank to inform the account

holder or police when the cheque is presented. It appears from the letter that only a request was made to the Bank that the said four cheques shall not be honoured.

15. If we look at the complaint and letter addressed by the complainant to the Branch Manager, the entire grievance of the complaint appears to be that basing on the written information which had been given to the appellant on 17th May, 2004, when the stolen cheque was presented, he should have given a complaint to the police. As the appellant has not chosen to give the complaint to the police, according to the complainant the other accused hatched a conspiracy with the appellant - Branch Manager and accordingly cheated him.

16. It is no doubt true that the Courts have to be very careful while exercising the power under Section 482 Cr.P.C. At the same time we should not allow a litigant to file vexatious complaints to otherwise settle their scores by setting the criminal law into motion, which is a pure abuse of process of law and it has to be interdicted at the threshold. A clear reading of the complaint does not make out any offence against the appellant/Branch Manager, much less the offences alleged under Sections 34, 379, 411, 417, 418, 420, 467, 458 and 477 I.P.C. We are of the view that even assuming that the Branch Manager has violated the instructions in the complaint in letter and spirit. It all amounts to negligence in discharging official work at the maximum it can be said that it is dereliction of duty.

17. In view of our above discussion, we have come to an irresistible conclusion that continuation of the criminal proceedings against the appellant for commission of the alleged offence under Sections 34, 379, 411, 417, 418, 420, 467, 458 and 477 I.P.C. is a pure abuse of process of law and the complaint case deserves to be quashed in the interest of justice.

18. We accordingly allow this appeal setting aside the impugned judgment of the High Court by quashing the criminal proceedings pending against the appellant in C.C. No.2397 of 2012 under Sections 34, 379, 411, 418, 420, 467, 458 and 477 I.P.C. on the file of Additional Chief Judicial Magistrate, Ghaziabad, Uttar Pradesh.
..J.

(RANJANA PRAKASH DESAI)J.

(N.V. RAMANA) NEW DELHI JULY2, 2014

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