

Prof. R.K. Vijayasathya vs Sudha Seetharam on 15 February, 2019

Equivalent citations: AIR ONLINE 2019 SC 534, (2019) 1 CRILR(RAJ) 220, (2019) 1 CRIMES 118, (2019) 1 RAJ LW 630, (2019) 1 UC 692, (2019) 2 ALLCRILR 841, (2019) 2 PAT LJR 98, (2019) 3 SCALE 563, (2019) 74 OCR 296, 2019 CRILR(SC MAH GUJ) 220, 2019 CRILR(SC&MP) 220

Author: D.Y. Chandrachud

Bench: Hemant Gupta, Dhananjaya Y Chandrachud

REPO

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 238 OF 2019
SPECIAL LEAVE PETITION (CRL) No. 1434 OF 2018

PROF R K VIJAYASARATHY & ANR

.... APP

Versus

SUDHA SEETHARAM & ANR

....RESPO

JUDGMENT

Dr Dhananjaya Y Chandrachud, J 1 Delay condoned.

2 The present appeal arises from the judgment and final order dated 1 January 2016 of the High Court of Karnataka, rejecting the prayer of the appellants to quash the criminal proceedings instituted by the first respondent against them. The High Court stayed the criminal proceedings till the disposal of a pending civil suit instituted by the son of the appellants against the first respondent.

The facts relevant to the present dispute are thus:

Rajiv Vijayasathya Ratnam, (the son of the appellants) and Savitha Seetharam
18:33:16 IST Reason:

(the daughter of the first respondent) were married on 24 May 2002. They moved to the United States of America and a child was born to them in 2009. Savitha was involved in a car accident on 5 February 2010 and proceedings were initiated against her abroad. It is alleged by the appellants that fearing the attachment of their son's property in the proceedings, an amount of Rs 20 lakhs was transferred by Rajiv to the bank account of the first respondent on 17 February 2010. Following a breakdown in marital relations, Savitha and Rajiv have been living separately since October 2010. Multiple rounds of litigation ensued in various courts.

4 Savitha filed a private complaint¹ against her husband Rajiv and the appellants alleging the commission of various offences, including criminal intimidation and a demand for dowry. The High Court of Karnataka quashed the proceeding against appellant No. 2. On 14 February 2013, Rajiv filed a civil suit for recovery of money² against the first respondent for the return of the money allegedly transferred by him into her bank account. The suit is pending. Two divorce petitions instituted by Savita have been dismissed by the family court. 5 On 25 February 2016, the first respondent filed a private complaint³ against the appellants which forms the subject matter of the present appeal. The first respondent alleges that the amount of Rs 20 Lakhs which was transferred by the son of the appellants was returned in cash to the appellants with interest of Rs 24,000 on 1 July 2010. No receipt was allegedly received by the first respondent. It is alleged that the appellants and their son have colluded to siphon the money and that the civil suit filed by the son of the appellants is without merit. 1 PCR No. 3418 of 2012; FIR No. 18 of 2012 registered on 23 February 2012

3 PCR 2116 of 2016 On 11 May 2016, the Additional Metropolitan Magistrate referred the complaint for investigation under Section 156(3) of the Code of Criminal Procedure 1973. On 19 May 2016, a First Information Report⁴ was registered under Sections 405, 406, 415 and 420 read with Section 34 of the Penal Code. Aggrieved by the judgment and final order of the High Court rejecting their petition to quash the FIR, the appellants have filed the present appeal. 6 Mr Nidhesh Gupta, learned Senior Counsel representing the appellants urged the following submissions:

- i) No offence is made out from the averments in the complaint as they stand;
- ii) The first respondent has admitted that the amount which forms the subject matter of the present dispute was received from the son of the appellants;
- iii) The subject matter of the present dispute is of a civil nature and the criminal complaint constitutes an abuse of the process of the court; and

iv) The allegations in the present complaint are similar to the previous complaint filed by the daughter of the first respondent.

7 On the other hand, Ms Pritha Srikumar, learned counsel for the respondents urged the following submissions:

i) The criminal proceeding is not liable to be quashed as the allegations in the complaint disclose the ingredients necessary to constitute an offence under Sections 405, 406, 415 and 420 of the Penal Code;

ii) The appellants have colluded with their son to siphon the money as no receipt was given to the first respondent when the amount of Rs 20,24,000 was transferred; and

iii) The law does not require that the complaint should reproduce verbatim every ingredient of the criminal offence in the complaint.

4 FIR 8 The rival submissions fall for our consideration. 9 The primary question before this Court is whether the High Court has erred in rejecting the plea of the appellants for quashing the criminal proceedings against them. The question at the heart of the present dispute is whether the averments in the complaint disclose the ingredients necessary to constitute an offence under the Penal Code.

10 Section 482 of Code of Criminal Procedure saves the inherent power of the High Court to make orders necessary to secure the ends of justice. In *Indian Oil Corpn. v NEPC India Ltd.*⁵, a two judge Bench of this Court reviewed the precedents on the exercise of jurisdiction under Section 482 of the Code of Criminal Procedure 1973 and formulated guiding principles in the following terms:

“12. ...

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the 5 (2006) 6 SCC 736 ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) ...” 11 The High Court, in the exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, is required to examine whether the averments in the complaint constitute the ingredients necessary for an offence alleged under the Penal Code. If the averments taken on their face do not constitute the ingredients necessary for the offence, the criminal proceedings may be quashed under Section 482. A criminal proceeding can be quashed where the allegations made in the complaint do not disclose the commission of an offence under the Penal Code. The complaint must be examined as a whole, without evaluating the merits of the allegations. Though the law does not require that the complaint reproduce the legal ingredients of the offence verbatim, the complaint must contain the basic facts necessary for making out an offence under the Penal Code. 12 The first respondent has alleged in the complaint that the appellants have committed offences under Sections 405, 406, 415 and 420 read with Section 34 of the Penal Code. It would thus be necessary to examine the ingredients of the above offences and whether the allegations made in the complaint, read on their face, attract those offences under the Penal Code. 13 Section 405 of the Penal Code reads thus:

“Section 405.- Criminal breach of trust.- Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits “criminal breach of trust”.

A careful reading of Section 405 shows that the ingredients of a criminal breach of trust are as follows:

- i) A person should have been entrusted with property, or entrusted with dominion over property;
- ii) That person should dishonestly misappropriate or convert to their own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so; and
- iii) That such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.

Entrustment is an essential ingredient of the offence. A person who dishonestly misappropriates property entrusted to them contrary to the terms of an obligation imposed is liable for a criminal breach of trust and is punished under Section 406 of the Penal Code⁶.

14 Section 415 of the Penal Code reads thus:

“Section 415. Cheating.- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.” The ingredients to constitute an offence of cheating are as follows:

deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.” The ingredients to constitute an offence of cheating are as follows:

- i) there should be fraudulent or dishonest inducement of a person by deceiving him;
- ii) (a) the person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or
(b) the person so induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived; and
- iii) in cases covered by (ii) (b) above, the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.

15 Section 420 of the Penal Code reads thus:

“Section 420. Cheating and dishonestly inducing deliver of property.- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable to being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.” The ingredients to constitute an offence under Section 420 are as follows:

- i) A person must commit the offence of cheating under Section 415; and

ii) The person cheated must be dishonestly induced to

(a) deliver property to any person; or

(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

Cheating is an essential ingredient for an act to constitute an offence under Section 420.

16 A court exercising its inherent jurisdiction must examine if on their face, the averments made in the complaint constitute the ingredients necessary for the offence. The relevant extract of the complaint filed by the first respondent is extracted below:

“The accused person’s son Mr. Rajiv Vijayasathathy Ratnam started to transfer all his monies to different accounts and also transferred some monies belonging to him in the US to his parents accounts in Bangalore, India and he also pleaded his wife i.e. Complainant’s daughter that he also wanted to divert some funds unto Complainant’s account in Bangalore...That Rajiv Vijayasathathy Ratnam diverted some of his monies to Accused No. 1 and 2 and the Complainant... It is further pertinent to mention that the accident occurred on 05.02.2010 and money was transferred on 17.02.2010, the transfer was due to the insecurity at the behest of Mr. Rajiv Vijayasathathy Rathnam, the money was not sought or required by the complainant.

The Complainant daughter Ms. Savitha Seetharam convinced the Complainant to accept transfer of monies which was for the benefit of the Accused person’s son Mr. Rajiv Vijayasathathy Ratnam and to hold it in trust for him and accordingly the son of the accused transferred monies on 17th February 2010 to the Complainant account Rs. 20,00,000/- (Rupees Twenty Lakhs only) ... It is pertinent to mention that the accused person’s son Mr. Rajiv Vijayasathathy Ratnam insisted the Complainant and her husband to pay the said monies by way of cash to the accused person’s including the interest...Mr. Rajiv Vijayasathathy Ratnam sought for the return of the aforesaid monies i.e. of Rs. 20,00,000/-” “...The said monies were paid in cash as per the dicta of the accused person’s son Mr. Rajiv Vijayasathathy Ratnam has filed a false and frivolous suit...” (Emphasis supplied) 17 The condition necessary for an act to constitute an offence under Section 405 of the Penal Code is that the accused was entrusted with some property or has dominion over property. The first respondent has stated that the disputed sum was transferred by the son of the appellants of his own volition to her. The complaint clearly states that the amount was transferred for the benefit of the son of the appellants and that the first respondent was to hold the amount ‘in trust’ for him. The complaint alleges that the money was transferred to the appellants ‘as per the dicta’ of the son of the appellants. There is on the face of the complaint, no entrustment of the appellants with any property. 18 The condition necessary for an act to constitute an offence under Section 415 of the Penal Code is that there was dishonest inducement by the accused. The first respondent admitted that the disputed sum was transferred by the son of the appellants to her bank account on 17 February 2010. She alleges that she transferred the money belonging to the son of the appellants at his behest. No act on part of the appellants has been alleged that discloses an intention to induce the

delivery of any property to the appellants by the first respondent. There is thus nothing on the face of the complaint to indicate that the appellants dishonestly induced the first respondent to deliver any property to them. Cheating is an essential ingredient to an offence under Section 420 of the Penal Code. The ingredient necessary to constitute the offence of cheating is not made out from the face of the complaint and consequently, no offence under Section 420 is made out.

19 In *Binod Kumar v State of Bihar*⁷ certain amounts were due and payable to a contract worker. When the amount due was not paid due to a termination of the contract, the worker filed a criminal case against the appellant for criminal breach of trust. The appellants' petition under Section 482 of the Code of Criminal Procedure for quashing was dismissed by the High Court. A two judge Bench of this Court examined the ingredients of the offence and whether the complaint on its face disclosed the commission of any offence. This Court quashed the criminal proceedings holding thus:

“14. At this stage, we are only concerned with the question whether the averments in the complaint taken at their face value make out the ingredients of criminal offence or not.

18. In the present case, looking at the allegations in the complaint on the face of it, we find that no allegations are made attracting the ingredients of Section 405 IPC. Likewise, there are no allegations as to cheating or the dishonest intention of the appellants in retaining the money in order to have wrongful gain to themselves or causing wrongful loss to the complainant. Excepting the bald allegations that the appellants did not make payment to the second respondent 7 (2014) 10 SCC 663 and that the appellants utilised the amounts either by themselves or for some other work, there is no iota of allegation as to the dishonest intention in misappropriating the property...

19. Even if all the allegations in the complaint taken at the face value are true, in our view, the basic essential ingredients of dishonest misappropriation and cheating are missing. Criminal proceedings are not a shortcut for other remedies. Since no case of criminal breach of trust or dishonest intention of inducement is made out and the essential ingredients of Sections 405/420 IPC are missing, the prosecution of the appellants under Sections 406/120-B IPC, is liable to be quashed.”²⁰ The suit for recovery of money was instituted by the son of the appellants against the first respondent in 2013. The complaint alleging offences under the Penal Code was filed by the first respondent belatedly in 2016. It is clear from the face of the complaint, that no amount was entrusted by the first respondent to either of the appellants and there was no dishonest inducement of the first respondent by the appellants to deliver any property. As stated by the first respondent in the complaint, the money belonged to the son of the appellants. It was transferred by the appellants' son to her on his own volition. The money was alleged to have been returned to the appellants on the instructions of their son. A plain reading of the complaint thus shows that the ingredients necessary for constituting offences under Sections 405, 415 and 420 of the Penal Code are not made out.

21 The respondents have relied on the decision of this Court in *Rajesh Bajaj v State of NCT of Delhi*⁸. In that case, the Delhi High Court had quashed an FIR alleging an offence under Section 420 of the Penal Code on the ground that the 8 (1999) 3 SCC 259 complaint did not disclose the commission of any offence. Allowing the complainant's appeal, this Court held thus:

“9. It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint the court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details...” The decision does not advance the submission of the first respondent. As we have noted above, the complaint in the present case is bereft of the basic facts necessary to constitute the offences alleged under Sections 405, 406, 415 and 420 of the Penal Code.

22 Learned Senior Counsel for the appellant contended that the actions of the first respondent constitute an abuse of process of the court. It is contended that the present dispute is of a civil nature and the first respondent has attempted to cloak it with a criminal flavor to harass the aged appellants. It is also contended that there is an undue delay in filing the complaint from which the present appeal arises, and this demonstrates the mala fide intention of the first respondent in filing the complaint against the appellants. Learned Senior Counsel for the appellants relied on the decision of this Court in *State of Karnataka v L Muniswamy*⁹. In that case, the prosecution alleged that eight of the accused had 9 (1977) 2 SCC 699 conspired to kill the complainant. The Karnataka High Court quashed the proceedings on the ground that no sufficient ground was made out against the accused. A three judge Bench of this Court dismissed the appeal by the State with the following observations:

“7...In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice.” 23 The jurisdiction under Section 482 of the Code of Criminal Procedure has to be exercised with care. In the exercise of its jurisdiction, a High Court can examine whether a matter which is essentially of a civil

nature has been given a cloak of a criminal offence. Where the ingredients required to constitute a criminal offence are not made out from a bare reading of the complaint, the continuation of the criminal proceeding will constitute an abuse of the process of the court.

24 In the present case, the son of the appellants has instituted a civil suit for the recovery of money against the first respondent. The suit is pending. The first respondent has filed the complaint against the appellants six years after the date of the alleged transaction and nearly three years from the filing of the suit. The averments in the complaint, read on its face, do not disclose the ingredients necessary to constitute offences under the Penal Code. An attempt has been made by the first respondent to cloak a civil dispute with a criminal nature despite the absence of the ingredients necessary to constitute a criminal offence. The complaint filed by the first respondent against the appellants constitutes an abuse of process of court and is liable to be quashed.

25 For the above reasons, the appeal is allowed. The judgment of the High Court is set aside and the criminal proceedings arising from PCR 2116 of 2016 instituted by the first respondent against the appellants are quashed. We however clarify, that no opinion has been expressed on the merits of the pending civil suit filed by the son of the appellants for the recovery of money. The pending suit shall be disposed of in accordance with the law.

.....J. [DR DHANANJAYA Y CHANDRACHUD]
.....J. [HEMANT GUPTA] New Delhi;

February 15, 2019.