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Court : Karnataka

Decided On : Feb-25-2008

Reported in : 2008CriLJ3415; ILR2008KAR3541; 2008(4)KCCR2208; 2008(4)AIRKarR475

Judge : N. Ananda, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 406, 409 and 420; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 156(3), 181(4), 200, 482 and 531

Appeal No. : Crl. P. No. 4510/2005

Appellant : Repl Engineering Limited and ors.

Respondent : icds Limited Represented by Its G.P.A. Holder and Deputy General Manager and anr.

Advocate for Def. : Udaya Holla, Sr. Counsel for R1 and; Hanumantharayappa, HCGP for R2

Advocate for Pet/Ap. : M.G. Kumar, Adv. for; Law Firm

Disposition : Petition dismissed

Judgement :

ORDER

N. Ananda, J.

1. Petitioners arraigned as accused Nos. 1 to 5 in C.C. No. 128/2002, pending trial for offences punishable under Sections 406, 409 and 420 of IPC r/w Section 34 of IPC on the file of Principal Civil Judge (Sr. Dn), have filed this petition to quash proceedings pending therein.

2. I have heard Sri M.G. Kumar, Learned Counsel appearing for petitioners and Sri Udaya Holla, learned Senior counsel appearing for I respondent and learned Government Pleader appearing for II respondent.

3. Brief facts necessary for disposal of petition is as follows:

The I respondent is a registered financial Institution engaged in extending credit to various Industrial units. It's head office is situated at Manipal. During the year 1995, I respondent imported six wind operated electricity generators bearing Nos. 3265542, 3265543, 3265544, 3265547, 3265548 and 3265549 from Denmark. Petitioner No. 1 M/s REPL Engineering Limited is represented through its Chairman and Managing Director, Petitioners-2 to 4 are Directors and petitioner No. 5 is the Company Secretary. The petitioner No. 1 entered into a lease agreement on 29.9.1995 with I respondent-Industrial Credit & Development Syndicate Ltd., (for short ICDS) and obtained on lease above said wind operated electricity generators.

4. Pursuant to lease agreement, invoices and bill of lading were endorsed in favour of Petitioner No. 1 and aforesaid wind operated electricity generators were received by petitioners-1 to 5 at Chennai Harbour.

In terms of lease agreement and memorandum of understanding entered into between I respondent and petitioners, petitioners were expected to install six wind operated electricity generators at Jamnagar and Gujarat. They were expected to maintain and operate the said generators and pay rentals to I respondent. In terms

of lease agreement and memorandum of understanding, ownership of said generators vested with I respondent and petitioners had limited rights of installation, maintenance and operation of said generators. The I respondent had a right to inspect the site of installation from time to time. The I respondent approached Syndicate Bank, availed letter of credit for a sum of Rs. 5,56,46,745/- towards payment of cost of six wind operated electricity generators to the Company situate at Denmark from where they were imported.

5. Petitioners have sold four wind operated electricity generators bearing Nos. 3265542, 3265543, 3265547 and 3265548 to M/s. True Max Engineering situated at Ahmedabad and one wind operated electricity generator bearing No. 3265545 to M/s. Vadilal Industries Ltd., at Ahmedabad. The remaining of one wind operated electricity generator could not be traced by I respondent. Therefore, I respondent filed a complaint under Section 200 of Cr.P.C. against petitioners before II Addl. Civil Judge (Jr. Dn) and JMFC at Udupi. The learned Magistrate referred complaint to jurisdictional Investigating Officer in terms of Section 156(3) of Cr.P.C. At the time of investigation, Investigating Officer found the petitioners had not installed six wind operated electricity generators. On the other hand, out of six wind operated electricity generators, they had sold four wind operated electricity generators to M/s. True Max Engineering and one wind operated electricity generator to M/s. Vadilal Industries Ltd. at Ahmedabad. The Investigating Officer visited the said Companies, recorded statements of witnesses, and submitted charge sheet against petitioners for offences punishable under Sections 406, 409 and 420 IPC and r/w 34 of IPC. The learned CJM of Udupi, on receipt of charge sheet issued summons to accused persons. Since accused Nos. 1 to 6 did not appear before the Court at a stretch, case against accuse No. 5 was split up.

6. Accused No. 5 filed an application for discharge. The said application was also supported by accused Nos. 3 and 4. The trial Court by order dated 19.1.2005 dismissed the application and directed accused persons to answer charges framed against them under Sections 406, 409 and 420 of IPC. Thereafter, petitioners filed present petition. On 17.1.2006, interim stay was granted for a limited period and it was extended from time to time till 30.1.2008.

7. The learned Counsel for petitioner has made following submissions:

i. The Magistrate and Police at Udupi have no jurisdiction and power to investigate and prosecute petitioners for offences alleged to have been committed at Mumbai.

ii. The transaction is predominantly civil in nature.

iii. The matter was referred to Arbitrator and award was passed in favour of I respondent.

iv. The Investigating Officer has not collected any material to prove lease agreement or memorandum of understanding said to have been entered into between parties;

v. Material collected during the course of investigation is hardly sufficient to establish criminal breach of trust.

vi. There are no averments in the complaint and Investigating Officer has not collected any material to establish that petitioners 2 to 4 were incharge and responsible for day-to-day business of I petitioner-Company.

vii. Even if the case of I respondent the generators were leased in favour of petitioners is accepted, it would not constitute an offence of criminal breach of trust. The transfer of property under alleged lease agreement do not constitute essential ingredients of criminal breach of trust.

In support of these contentions, learned Counsel for petitioners has relied on following decisions:

1993 Cri.L.J. 831,

: 2004 CriLJ4180 ,

: 1998 CriLJ4091 ,

: 2001 CriLJ1246 ,

: 2001 CriLJ4765 .

8. Sri Udaya Holla, senior counsel appearing for I respondent has made following submissions relying on following decisions:

1. Criminal action is maintainable along with Civil suit if the action constituted both civil wrong as well as criminal wrong : 1996 CriLJ3501 and : AIR 2006 SC2780 .

2. Inherent power under Section 482 Cr.P.C. should be exercised sparingly and with circumspection and that too in rarest of rare cases. : 2002 CriLJ553 .

3. Statements recorded in the course of investigation and the averments of the complaint will have to be accepted on their face value. While exercising inherent powers under Section 482 Cr.P.C. it is not permissible for the High Court to ignore material on record AIR 2002 SC 477.

4. The High Court while exercising powers under Section 482 Cr.P.C. should not decide the matter as if it was an appeal against judgment of conviction : 1994 CriLJ2086 .

5. Person who seek to invoke Section 482 Cr.P.C. must approach Court with clean hands and with clean background. Delay in approaching the High Court of more than one year disentitles a party to relief under Section 482 Cr.P.C. - 1989 (2) KLJ 347.

6. The lease agreement was accepted at Manipal. Therefore, proper venue for trial of a case of criminal breach of trust is jurisdictional court at Udupi - 1978 Cri.L.J. 577 and 2001 Cri.L.J. 3773.

9. The learned Government Pleader appearing for II respondent taking me through various documents and material collected during course of investigation has contended the averments of complainant and statements of witnesses would constitute offences alleged against petitioners, the learned Government Advocate has relied on a judgment of Supreme Court reported in AIR 1957 SC 196.

10. This is a warrant case instituted upon a police report. The application filed by petitioners for discharge was dismissed by the order dated 19.1.2005.

11. It is well settled law when a petition filed under Section 482 Cr.P.C. seeking quashing of charges framed against accused this Court should not interfere with the order unless there are strong reasons. Such an order could be passed only in exceptional cases or rare cases. Moreover, once the trial Court has framed charges against the accused persons, trial must proceed with necessary assistance. In the case on hand, as already narrated, application filed by accused Nos. 2, 3 and 5 for discharge was dismissed by the trial Court.

12. This Court relying on the decision reported in 1989 (2) KLJ 347 has held that delay in approaching High Court would disentitle a party to relief under Section 482 Cr.P.C.

13. In the case on hand, charge sheet was filed on 2.8.2002 and this criminal petition was filed on 9.11.2005.

14. In view of rival contentions raised by parties, following points would arise for determination:

1. Whether the Court below has jurisdiction to try offences against petitioners?
2. Whether the transaction is predominantly civil in nature that would debar initiation of criminal proceedings?
3. Whether transfer of generators under lease deed would amount to entrustment to attract an offence of criminal breach of trust.
4. Whether the prosecution has made out a case to proceed against all the accused?

15. Regarding Point No. 1:

The Supreme Court in the case of State of Madhya Pradesh v. K.P Ghiara AIR 1987 SC 196, held the venue of enquiry or trial of a case like the present is primarily to be determined by the averments contained in the complaint or charge sheet and unless the facts there are positively disproved, ordinarily the Court, where the charge sheet or complaint is filed, has to proceed with it.

16. In the case on hand, statements of witnesses recorded during course of evidence and several documents relied upon by the prosecution would reveal the entire transaction has taken place in terms of lease deed entered into between parties. Under Section 181(4) of Cr.P.C. if any offence relates to misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which was subject to the offence was received or retained, or was required to be returned or accounted for, by the accused person. The six wind operated electricity generators were leased to petitioners and petitioners had to account for the same at Manipal. The lease was accepted by petitioners at Manipal. Therefore, trial of a case of criminal breach of trust before jurisdiction Court at Udupi is in conformity with provisions under Section 181(4) of Cr.P.C.

17. The Supreme Court in the case of Smt. Rajkumari Vijn v. Devraj Vijn : 1977 CriLJ940 , has made a distinction between 'Territorial jurisdiction' and 'inherent jurisdiction' and held, lack of inherent jurisdiction goes to the root of the matter and any transgression of it makes the entire trial void whereas the territorial jurisdiction is not of a peremptory character and is curable under Section 531.

18. In the case on hand, averments of complainant and material collected during course of investigation would prima facie establish that the Court at Udupi has jurisdiction to try petitioners for offences alleged against them. Therefore, point No. 1 is answered in affirmative.

19. Reg. point No. 2:

The averments of the complainant and statements of witnesses recorded during investigation, documents produced by prosecution, would reveal that six wind operated electricity generators were leased to petitioners subject to conditions the petitioners shall install, maintain, operate and pay rentals to I respondent-owner of six wind operated electricity generators.

According to material collected during the course of investigation, petitioners have sold four wind operated electricity generators to M/s True Max Engineering Company, Ahamedbhad and one wind operated electricity generators to M/s

Vadilal & Co.,, Ahamadbhad. The statement of witnesses namely CWS. 4, 5 and 8 would reveal the said machineries had been leased to petitioners subject to above conditions. Contrary to terms of lease agreement petitioners have sold five wind operated electricity generators and other generator could not be traced by investigating Officer. Though I respondent had civil remedy to recover the amount, the nature of acts committed by petitioners would not debar initiation criminal proceedings.

The Learned Counsel for petitioners relying on the judgment of Supreme Court reported in : AIR 2006 SC754 , : 1998 CriLJ4091 , has contended transfer of generators under a lease agreement would not be entrustment of property to attract an offence of criminal breach of trust.

In the case on hand, six generators were leased in terms of lease agreement wherein petitioners have agreed to install, maintain and operate six generators and pay rentals to I respondent. Despite this, petitioners have sold five wind operated electricity generators and misappropriated sale proceeds. Therefore, it cannot be said that generators transferred to petitioners would not amount to entrustment to attract the offence of criminal breach of trust. The generators were given for limited purpose with limited rights and petitioners had converted limited rights into absolute rights to sell five generators as if they were the owners of generators. Therefore, contention of learned Counsel for petitioners cannot be accepted. In view of this, point No. 2 is answered in Negative.

20. The learned Counsel for petitioners has contended all the directors of the Company have been falsely implicated in the case without there being any material to substantiate the charges framed against them.

21. From the statement of one CW-8 Sudeerpete, I find that at relevant point of time he was working as Senior Executive of R.P.E.L. Petitioner No. 1 was the Managing Director and other petitioners were the Directors of I petitioner-R.P.E.L. He has stated that transfer of generators took place at the instance of petitioners-2 to 4. He has made a categorical statement that petitioners-2 to 4 were incharge of the affairs of R.P.E.L. Company, without their consent no transaction used to take place. He has also stated that five generators were sold contrary to terms of lease

agreement and one generator could not be traced by Investigating Officer. Therefore, the submission made by learned Counsel for petitioners that petitioners-2 to 5 have been falsely implicated cannot be accepted. I answer point No. 4 in affirmative.

22. In view of the findings on Point Nos. 1 to 4 and also having regard to fact the trial Court has dismissed the application filed by petitioners for discharge, bearing in mind the delay caused by petitioners in approaching this Court, I am of the considered opinion that powers vested with this Court under Section 482 Cr.P.C. cannot be exercised to quash the impugned proceedings. Accordingly, criminal petition is dismissed.

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