

Ashish Verma Vs. State and anr

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SooperKanoon Citation : sooperkanoon.com/924906

Court : Delhi

Decided On : Dec-13-2011

Appellant : Ashish Verma

Respondent : State and anr

Judgement :

* THE HIGH COURT OF DELHI AT NEW DELHI + Crl.M.C. 4142/2011 and Crl.M.A. 19221/2011 (Exemption) Date of Order: 13.12.2011 ASHISH VERMA
Petitioner Through: Mr. Vijay Pal Sharma, Advocate versus STATE and ANR
Respondent Through: Ms. Fizani Husain, APP for State Counsel for complainant (presence not given) CORAM: HON'BLE MR. JUSTICE M.L. MEHTA M.L. MEHTA, J. (Oral) This is a petition under Section 482 Cr.PC for quashing of FIR No.115/2011 registered at Police Station Rani Bagh under Section 420 IPC and all proceedings emanating therefrom. The learned counsel appearing for the petitioner submitted that in the complaint made to the police, it had opined the dispute to be of a civil nature and further that out of the 40 cheques, 33 were never presented in the bank, whereas eight cheques were given by the respondent to third person namely Surender Garg who has also filed cases against the petitioner under Section 138 NI Act. I have heard learned counsel for the petitioner and learned APP for the State as well as the learned counsel for the complainant/respondent no.2. The allegations against the petitioner are that he lured the complainant to have lucrative business dealings with him and by such representation, he was induced to believe the misrepresentation of the petitioner.

The petitioner had purchased some computer hardware from the complainant on credit basis. Subsequently, the goods Crl.M.C. 4142/2011 *Page 1 of 3* that were purchased were sold by the petitioner on cash basis at cheaper rates. The intention of the petitioner was to cheat and defraud the complainant. When the complainant started demanding the price of the computer hardware goods, the petitioner after long persuasions gave 40 cheques to the complainant knowing fully well that there was no amount of money in his account. The complainant filed complaints in this regard before the learned MM and after examining the complainant and the material available on record, the learned MM passed an order dated 25.4.2011 under Section 156(3) Cr.P.C for registration of an FIR against the petitioner. The fact that there was no amount of money available with the petitioner in his account despite that he had issued as many as 40 cheques in discharge of the liability, would prima facie shows his intention of cheating the complainant. It is also a matter of record that the petitioner instead of appearing before the learned MM which had issued warrants of his arrest on account of his non appearance there, has chosen to approach this Court for quashing of the complaint and the proceedings against him. It is not disputed by the petitioner that the said 40 cheques were given by him to the complainant in discharge of his liability of payment. The said liability was also acknowledged by the petitioner in the writing of 4.9.2009 entered with the complainant. It is also noted that earlier two applications for anticipatory bail have already been dismissed by this Court. From the averments as made in the complaint and the material available on record, it is prima facie seen that the offences under Section 415, 418, 460, 468 and 471 are made out against the petitioner herein. No doubt that the complainant did have a civil remedy available with him against the petitioner, but at the same time it cannot be said that the ingredients of aforesaid sections were totally absent as per the averments made in the complaint. Both criminal as well as civil remedies can be pursued simultaneously as the same are mutually exclusive and clearly co-exist. In this regard, reliance can be placed on *Medchl Chemicals and Pharma (P) Ltd.v Biological E. Ltd. And others* [(2003) 3 SCC 269 wherein the Crl.M.C. 4142/2011 *Page 2 of 3* Supreme Court held thus: "17. On a careful reading of the complaint, in our view, it cannot be said that the complaint does not disclose the commission of an offence. The ingredients of the offences under Sections 415,

418 and 420 cannot be said to be totally absent on the basis of the allegations in the complaint. We, however, hasten to add that whether or not the allegations in the complaint are otherwise correct has to be decided on the basis of the evidence to be led at the trial in the complaint case but simply because of the fact that there is a remedy provided for breach of contract, that does not by itself clothe the court to come to a conclusion that civil remedy is the only remedy available to the appellant herein. Both criminal law and civil law remedy can be pursued in diverse situations. As a matter of fact they are not totally exclusive but clearly, coextensive and essentially differ in their content and consequence. The object of criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect the civil remedies at all for suing the wrongdoer in cases like arson, accidents, etc. It is an anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import". (vide *Pratibha Rani v Suraj Kumar* 9(1998) 8 SCC 745). Having regard to the foregoing facts and circumstances, I do not find any merit in this petition. The same is hereby dismissed. No costs. M.L. MEHTA (JUDGE) DECEMBER 13, 2011 rajdass Crl.M.C. 4142/2011 Page 3 of 3