

Anil Bothra and ors. Vs. State and ors.

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Court : Delhi

Decided On : Jan-22-2013

Judge : G.P. Mittal

Appellant : Anil Bothra and ors.

Respondent : State and ors.

Advocate for Def. : Ms. Rajdipa Behura, Mr. J.S. Bakshi

Advocate for Pet/Ap. : Mr. K.B. Andley, Mr. M.L. Yadav

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

22. d January, 2013 + CRL. M.C. 3978/2011 ANIL BOTHRA & ORS. Through: Petitioners Mr. K.B. Andley, Sr. Advocate with Mr. M.L. Yadav, Advocate versus STATE & ORS. Through: Respondents Ms. Rajdipa Behura, APP for the State along with ASI Ram Gopal Singh, P.S. Mukherjee Nagar. Mr. J.S. Bakshi, Advocate for the Respondent No.2. CORAM: HON'BLE MR. JUSTICE G.P.MITTAL JUDGMENT G. P. MITTAL, J.

(ORAL) 1. The Petitioners invoke the inherent powers of this Court under Section 482 Cr.P.C. for quashing of charge for the offence punishable under Sections 420/34, 406/34 and 506(ii)/34 IPC.

2. A criminal complaint was preferred by the complainant Ashish Begwani alleging that the three Petitioners approached the complainant and allured him to deposit his money with their firm as they had a very flourishing and lucrative business and the complainant would be paid interest @ 24% per annum. The complainant was lured by the representations made by the Petitioners and made a deposit of `3,50,000/- for which certain promissory notes, receipts etc. were executed by the Petitioners. According to the averments made by the complainant when the complainant approached the Petitioners for payment of interest and return of money, initially they made false excuses and later on became unavailable. According to the complainant, the Petitioners conduct created reasonable apprehension about the dishonest intention of the Petitioners and on re-examination the receipt dated 15.12.1998 of `1,00,000/- executed on behalf of the firm Anil Textiles, its proprietor, Petitioner Shanti Lal Bothra had put different signatures than those on the other receipts. In the complaint, it was further stated that the Petitioners extended threat to kidnap and murder the complainant.

3. By an order dated 06.12.2010, the learned Metropolitan Magistrate(MM) found prima facie case against the Petitioners under Sections 406/420/506/34 and framed the charges against the Petitioners.

4. It is urged by the learned Sr. Counsel for the Petitioners that the transaction in question was purely a civil transaction without any criminality involved therein and thus the complaint and the charges framed thereon are liable to be quashed.

5. It is well settled that the powers under Section 482 of the Code are very wide and the very plentitude of the power requires great caution in its exercise. The powers under Section 482 can be exercised only in the interest of justice and to prevent the abuse of the process of the Court or otherwise to secure the ends of justice. While exercising power under Section 482 Cr.P.C., the Court is not to go into the truthness or the falsity of the evidence relied upon by the complainant/prosecution or where the evidence relied on or sought to be produced would result in conviction of the accused or not. In Amit Kapoor v. Ramesh Chander & Anr., (2012) 9 SCC 46.while dealing with the powers of the High Court under Section 482 of the Code in relation to quashing of FIR or discharge of an

accused, the Supreme Court held as under:

16. The abovestated principles clearly show that inherent as well as revisional jurisdiction should be exercised cautiously. If the jurisdiction under Section 482 of the Code in relation to quashing of an FIR is circumscribed by the factum and caution aforenoticed, in that event, the revisional jurisdiction, particularly while dealing with framing of a charge, has to be even more limited.

17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the record of the case and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.

18. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of this Court under Article 136 of the Constitution of India. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by

the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.

6. A perusal of the averments made in the complaint did reveal that there was a representation by the three Petitioners for deposit of the amount. The Petitioners avoidance to meet the complainant and subsequent revelations in variation of signatures of Petitioner No.3 coupled with nonpayment of the interest even once would show the dishonest intention since the very beginning. It has to be borne in mind that the conduct of a person may give rise to civil as well as criminal liability. Simply because a person has a civil remedy may not necessarily mean that he cannot pursue the criminal action. Thus, as far as Sections 420/34 IPC is concerned, this Court would not like to interfere with the framing of the charge on the basis of the material produced by the complainant.

7. But, at the same time, it has to be borne in mind that as per the case of the complainant himself, the amount was given as a loan. So, there was no entrustment for a specific purpose making the Petitioners liable for criminal misappropriation. Similarly, there is not even a whisper as to when the alleged threat of kidnapping or murder was extended and by which of the Petitioners. The framing of the charge itself shows that the entrustment and alleged threat was alleged to be extended sometimes between December, 1998 to January, 2001. This shows that the complaint lacked specific allegation with regard to threat; admittedly there was no allegation of criminal misappropriation. Thus, charges for the offence punishable under Sections 406/34 and 506(ii)/34 IPC are quashed.

8. The Trial Court shall proceed with the trial for the offence punishable under Sections 406/34 IPC.

9. The Petition is allowed to the extent indicated above. (G.P. MITTAL) JUDGE JANUARY 22 2013 pst 01.02.2013 File is taken up today. It is pointed out that there is a typographical mistake in Para 8 of the judgment, wherein instead of Sections 420/34, Sections 406/34 IPC has been mentioned. Now, Para 8 shall be read as under:8. The Trial Court shall proceed with the trial for the offence punishable under Sections 420/34 IPC. (G.P. MITTAL) JUDGE FEBRUARY 01 2013 pst

