

Devendra and ors. Vs. State of U.P. and anr.

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Court : Supreme Court of India

Decided On : May-06-2009

Reported in : JT2009(8)SC120; 2009(7)SCALE613; (2009)7SCC495; [2009] 7 SCR 872; MANU/SC/0941/2009

Judge : S.B. Sinha and; Mukundakam Sharma, JJ.

Acts : Indian Penal Code (IPC) - Sections 415, 420, 463, 464, 467, 468 and 469; Code of Civil Procedure (CPC) - Sections 11 and 151 - Order 9, Rule 13; Code of Criminal Procedure (CrPC) - Sections 144, 145, 146, 482 and 483

Appeal No. : Criminal Appeal No. 940 of 2009 (Arising out of SLP (Crl.) No. 4998 of 2008)

Appellant : Devendra and ors.

Respondent : State of U.P. and anr.

Disposition : Appeal allowed

Judgement :

S.B. Sinha, J.

1. Leave granted.

2. Whether a pure civil dispute can be a subject matter of a criminal proceeding under Sections 420, 467, 468 and 469 of the Indian Penal Code is the question involved herein.

It arises in the following factual matrix:

3. The parties are co-sharers. The genealogical tree of the family is as under:

SOLHU|4. Solhu had five sons, viz., Girdhar, Roopa GirdharNaraina Gabru Naraina Harikesh Roopa and Gabru,| |(Died issueless) (Died issueless)|GulluHarikesh. Appellant Nos. 1 and 2 are grand sons of Girdhar. Indisputably,Jai Chand|Saharam Nanak Chattar Pal Jai Singh| | |(Died) (Died) (Died)Gabru died issueless. According to the appellants, the share of Naraina inBharatSmt.Phool Singh Om Pal Janter | Sunderthe joint family, who died issueless, devolved upon among the three |Devendra Rajendra Munnisurviving brothers, viz., Girdhar, Roopa and Harikesh. However, according to the respondent No. 2, the share of Naraina devolved upon Rupa and Harikesh.

5. On or about 17.03.1982, Gullu, son of Harikesh filed a suit for partition of his 1/3rd share before the Additional Sub Divisional Officer, Pargana being Suit No. 135 of 1982. By an order dated 24.11.1983, the said suit was decreed, stating:

1. Plaintiff Gullu has < share in disputed land.

2. Share of defendant Devendra and Rajendrath is < in disputed land.

3. Share of defendants Jai Singh, ChatarPal, Nanakchand and Jaichand is = in disputed land.

6. Gullu filed an appeal thereagainst before the Commissioner, Meerut Division. By an order dated 19.03.1984, the said decree was modified opining that 3/8th share in the joint family belonged to sons of Roopa, viz., Jai Singh, Chatar Pal, Nanakchand and Jaichand. Aggrieved by the said order, Jai Singh, son of Roopa, filed an appeal before the Board of Revenue, which by an order dated 21.10.1985 set aside the order dated 19.03.1984 passed by the Additional Commissioner and affirmed the order of the Additional Sub-Divisional Officer dated 24.11.1983.

7. Aggrieved thereby, Gullu filed a Civil Misc. Writ Petition bearing No. 17667 of 1985 before the High Court wherein the appellant Nos. 1 and 2 were not impleaded. The High Court by its order dated 7.11.1985, while issuing notice, stayed the operation of the order dated 21.10.1985 passed by the Board of Revenue.

8. On or about 22.08.1997, a sale deed was executed by the appellant Nos. 1 and 2 in favour of the appellant Nos. 3 and 4.

9. On 24.08.2005, a suit was filed by the respondent No. 2 and others for cancelling the aforesaid deed of sale dated 22.08.1997, which was registered as Civil Suit No. 382 of 2005. The said suit is still pending in the Court of Learned Civil Judge (Junior Div.) Ghaziabad. In the said suit, however, it was averred that Solhu had four sons whereas in the suit No. 135 of 1982, it was stated that Solhu had five sons.

10. Appellants filed an application under Order 9 Rule 13 read with Section 151 of the Code of Civil Procedure before the Court of Deputy District Magistrate (First Class) Ghaziabad praying for dismissal of the suit No. 135 of 1982. An application for impleadment was also filed by the appellants in Civil Misc. Writ Petition No. 17669 of 1985.

11. On or about 21.09.2005, the respondent No. 2 filed an application in the Police Station, Kavinagar, Ghaziabad wherein the City Magistrate by an order dated 17.09.2005 passed an order to hear the complainant and register a First Information Report. Thereafter, the respondent No. 2 filed a First Information Report in the Police Station, Sahni Gate on 21.09.2005.

12. Appellants filed an application for quashing the said First Information Report before the High Court. It was marked as Criminal Misc. Writ Petition No. 10568 of 2005. By an order dated 17.10.2005, the High Court, while dismissing the said application, directed:

5. The investigating officer will make all possible efforts to conclude the investigation within three months of the date on which a certified order of this order

is served upon him.

The investigation was thereafter taken up. A chargesheet was submitted before the learned Chief Judicial Magistrate.

13. The learned Chief Judicial Magistrate by an order dated 20.02.2006 took cognizance of the offence. No reason was assigned in support thereof.

14. Questioning the legality of the said order, the appellants filed another application under Section 482 of the Code of Criminal Procedure, which by reason of the impugned judgment, has been dismissed.

15. Mr. S.R. Singh, learned senior counsel appearing on behalf of the appellants would submit:

(i) The learned Chief Judicial Magistrate having not assigned any reason while taking cognizance of the offence, the High Court should have held that the same suffered from total non-application of mind.

(ii) Having regard to the question as to whether the appellants have one-third or one-fourth share and a civil suit being pending, the order dated 17.10.2005 could not be sustained.

16. Mr. Ratnakar Das, learned senior counsel appearing on behalf of the respondent - State, on the other hand, would submit that having regard to the provisions contained in Section 463 of the Indian Penal Code, an offence for commission of forgery must be held to have been made out.

The learned Counsel appearing on behalf of the complainant also supported the impugned order.

17. The fact that the appellants are co-sharers is not in dispute. The dispute between them is confined to the extent of their respective shares. It must be determined only in a civil suit.

18. If the appellant Nos. 1 and 2 had executed a deed of sale in favour of a third party stating that they have one-third share over the entire properties, the same

would not be binding on the complainant - respondent. If any cause of action arose by reason of a threat of dispossession at the hands of the co-sharer or at the hands of the third-party, as was contended, recourse to legal action could always be taken. Even for that purpose, a proceeding under Sections 144 and 145 of the Code of Criminal Procedure would be maintainable. The decision of a criminal court in a case of this nature would not be binding on the civil court.

19. In *Shanti Kumar Panda v. Shakuntala Devi* : 2004 CriLJ1249 , this Court held:

(3) A decision by a criminal court does not bind the civil court while a decision by the civil court binds the criminal court. An order passed by the Executive Magistrate in proceedings under Sections 145/146 of the Code is an order by a criminal court and that too based on a summary enquiry. The order is entitled to respect and wait before the competent court at the interlocutory stage. At the stage of final adjudication of rights, which would be on the evidence adduced before the court, the order of the Magistrate is only one out of several pieces of evidence.

20. There cannot, however, be any doubt or dispute whatsoever that in a given case a civil suit as also a criminal proceeding would be maintainable. They can run simultaneously. Result in one proceeding would not be binding on the court determining the issue before it in another proceeding.

In *P. Swaroopa Rani v. M. Hari Narayana @ Hari Babu* : AIR 2008 SC1884 , the law was stated, thus:

13. It is, however, well-settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case.

[See also *Seth Ramdayal Jat v. Laxmi Prasad* : 2009(5)SCALE527]

21. It was, however, submitted that by reason of execution of a deed of sale claiming title over the property to which the appellants were not entitled to, the complainant - respondent had been cheated. It is difficult to accept the said

contention. Appellants had not made any representation to the respondent No. 2. No contract and/ or transaction had been entered into by and between the complainant and the appellants.

22. 'Cheating' has been defined in Section 415 of the Indian Penal Code to mean:

Cheating-- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'.

In V.Y. Jose v. State of Gujarat and Anr. : (2009)3SCC78 , this Court opined:

An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:

i) deception of a person either by making a false or misleading representation or by other action or omission;

(ii) fraudulently or dishonestly inducing any person to deliver any property; or

(iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

12. For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out.

It is, therefore, evident that a misrepresentation from the very beginning is a sine qua non for constitution of an offence of cheating, although in some cases, an intention to cheat may develop at a later stage of formation of the contract.

In *Hridaya Ranjan Prasad Verma and Ors. v. State of Bihar and Anr.* : (2000) 4 SCC 168, this Court held:

14. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

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.

[See also *Indian Oil Corporation v. NEPC India Ltd. and Ors.* : AIR 2006 SC2780 , *Veer Prakash Sharma v. Anil Kumar Agarwal and Anr.* : 2007 CriLJ3735 , *V.Y. Jose (supra)* and *Ravindra Kumar Madhanlal Goenka and Anr. v. Rugmini Ram Raghav Spinners and Anr.* : 2009 CriLJ2852]

23. Section 463 of the Indian Penal Code reads as under:

Forgery

Whoever makes any false documents or false electronic record or part of a document or electronic record with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

According to Mr. Das, making of a false document so as to support any claim over title would constitute forgery within the meaning of the said provision and as a document was created for the purpose of showing one- third share in the joint property by the appellants although they were not entitled to therefor, they must be held to have committed an offence.

Making of any false document, in view of the definition of 'forgery' is the sine qua non therefor. What would amount to making of a false document is specified in Section 464 thereof.

What is, therefore, necessary is to execute a document with the intention of causing it to be believed that such document inter alia was made by the authority of a person by whom or by whose authority he knows that it was not made.

24. Appellants are the owners of the property. They have executed a sale deed. Execution of the deed of sale is not denied. If somebody is aggrieved by the false assertions made in the said sale deed, he would be the vendees and not the co-sharers.

Appellants have not been alleged to be guilty of creating any false document.

25. Reliance has been placed by Mr. Das on Trisuns Chemical Industry v. Rajesh Agarwal and Ors. : 1999 CriLJ4325 wherein this Court held that quashing of a complaint should be limited to very extreme situations. There is no dispute with regard to the legal position.

Reliance has also been placed on Kamaladevi Agarwal v. State of W.B. and Ors. : 2001 CriLJ4733 wherein this Court held:

9. Criminal prosecution cannot be thwarted at the initial stage merely because civil proceedings are also pending...

15. We have already noticed that the nature and scope of civil and criminal proceedings and the standard of proof required in both matters is different and distinct. Whereas in civil proceedings the matter can be decided on the basis of probabilities, the criminal case has to be decided by adopting the standard of proof of 'beyond reasonable doubt'...

17...We are also not impressed by the argument that as the civil suit was pending in the High Court, the Magistrate was not justified to proceed with the criminal case either in law or on the basis of propriety. Criminal cases have to be proceeded with in accordance with the procedure as prescribed under the Code of Criminal Procedure and the pendency of a civil action in a different court even though higher in status and authority, cannot be made a basis for quashing of the proceedings.

7. This Court has consistently held that the revisional or inherent powers of quashing the proceedings at the initial stage should be exercised sparingly and only where the allegations made in the complaint or the FIR, even if taken at their face value and accepted in entirety, do not prima facie disclose the commission of an offence. Disputed and controversial facts cannot be made the basis for the exercise of the jurisdiction.

We may, however, notice that the said decision has been considered recently by this Court in *Mahesh Choudhary v. State of Rajasthan and Anr.* : (2009)4SCC66 wherein it was noticed:

Recently in *R. Kalyani v. Janak C. Mehta and Ors.* :2008 (14) SCALE 85, this Court laid down the law in the following terms:

9. Propositions of law which emerge from the said decisions are:

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in

their entirety, disclosed no cognizable offence.

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

10. It is furthermore well known that no hard and fast rule can be laid down. Each case has to be considered on its own merits. The Court, while exercising its inherent jurisdiction, although would not interfere with a genuine complaint keeping in view the purport and object for which the provisions of Sections 482 and 483 of the Code of Criminal Procedure had been introduced by the Parliament but would not hesitate to exercise its jurisdiction in appropriate cases. One of the paramount duties of the Superior Courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint.

16. The charge-sheet, in our opinion, prima facie discloses commission of offences. A fair investigation was carried out by the Investigating Officer. The charge-sheet is a detailed one. If an order of cognizance has been passed relying on or on the basis thereof by the learned Magistrate, in our opinion, no exception thereto can be taken. We, therefore, do not find any legal infirmity in the impugned orders.

26. There is no dispute with regard to the aforementioned propositions of law. However, it is now well-settled that the High Court ordinarily would exercise its jurisdiction under Section 482 of the Code of Criminal Procedure if the allegations made in the First Information Report, even if given face value and taken to be correct in their entirety, do not make out any offence. When the allegations made

in the First Information Report or the evidences collected during investigation do not satisfy the ingredients of an offence, the superior courts would not encourage harassment of a person in a criminal court for nothing.

27. Mr. Das, furthermore, would contend that the order of the High Court dated 17.10.2005 would operate as *res judicata*. With respect, we cannot subscribe to the said view. The principle of *res judicata* has no application in a criminal proceeding. The principles of *res judicata* as adumbrated in Section 11 of the Code of Civil Procedure or the general principles thereof will have no application in a case of this nature.

28. The High Court has refused to quash a First Information Report as a different standard therefor was required to be applied. However, when materials are collected and a chargesheet is filed on the basis whereof the Magistrate takes cognizance of the offence, the same would give rise to a new cause of action. An order taking cognizance of an offence on the basis of a chargesheet filed by the investigating officer and/ or directing issuance of summons on a complaint petition, indisputably, would attract the provisions of Section 482 of the Code of Criminal Procedure if a case has been made out for invocation thereof.

29. Mr. Das submits that a wrong committed on the part of a person may be a civil wrong or a criminal wrong although an act of omission or commission on the part of a person may give rise to both civil action and criminal action. A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out.

30. Furthermore, in a case of this nature where even, according to Mr. Das, no case has been made out for taking cognizance of an offence under Section 420 of the Indian Penal Code, it was obligatory on the part of the learned Chief Judicial Magistrate to apply his mind to the contents of the chargesheet. Such application of mind on his part should have been reflected from the order. [See *State of Karnataka and Anr. v. Pastor P. Raju* : 2006 CriLJ4045 and *Pawan Kumar Sharma v. State of Uttaranchal*, Criminal Appeal No. 1692 of 2007 decided on 10th

December, 2007]

31. We, however, must place on record that we have not entered into the merit of the dispute as the civil suit is pending. The same has to be determined in accordance with law. We would request the court concerned to consider the desirability of the disposing of civil suit as expeditiously as possible.

32. The appeal is allowed with the aforementioned directions.

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