

Lemos Cements Ltd. and ors. Vs. Dinesh Kumar Saraf and anr.

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Court : Jharkhand

Decided On : Oct-15-2004

Reported in : 2005(1)BLJR519; [2005(1)JCR154(Jhr)]

Judge : Hari Shankar Prasad, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 120B, 403, 406 and 420

Appeal No. : Cri. Misc. No. 4805 of 1999 (R)

Appellant : Lemos Cements Ltd. and ors.

Respondent : Dinesh Kumar Saraf and anr.

Advocate for Def. : Rajesh Kumar,; Amrita Sarkar and; D.K. Bharti, Advs.

Advocate for Pet/Ap. : R. Kumar,; M. Prabhash, Advs.

Disposition : Application dismissed

Judgement :

Hari Shankar Prasad, J.

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the entire criminal proceeding including the order dated 1.4.1999 taking cognizance of the offence under Sections 403, 406, 420 and 120B of the

Indian Penal Code passed in Complaint Case No. 121 of 1999 by the learned Judicial Magistrate.

2. Facts giving rise to the filing of this application are that opposite party No. 1 Dinesh Kumar Saraf filed a complaint case in the Court of the learned Chief Judicial Magistrate, Ranchi on 23.2.1999 against the petitioners being complaint case No. 121 of 1999 alleging therein that an agreement was executed between the complainant O.P. No. 1 and M/s Lemos Cements Limited on 1.4.1998 by which, the complainant was appointed as liasoning agent of petitioner No. 1 for promoting the sales of cements manufactured by the petitioner No. 1. it was stipulated in the agreement that all payments against the supply will be made by the Account Payee cheques and no cash payment will be accepted. But contrary to the provision of agreement, the petitioners started taking cash advance and payments and thus that part of the agreement was abandoned. Thereafter Ram Swamp Rungta and P.P. Singh, the petitioner Nos. 2 and 3 respectively, came to the office of the complainant on 2.5.1998 and informed that further supplies to the complainant would be made only, if by way of collateral security, two cheques each of Rs. 4.00 lakh are given to the petitioner No. 1 and the petitioner would use the same only in case of default in payment against the supplies made by the petitioners to the complainant/opposite party No. 1. The complainant handed over two post dated cheques dated 2.5.1998 and 2.8.1998 of Rs. 4.00 lakh to the petitioner No. 4 Bajrang Kumar Kedia. On 2.6.1998 the petitioner issued a letter to the complainant that performance of the complainant in lifting the supplies was very poor and as such, the supply to the complainant from Dakra, Lapra, Rai, Dhamdham, Khalari and Bijupara was stopped and all Bills of petitioner No: 1 until 25.6.1998 were settled and paid from 2.5.1998 to 26.6.1998. The complainant had received supplies worth Rs. 38,69,700/- from the petitioner No. 1-firm and paid them Rs. 41,33,010/by Account Payee Cheques. The petitioners after taking account have admitted that they owe Rs. 71,460/- to the complainant prior to their settlement of account on 2.5.1998. Petitioners made it clear to the complainant that from 25.6.1998, the complainant firm would deal with M/s Orbit Vyapar (Pvt) Limited and not with the petitioners and the complainant firm should make all further payments to Orbit Vyapar (Pvt.) Limited, but the complainant through a letter sent under certificate of posting to all the petitioners informing them that the

two cheques issued to the petitioner have now become redundant and, therefore, are being cancelled and as such, petitioners should return the said cheques to the complainant and petitioner Ram Swamp Rungta and P.P. Singh gave assurance that they will return the cheques but they did not return the same and the complainant received the letter dated 12.11.1998 informing him that one of the two cheques dated 2.5.1998 was presented by the petitioners in the bank but the same was dishonoured on the account of insufficient fund and it was made clear that if the amount of Rs. 4.00 lakh is not paid, then a case will be filed against the opposite party No. 1-complainant. Thereafter complainant issued a legal notice to the petitioners asking them to return the said cheques and in case of any use of said cheques, action would be taken against them. Thereafter complainant filed this complaint case.

3. Learned counsel appearing for the petitioners submitted that there was an agreement between the petitioner No. 1 Lemos Cement Limited and the complainant's firm-O.P. No. 1 and as per terms of the agreement, complainant-O.P. No. 1 gave two post dated cheques of Rs. 4.00 lakh each as security bearing Nos. CA/RCH-0239730 dated 2.5.1998 and other bearing No. CA/RCH-0239731 dated 2.8.1998 respectively to the petitioners and while handing over the cheques on 2.5.1998. O.P. No. 1-complainant undertook in writing to honour those cheques in any circumstances and in the event of default in honouring the deposited cheques, the petitioners will be liberty to take action against the complainant, it was further pointed out that as per agreement, the complainant-O.P. No. 1 was to deposit a sum of rupees two lakh and eleven thousand by way of security and since credit allowed to the complainant. was much higher, the two cheques were given to the petitioners by the complainant and complainant's outstanding dues was about Rs. 5.00 lakh.

4. On the other hand, complainant O.P. No. 1 appeared and filed counter affidavit, from perusal of which it appears that a plea has been taken that the petitioner No. 1 Lemos Cements Limited stopped all supplies to the complainant's firm from 21.6.1998 and directed them to deal with another concern namely Orbit Vyapar (Pvt.) Limited and on receipt of said letter dated 26.6.1998, complainant vide his letter dated 26.6.1998 cancelled two cheques which were given as collateral

security and asked the petitioners to return the two cheques forthwith to the complainant as the said cheques were given as collateral security which is admitted by the petitioner in Para-10 of their application under reference. The claim of the petitioners, that they have not received the above letter dated 26.6.1998, is not correct. The petitioners have on 6th July 1998 acknowledged receipts of the complainant's letter dated 26.6.1998 and the above fact totally disapproves claim of the petitioner that they have not received the above letter dated 26.6.1998.

5. It was further pointed out that since performance of the complainant-O.P. No. 1 firm in lifting the supply was very poor, so the complainant was informed by the petitioner about discontinuing of supplies from Dakra, Lapra. Rai. Dhamdham, Khelari and Bijupara and the complainant was further directed to take delivery and supply from the selling agent of the petitioners namely Orbit Vyapar (Pvt.) Ltd. and directed the complainant to deal with the said selling agent, it is further submitted that one of the cheques issued by the complainant as security was presented in the bank for recovery of the outstanding dues, but the same was dishonoured due to insufficient fund and petitioners as per agreement accepted the post dated cheques for the materials already supplied to the complainant and the complainant in writing vide letter dated 2.5.1998 had given an undertaking to honour the cheques in any circumstances, but the cheque was dishonoured. On the other hand, claim of the complainant-O.P. No. 1 that he had through under certificate of posting informed the petitioners that two cheques had been cancelled, is false in view of the fact that such an important letter will not be sent through under certificate of posting but will be sent through registered post and no such letter was ever received by the petitioner. Further, petitioners were neither informed about cancellation of the cheques nor there was any reason to cancel the cheques and in fact, it was never cancelled and, therefore, the petitioners after following paraphermelia filed a complaint case No. 677 of 1998 under Section 406 and 420, IPC and under Section 138 NI Act in the Court of Chief Judicial Magistrate, Ranchi on 11. 12. 1998 and cognizance was taken on 18.1.1999 and this instant case is counter-blast to the case filed by the petitioners against the complainant-O.P. No. 1 in order to save skin from the case filed by the petitioners. The complainant filed complaint case on 23.2.1999 whereas petitioners had filed case on 11.12.1998

and before filing of the case by the complainant O.P. No. 1, cognizance in the case bearing No. 677 of 1998 had been taken on 18.1.1998. It was further pointed out that complainant-O.P. No. 1 has failed to produce any document showing that two cheques were issued only for future supply, rather the fact is that it was issued as a security for the supply which were being made by the petitioners to the complainant and the complainant vide letter dated 2.5.1998 had undertaken to honour the deposited cheques. In that view of the matter, prayer has been made to quash cognizance. It was further pointed out that no case under Sections 403, 406 and 120B of the Indian Penal Code is made out against the petitioners as ingredients constituting those offences are lacking and if the case is allowed to continue, it will be an abuse of the process of the Court. The case is of purely civil nature and no criminal case will lie. Learned counsel for the O.P. No. 1 submitted that the learned Court below has taken cognizance after holding inquiry under Section 202, Cr PC and when the Court found prima facie case against the petitioner, then cognizance in the case was taken. It was also submitted that what is necessary for the learned Court below is to consider the prima facie case and in the instant case, from the evidence of witnesses, it appears that there is prima facie case and that is why the learned Court below has taken cognizance in the case and that does not require any interference by this Court. It was pointed out that it is wrong to say that no information regarding cancellation of cheques was given. In fact such Information regarding cancelling the aforesaid two cheques was given to the petitioner through under certificate of posting and that was received by the petitioner and in another case, letter dated 26.6.1998, through which information was sent to the petitioner cancelling the two cheques, has been marked as exhibit on behalf of the bank authority and this is clear cut proof that information was sent to the petitioner by suppressing the fact, has lodged this case.

6. Learned counsel for the petitioner had pointed out that this is a case of purely civil nature and no ingredients of criminal offence are there and, therefore, no criminal case will lie. In this connection, learned counsel placed reliance upon *Sunil Kumar Bhoobna and Ors. v. State of Bihar and Anr.*, 1998 (2) East Cr Cases 1004 (Pat) wherein it has been held that in a case of civil wrong if ingredients of criminal offence are not present, prosecution is quashed. Further reliance was

placed upon, Narendra Kumar Mishra and Ors. v. State of Bihar and Anr., 1996 (2) East Cr Cases 72 Pat (RB) wherein criminal complaint relating to civil liability was quashed.

7. On the other hand, learned counsel for the O.P. No. 1 submitted that even in a case where petitioner's criminal liability is there and civil wrong is also there, the criminal case cannot be thwarted merely because civil proceedings are also maintainable. In this connection, reliance was placed upon (1999) 8 Supreme Court cases 686 wherein it has been held that criminal prosecution cannot be thwarted merely because civil proceedings are also maintainable. In this case, it was held that even if existence of arbitration clause in the contract for supply of goods between the appellant company and another company is there that was also held not sufficient ground for quashing the complaint filed by the appellant against the supplier company alleging cheating by supplying inferior goods. Reliance was further placed upon (2000) 5 Supreme Court Cases 623 wherein it was held that no prejudice would be caused to the appellant in allowing criminal proceeding to continue against him. In the instant case, the bank manager was prosecuted for a charge of entering into criminal conspiracy with appellant and others and provided overdraft facility to the appellant beyond scope of the manager's powers. It was held that indirect circumstantial evidence may be sufficient for conviction and, therefore, petition filed for quashing the criminal prosecution was rejected. Learned counsel further placed reliance on Rajesh Bajaj v. State NCT of Delhi and Ors., AIR 1999 SC 1216 wherein it has been held that allegation of inducement in a commercial transaction, criminal proceeding cannot be quashed because it is premature a stage for High Court to step in and stall the investigation by declaring that is a commercial transaction simpliciter wherein no semblance of criminal offence is involved. Para-12 of the judgment is quoted hereinbelow (East Cr C Page 952):

'12. The High Court seems to have adopted a strictly hypertechnical approach and sieved the complaint through a culendar of finest gauzes for testing the ingredients under Section 415, IPC. Such an endeavour may be justified during trial, but certainly not during the stage of investigation. At any rate, it is too premature a stage for the High Court to step in and stall the investigation by declaring that it is

a commercial transaction simpliciter wherein no semblance of criminal offence is allowed.'

8. From the discussions made above and after going through the case of the parties, I am of the view that cognizance does not require any interference. In that view of the matter, this quashing application is dismissed.

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