

K. Jagadish vs Udaya Kumar G.S. on 10 January, 2020

Author: Uday Umesh Lalit

Bench: Uday Umesh Lalit, Vineet Saran

NON-REP

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.56 OF 2020
[Arising Out of Special Leave Petition (Crl) No.3304 of

K. JAGADISH

...Appella

VERSUS

UDAYA KUMAR G.S. & ANR.

...Responde

JUDGMENT

Uday Umesh Lalit, J.

1. Leave granted.

2. This appeal challenges the final judgment and order dated 04.10.2016 passed by the High Court of Karnataka at Bengaluru in Criminal Petition No.6279 of 2016.

3. The appellant initiated criminal proceedings by filing a complaint submitting inter alia:

(a) That he was abducted on 08.07.2016 and was kept in confinement for the next four days and directly presented before the Sub-Registrar's office on 11.07.2016 and was made to sign on a Sale Deed purporting to convey title in respect of land bearing Old Sy.

No.47, New Sy No.47/2, situated at Kampapura Village, Hessaraghatta Hobli, Bangalore North Taluk, measuring 39.08 guntas.

(b) At the time of execution of the document, no consideration was paid but three post-dated cheques aggregating to Rs.49.38 lakhs were handed over to the appellant and he was threatened that he must encash the cheques.

(c) Under such threat and coercion and since he was under

surveillance, he deposited the first cheque amounting to Rs.15 lakhs on 12.07.2016 which was accordingly encashed and credited to his account.

4. The first of the other two cheques was due on 15.07.2016 which the appellant never deposited and on 17.07.2017 initiated the criminal proceedings submitting that he was coerced to enter into the transaction, as stated above. The second and third cheques were thus never encashed by the appellant and right from the first day the appellant had shown inclination to deposit the sum of Rs.15 lakhs received by way of encashment of the first cheque.

5. The criminal proceedings so launched by the appellant were, however, quashed by the High Court while entertaining a petition filed by the respondent No.1 herein under Section 482 of the Code of Criminal Procedure (for short "Code"). It was observed by the High Court that since there was a Registered Sale Deed and if it was alleged by the appellant that the Sale Deed was not valid for any reason, it was for him to file a Civil Suit and have the appropriate relief granted in his favour in a manner known to law and therefore the criminal proceedings were required to be quashed.

6. In this appeal, we heard Mr. Jawahar Raja, learned counsel for the appellant and Mr. Vidya Sagar, learned counsel for respondent No.1.

7. One of the striking features of the matter is that on the day when the Sale Deed was executed, not a single paisa was actually received by way of consideration. Three post-dated cheques were handed over to the appellant and one of those three cheques was deposited in the bank for encashment on the next date. It is a matter of record that subsequent cheques were not even sought to be encashed and the appellant showed his willingness to deposit even the sum of Rs.15 lakhs received by encashment of first cheque. Further, neither the conveyance deed was preceded by any agreement of sale nor any advertisement was issued by the appellant showing his inclination to dispose of the property in question.

8. It is true that civil proceedings have been subsequently initiated to get the registered Sale Deed set-aside but that has nothing to do with the present criminal proceedings.

9. It is thus well settled that in certain cases the very same set of facts may give rise to remedies in civil as well as in criminal proceedings and even if a civil remedy is availed by a party, he is not precluded from setting in motion the proceedings in criminal law.

10. In *Pratibha Rani v. Suraj Kumar and another*¹ this Court summed up the distinction between the two remedies as under:

"21. There are a large number of cases where criminal law and civil law can run side by side. The two remedies are not mutually exclusive but clearly coextensive and essentially differ in their content and consequence. The object of the 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. It is not at all intelligible to us to take the stand that if the husband dishonestly misappropriates the stridhan property of his wife, though kept in his custody, that would bar prosecution under Section 406 IPC or render the ingredients of Section 405 IPC nugatory or abortive. To say that because the stridhan of a married woman is kept in the custody of her husband, no action against him can be taken as no offence is committed is to override and distort the real intent of the law.”

11. In *Rajesh Bajaj v. State NCT of Delhi and others*² this Court observed:

“10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or 1 (1985) 2 SCC 370 2 (1999) 3 SCC 258 money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions. One of the illustrations set out under Section 415 of the Indian Penal Code [Illustration f] is worthy of notice now:

“(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.”

11. The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not.

The complainant has stated in the body of the complaint that he was induced to believe that the respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not clear. He also mentioned that the respondent after receiving the goods had sold them to others and still he did not pay the money. Such averments would prima facie make out a case for investigation by the authorities.

12. The High Court seems to have adopted a strictly hypertechnical approach and sieved the complaint through a colander of finest gauzes for testing the ingredients under Section 415 IPC. Such an endeavour may be justified during trial, but certainly not during the stage of investigation. At any rate, it is too premature a stage for the High Court to step in and stall the investigation by declaring that it is a commercial transaction simpliciter wherein no semblance of criminal offence is involved.”

12. The aforesaid view was reiterated in *Kamladevi Agarwal v. State of West Bengal and others*³ as under:

“9. Criminal prosecution cannot be thwarted at the initial stage merely because civil proceedings are also pending. After referring to judgments in *State of Haryana v. Bhajan Lal*⁴ and *Rajesh Bajaj v. State NCT of Delhi*² this Court in 3 (2002) 1 SCC 555 4 1992 Supp (1) SCC 335 *Trisuns Chemical Industry v. Rajesh Agarwal*⁵ held: (SCC p.

690, paras 7-8) “7. Time and again this Court has been pointing out that quashing of FIR or a complaint in exercise of the inherent powers of the High Court should be limited to very extreme exceptions (vide *State of Haryana v. Bhajan Lal*⁴ and *Rajesh Bajaj v. State NCT of Delhi*⁵).

8. In the last referred case this Court also pointed out that merely because an act has a civil profile is not sufficient to denude it of its criminal outfit. We quote the following observations: (SCC p. 263, para 10) ‘10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions.” After referring to various decisions it was finally concluded as under:

“17. In view of the preponderance of authorities to the contrary, we are satisfied that the High Court was not justified in quashing the proceedings initiated by the appellant against the respondents. 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.”

13. In *R. Kalyani v. Janak C. Mehta and others*⁶ this Court culled out propositions concerning interference under Section 482 of the Code as under:

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

(1) The High Court ordinarily would not exercise its inherent 5 (1999) 8 SCC 686 6 (2009) 1 SCC 516 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.

14. In the light of the principles as mentioned hereinabove, we have no hesitation in concluding that the High Court erred in quashing the criminal proceedings. We, therefore, allow this appeal, set aside the decision rendered by the High Court and direct that criminal proceedings shall be taken to logical conclusion in accordance with law.

15. We must however state that we shall not be taken to have expressed any opinion on merits of the matter which shall be gone into at every stage in accordance with law.

.....J. (Uday Umesh Lalit)J. (Vineet Saran) New Delhi;

January 10, 2020

ITEM NO.18

COURT NO.6

SECTION II-C

S U P R E M E C O U R T O F
RECORD OF PROCEEDINGS

I N D I A

Petition(s) for Special Leave to Appeal (Crl.)

No(s). 3304/2017

(Arising out of impugned final judgment and order dated 04-10-2016 in CRLP No. 6279/2016 passed by the High Court Of Karnataka At Bengaluru) K. JAGADISH Petitioner(s) VERSUS UDAYA KUMAR G.S. & ANR. Respondent(s) Date : 10-01-2020 This petition was called on for hearing today. CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT HON'BLE MR. JUSTICE VINEET
SARAN For Petitioner(s) Mr. Jawahar Raja, Adv.

Mr. Pukhrambam Ramesh Kumar, AOR Mr. Archit Krishna, Adv.

Mr. Karun Sharma, Adv.

For Respondent(s) Mr. E. C. Vidya Sagar, AOR Mr. H.V.Uday Kumar, Adv.

Mr. V. N. Raghupathy, AOR UPON hearing the counsel the Court made the following
O R D E R Leave granted.

The appeal is allowed in terms of the signed non- reportable judgment.

Pending applications, if any, also stands disposed of.

(INDU MARWAH)

(SUMAN JAIN)

COURT MASTER (SH)

BRANCH OFFICER

(signed non-reportable judgment is placed on the file)