

Naresh Kumar Singh and anr. Vs. the State

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Court : Delhi

Decided On : Apr-07-2000

Reported in : 2000IIIAD(Delhi)1044; 2000CriLJ3431; 85(2000)DLT645; 2000(54)DRJ104; 2000RLR300

Judge : Usha Mehra and; S.N. Kapoor, JJ.

Acts : [Constitution of India](#) - Article 226; [Indian Penal Code \(IPC\), 1860](#) - Sections 408; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 320

Appeal No. : Crl. W. No. 1216 of 1999

Appellant : Naresh Kumar Singh and anr.

Respondent : The State

Advocate for Def. : Mr. Rohit Sharma, Adv.

Advocate for Pet/Ap. : Mr. S. Mukherjee, Adv

Judgement :

ORDER

Usha Mehra, J.

1. Joint petition has been filed by the petitioners seeking quashing of the FIR No.416/98 under Section 408 IPC lodged by petitioner No.2 against petitioner

No.1 with Police Station in Chitrajan Park, New Delhi.

2. In order to appreciate the contention raised in the petition, let's acquaint with the facts of the case. The petitioner no.1 was employed as Peon with petitioner No. 2 Hiten Industrial Textile Ltd. (hereinafter called the Company). On 30th, September 1998 petitioner No. 1 was deputed to collect a sum of Rs. 1,80,000/- in cash from Fateh Puri on behalf of the Company. Petitioner No.1 collected the cash amounting to Rs. 1,80,000/- but neither came to the office nor deposited that amount. Petitioner No. 1 was also not found at his residence, therefore, Company suspected he had misappropriated the amount which belonged to the Company. Accordingly, the Company lodged a written report with the Police dated 8th October, 1998 on the basis of which FIR No. 416/98 dated 8th October, 1998 was registered. Petitioner No.1, however, contacted the company and paid back the amount, by way of two bank drafts, cash as well as by adjusting his outstanding amounts. He also tendered resignation. The same was accepted by the Company. After the amount was received from the petitioner No.1 and resignation accepted, the company decided not to press its complaint against the petitioner No.1. Accordingly petitioner No. 1 and the company jointly filed this petition for quashing the said FIR.

3. Notice on the petition was issued to the respondent/State. State filed reply affidavit and took the plea that matter is still under investigation. It is, however, admitted by the State in its reply affidavit that it received communication from the Company on 9th May, 1999 saying that the matter has been amicably settled between petitioners and that the company wanted to withdraw its complaint.

4. On behalf of the Company, Shri Dinesh Chandra, Taxation Advocate, appeared and filed the affidavit supported by Resolution of the Board of Directors of the Company authorising him to make the statement in the Court indicating withdrawal of its complaint and for quashing of the FIR. He stated that petitioners have settled the matter. Company had suspected that petitioner No.1 was trying to misappropriate the money. But when petitioner No.1 explained the reason of his sudden departure from Delhi and that the circumstances were beyond his control, the Company accepted his Explanationn and received back its amount of

Rs.1,80,000/- as well as resignation of the petitioner No.1.

5. The question for consideration is whether in the facts of this case further investigation should be allowed to continue or the FIR be quashed. Admittedly the status of the petitioner No. 1 was only of a peon. Because of the delayed return of the company's money he has already lost his job. Company accepted his Explanationn for the delay of returning the money and, thereforee, accepted his resignation. Thus because of his negligence he lost his job. Now since he has repaid the amount and his accounts have been settled with the company, it would be double jeopardy to force him to face him to face criminal litigation particularly when the Company the complainant is not interested in pursuing the same. Petitioner No.1 returned the amount without any outside intervention or pressure. Company has already accepted his resignation. It would be futile to drag the parties to litigation. There is nothing on record wherefrom it could be inferred that there was any fraudulent intention on the part of petitioner No.1 to mis-appropriate the Company's money. From the conduct of petitioner No. 2 whereby it accepted the resignation of petitioner No. 1 and settling his account clearly indicate that there was no fraudulent intention on the part of petitioner No.1. Thus the assertion made in the FIR do not constitute a cognizable offence. The averments made in the complaint dated 8th October, 1998 on the basis of which FIR was recorded on the face value do not satisfy the ingredients of the offence alleged to have been made.

6. Counsel for the petitioners in order to support his contention that in such circumstances FIR should be quashed relying on the decisions in the case of Punjab National Bank Vs . Surendra Prasad Sinha, : AIR 1993 SC1616 and on the decision in the case of Sunil Kumar v. M/s. Escorts Yamaha Motors Ltd. & Ors. reported in 1999 9 AD (S.C.) 36. In Sunil Kumar's case a complaint was lodged under Sections 420/406/468 IPC. Complainant sought the quashing of the said FIR on the ground that the said FIR was lodged to pre-empt the case under Section 138 of the Negotiable instruments Act. The High Court quashed the FIR. Quashing order was challenged in Supreme Court. Before the Apex Court appellant took the plea that the assertion made in the FIR constituted a cognizable offence, and thereforee, Court had no jurisdiction to quash the same. On the other

hand counsel for respondents/accused took the plea that FIR was lodged with an intention to pre-empt the filing of the criminal complaint against the appellant and pleaded that in case the criminal proceedings are allowed to continue it would result in manifest injustice and further that issuance of process should not be allowed to be an instrument of oppression or needless harassment. Responsibilities and duties on the Magistracy lie in finding out whether the alleged accused would be legally responsible for the offence charged for. The Court at that stage could be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration lest it would be an instrument in the hand of the private complainant as vendetta to harass the person needlessly. The Apex Court upheld the quashing of the FIR and observed that High Court was within its power to quash the FIR otherwise it would amount to abuse of the process of the Court.

7. In the present case also the complaint prima facie does not show fraudulent intentions on the part of petitioner No.1. The circumstances as pointed out by Mr. Dinesh Chandra show that the amount has since been returned by the petitioner No. 1. Petitioner No. 1. returned the amount without any intervention or pressure. Company accepted his Explanationn of delayed return of the amount hence accepted his resignation. thereforee, in the facts of this case keeping the conduct of petitioners in mind, we feel manifest injustice would done in case issuance of process is allowed to continue. This will work as an instrument of needless harassment.

8. Admittedly while exercising the power under Section 482, Cr. P.C. the Court has to exercise more caution and circumspection. But at the same time to say that the High Court is without power although parties have settled their disputes amicably would be to make the provisions of Section 482 of Cr.P.C. nugatory and Ineffective. So long as these powers are exercised to secure the end of justice and to stop the abuse of the process of the Court, it will be within the frame work of the Code of Criminal Procedure. In a dispute of this nature which was based on suspicion and subsequently got settled between the employer and employee would be to advance the course of justice. No useful purpose will be served if the parties who have sorted out their differences and buried their past and have

settled their accounts are allowed to drag on in criminal litigation. It will be against the spirit of the Code especially when parties have settled their differences. Instead of securing justice it would amount to perpetuating injustice to them.

9. Moreover, reading of the complaint show it is of civil nature. Offence under Section 408 IPC is compoundable as per the provisions of Section 320 Cr. P.C. It can be compounded by the owner of the property. In this case company has compounded the offence. thereforee, we find this to be a fit case where the FIR should be quashed. It will not serve any purpose in asking the petitioner No.1 to approach the Metropolitan Magistrate for compounding the offence because that would amount to prolonging the agony of the parties. Moreover, petition was entertained by this Court, notice was issued, reply has already been filed by the State and arguments heard. At this stage it will not be appropriate to direct petitioners to approach the Metropolitan Magistrate for compounding of the offence.

10. Under these circumstances we deem it fit to exercise our inherent power and permit them to compound the offence. Since they have compounded nothing survives in the FIR No. 416/98 registered under Section 408 of IPC, within the jurisdiction of the Police Station Chitranjan Park, New Delhi. Consequently there is no need to continue with the proceedings any further. Order accordingly.