

Harbans Lal Vs. the State

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Court : Delhi

Decided On : Mar-31-1981

Reported in : 1981CriLJ1777; 20(1981)DLT114

Judge : D.B. Khanna, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; [Indian Penal code, 1860](#) - Sections 420

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 297 of 1979

Appellant : Harbans Lal

Respondent : The State

Advocate for Pet/Ap. : G.N. Aggarwal, Adv

Judgement :

D.R. Khanna, J.

(1) The charge framed has been one of cheating under section 420 Indian Penal Code . for having issued a post-dated cheque for Rs. 4,250.00 while effecting purchase of 5 room-coolers when the accused Harbans Lal knew that he did not have sufficient amount in his bank account to meet the payment of the cheque, and, thereforee, it bounced. It was framed on 25.10.1976.

(2) Thereafter the prosecution evidence was completed between the period 26.10.1977 and 6 1.1978. The accused also led defense evidence which too was completed on 2.8.1978. The case was thereafter fixed for hearing of final arguments on a number of dates but the accused or his counsel were not available. On 2.2.1979, however an application was moved from the side of the accused under section 5 of the Code of Criminal Procedure to the effect that since relief on the basis of dishonoured cheque .could be specifically obtained under order 37 of the Code of Civil Procedure, no criminality could be attributed, and, thereforee, the case should be dismissed on this legal ground. The arguments on this application as also on the case, could not be heard and completed as on a number of hearings thereafter the accused or his counsel could not proceed with the case.

(3) The present Criminal Miscellaneous No. 297 of 1979 was moved by the accused before this Court on 29.5.1979 for direction that the trial court should be required to dispose of the aforesaid application dated 2.2.1979 before the final arguments in the case were heard. Notice on this petition was issued to the State. None, however, appeared from its side at the time of the hearing. The petitioners' counsel Mr. G.N. Aggarwal has, thereforee, been heard.

(4) I agree with Mr. Aggarwal that a dispute which is primarily of civil nature should not be made the subject-matter of criminal proceedings, and one of the parties should not be allowed to avail the prosecution agency as a lever to press upon the other to discharge its civil commitment. The ordeal of a criminal trial should not be made to suffer in simple cases of civil disputes by giving them the colour of criminal image when none such exists. This however, does not necessarily imply that a civil wrong may not as well result in criminal consequence.

(5) What is found in the present case is that the grill of entire trial has already been gone through, and the challan submitted in May, 1976 has mostly run its way, and the evidence of both the sides has been completed. Only final arguments have to be heard. This is, thereforee, not a case where interference of the Court is sought for protection against the harassment and inconvenience of a prolong criminal trial. There is, thereforee, nothing to call a halt to the case reaching its finality in its hour

of last legs. The accused can legitimately be heard to assert during the course of the same that no criminal offence was made out, and the proper course for the complainant was to have agitated his civil rights. There is nothing to suppose at this stage that the learned trial court will not grant appropriate relief in this regard to the accused if he is otherwise entitled to the same. However, to allow at this belated stage, the bifurcation of the legal contention and the merits of the controversy may ultimately result in prolongation of the agony, and the view taken one way or the other by the trial court may not later find support in appeal or revision and any remand may entail protection.

(6) I, therefore, do not consider it advisable to interfere at this late stage of the case. The petition is dismissed.

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