

Suryalakshmi Cotton Mills Ltd vs Rajvir Industries Ltd. & Ors on 9 January, 2008

Equivalent citations: AIR 2008 SUPREME COURT 1683, 2008 AIR SCW 1956, 2008 (2) AIR JHAR R 805, 2008 (3) SRJ 231, (2008) 63 ALLINDCAS 146 (SC), 2009 (3) SCC(CRI) 824, 2008 CRILR(SC&MP) 415, 2008 (63) ALLINDCAS 146, 2008 CRILR(SC MAH GUJ) 415, 2008 (3) CRI RJ 458, 2008 ALL MR(CRI) 1422, 2008 (13) SCC 678, 2008 (1) CALCRILR 870, 2008 (1) SCALE 331, (2008) 1 CRILR(RAJ) 415, (2008) 1 MAD LJ(CRI) 721, (2008) 1 RECCRIR 652, (2008) 1 CURCRIR 93, (2008) 1 SCALE 331, (2008) 1 UC 453, (2008) 1 DLT(CRL) 329, (2008) 1 NIJ 412, (2008) 61 ALLCRIC 23, (2008) 1 CHANDCRIC 205, (2008) 1 ALLCRILR 819, 2008 (2) ANDHLT(CRI) 152 SC, (2008) 2 BANKCLR 320, 2008 (1) ALD(CRL) 669

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Bench: S.B. Sinha, Harjit Singh Bedi

CASE NO. :

Appeal (crl.) 62 of 2008

PETITIONER:

Suryalakshmi Cotton Mills Ltd.

RESPONDENT:

Rajvir Industries Ltd. & Ors.

DATE OF JUDGMENT: 09/01/2008

BENCH:

S.B. Sinha & Harjit Singh Bedi

JUDGMENT:

J U D G M E N T [Arising out of SLP(Crl.) No. 2920 of 2007] S.B. SINHA, J :

1. Leave granted.

2. Private parties herein were the Directors of the appellant Company.

They were closely related. It had two units. One was known as Mahaboobnagar Unit and the second was a sales depot at Tirupur. The Managing Director of the Company was Shri L.N. Agarwal. He was stationed at Hyderabad. Allegedly, pursuant to negotiations which took place between him on the

one hand, and Shri U.K. Agarwal and Ritesh Kumar Agarwal (Accused Nos. 2 and 3) on the other, representations were made that as process for obtaining cheques from the Managing Director had been taking considerable time, it would be advisable that signed blank cheques be left in the hands of accused Nos. 2 and 3 for efficient management of Mahaboobnagar Unit and Tirupur Sales Depot.

3. Relying on or on the basis of the said representation, signed blank cheques were handed over to them during the period 2000 A.D. to 2004 A.D. Disputes and differences arose between the parties in 2005 A.D.

4. A Company Petition was filed before the Andhra Pradesh High Court. A Scheme for arrangement submitted by the parties was approved, pursuant where to Mahaboobnagar unit was transferred in favour of Rajvir Industries Limited (Accused No. 1) and Mahaboobnagar Unit to Shri L.N. Agarwal. For the said purpose, the units were demerged and vested in the respondent No. 1. Allegedly, the said Scheme was fully implemented and the respondent Nos. 2 and 3 by a letter dated 22.4.2005 stated out that they would not make demand of any payment in respect of the said Mahaboobnagar Unit.

5. L.N. Agarwal allegedly made oral requests to the accused Nos. 2 and 3 to return the unused signed blank cheques, in his capacity as the Secretary of the appellant Company.

6. However, allegedly on the premise that Respondent Nos. 2 and 3 herein entered into a conspiracy to misuse the said cheques; an informal complaint was filed on 20.10.2006 and another complaint was filed on 30.10.2006 with Mahankali Police Station. An endorsement was made therein that there was no role for the police to play at that stage.

7. Respondents herein thereafter issued a letter dated 1.10.2004 as also a telegram dated 20.10.2004 stating that as the institutional liability of the respondent No. 1 had crossed 13.25 crores, with a view to repay a part of the said amount, a cheque of a sum of Rs. 6.28 crores had been drawn by the appellant in favour of the first respondent being the amount of difference which had been deposited for collection. In the telegram, it was stated; I HEREBY INFORM YOU THAT AFTER THE DEMERGER M/S. SURYALAKSHMI COTTON MILLS LIMITED AND M/S. RAJVIR INDUSTRIES LIMITED THE SHARES WERE TRANSFERRED FROM MY SIDE AND YOUR SIDE FOR THE DIFFERENCE OF SHARE TRANSFER AMOUNTS AND AS PER OUR PERSONAL UNDERSTANDING TO CLEAR THE DIFFERENCE AMOUNT OF MY FAMILY HOLDING SHARES YOU HAVE ISSUED TWO CHEQUES ONE FOR RS. 3,39,12,086.00 DATED 31.07.2006 VIDE CHEQUE BEARING NO. 444842 AND ANOTHER CHEQUES BEARING NO.

444841 DATED 31.07.2006 FOR AN AMOUNT OF RS. 3,80,77,646-00, BOTH THE CHEQUES WERE DRAWN ON ANDHRA BANK, TIRUPUR BRANCH, TAMILNADU. THEREAFTER YOU HAVE REQUESTED ME ORALLY TO PRESENT THE SAME IN THE 3RD WEEK OF OCTOBER, 2006. AS PER YOUR INSTRUCTIONS I HAVE DEPOSITED THE SAID CHEQUE FOR COLLECTION WITH OUR BANK. PLEASE HONOUR THE SAME.

8. A First Information Report thereafter was lodged by the appellant before the Station House Officer of the Police Station Mahankali, Hyderabad alleging inter alia that the blank signed cheques issued in the year 2001-2002 had been fraudulently used.

9. F.I.R. thereafter was sought to be lodged.

10. On a purported refusal by the Police Station to register a complaint on the basis thereof, the appellant filed a complaint petition in the Court of XI Additional Chief Metropolitan Magistrate, Secunderabad. Pursuant to the direction issued by the learned Magistrate, a First Information Report was lodged by the officer-in-charge of the Mahankali Police Station.

11. Legal notices were, however, issued by the first respondent upon the appellant with regard to dishonour of three cheques bearing No. 444840 dated 31.7.2006 of Rs. 6.28 crores, Cheque No. 444841 dated 31.7.2006 of a sum of Rs. 3,80,77,646/- and Cheque No. 444842 dated 31.07.2006 of an amount of Rs. 3,39,12,086/-.

12. On or about 13.11.2006, an application was filed before the High Court for quashing of the said First Information Report. Admittedly, on 6.12.2006, a complaint petition was filed by the first respondent herein purported to be under Section 138 and 141 of the Negotiable Instruments Act against the appellant and also its Chairman and Managing Director. By reason of the impugned judgment, the said quashing application filed by the respondents herein has been allowed.

13. A learned Single judge of the High Court, in his judgment, not only considered the ingredients for the offences under Section 406, 420, 460 of the Indian Penal Code but also the background facts leaving to the dispute between the parties so as to enable it to ascertain whether the ingredients thereof stood satisfied or not. It was held that the said complaint petition was filed on the basis whereof the First Information Report was directed to be lodged only to pre-empt the accused from filing a complaint petition under Section 138 of the Negotiable Instruments Act stating :

..Therefore, even if the allegations in the complaint are taken as true and correct, at this stage, they do not make out prima facie case of cheating or criminal breach of trust or forgery. Therefore, continuation of proceedings against the present petitioner is nothing but abuse of process of Court.

14. Mr. Rakesh Dwivedi, learned senior counsel appearing on behalf of the appellant would submit that the High Court committed a manifest error in quashing the First Information Report at such an early stage and acted in total disregard of the parameters of its jurisdiction under Section 482 of the Code of Criminal Procedure. Taking us through various documents including the notices served by the parties against each other and the Scheme of Demerger, it was urged that the purpose for which the cheques are said to have been issued being not supported by any document or the deed of demerger, it was pre-mature on the part of the High Court to quash the First Information Report. It was contended that it is not the law that for the purpose of constitution of an offence under Section 420 of the Indian Penal Code, subsequent conduct for the purpose of ascertaining intention of the accused in regard to making of a false representation to the complainant cannot be taken into

consideration, more particularly in a case, where blank cheques have been issued on good faith and on a representation made by the accused. After the Scheme of Demerger was framed in March, 2001, it was the duty of the respondent to return the cheques which were properties, within the meaning of the provisions of Section 405 of the Indian Penal Code, and then, it was contended, a case of Criminal Procedure of _____ order been made out. Embezzlement and/or conversion thereof for the purposes other than for which the same had been entrusted would also go to show that the respondents have committed a criminal breach of trust.

The theory that the accused must have had a bad intention at the time of the very inception of the contract would apply only to contractual liabilities and not where some valuable documents are entrusted. In any event, the said principle will have no application in relation to offences made under Section 406 and 463 of the Indian Penal Code.

15. Mr. C.A. Sundaram, learned senior counsel appearing on behalf of the respondent, on the other hand, submitted;

(i) The question as to whether the First Information Report in the facts and circumstances of this case should be treated to be an abuse of process of Court or not should be determined having regard to public policy involved namely as to whether a defaulter who has failed to make lawful payment of an amount and thus liable to be prosecuted in respect whereof the cheque had been issued by it can pre-empt filing of a complaint petition which would be his defence in the case filed against him under Section 138 of the Negotiable Instruments Act.

(ii) Prosecution under Section 420 of the Indian Penal Code would lie only in the event, an allegation is made in regard to the existence of an intention on the part of the accused from the very inception of the contract and not thereafter.

(iii) In the counter affidavit filed before the High Court, it has been alleged that the employees of the respondent No. 1 Company had filled up the blank cheque which is contradictory to and inconsistent with the story made out in the complaint petition that it was respondent Nos. 2 and 3 who did so and, therefore, no charge can be framed for commission of forgery.

(iv) Keeping in view the fact that the cheques were purported to be issued in the years 2000 to 2004 when allegedly the parties were maintaining excellent relationship and the dispute between them having been arisen only in September, 2004, it is wholly improbable that the memorandum of understanding would not contain a clause in regard to handing over of the blank cheques and/or no demand shall be made to return the same.

16. The parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal Procedure is now well settled. Although it is of wide amplitude, a great deal of caution is also required in its exercise. What is required is application of well known legal principles involved in the matter.

17. It is neither feasible nor practicable to lay down exhaustively as to on what ground the jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure should be exercised, but some attempts have been made in that behalf in some of the decisions of this Court as for example State of Haryana Vs. Bhajan Lal [1992 Supp (1) SCC 335], Janata Dal Vs. H.S. Chowdhary and Others [(1992) 4 SCC 305], Rupan Deol Bajaj (Mrs.) and Another Vs. Kanwar Pal Singh Gill and Another [(1995) 6 SCC 194], Indian Oil Corp. Vs. NEPC India Ltd. and Others [(2006) 6 SCC 736]. In Bhajan Lal (supra), this Court held;

(1) Where the allegations made in the first information report or 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 a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code. (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused. (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code. (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. We may also place on record that criminal proceedings should not be encouraged when it is found to be mala fide or otherwise abuse of the process of court.

In All Cargo Movers (I) Pvt. Ltd. & Ors. v. Dhanesh Badarmal Jain & Anr. [2007 (12) SCALE 391], it was opined :

We are of the opinion that the allegations made in the complaint petition, even if given face value and taken to be correct in its entirety, do not disclose an offence. For the said purpose, This Court may not only take into consideration the admitted facts but it is also permissible to look into the pleadings of the plaintiff-respondent No. 1 in the suit. No allegation whatsoever was made against the appellants herein in the notice. What was contended was negligence and/or breach of contract on the part of

the carriers and their agent. Breach of contract simplicitor does not constitute an offence. For the said purpose, allegations in the complaint petition must disclose the necessary ingredients therefor. Where a civil suit is pending and the complaint petition has been filed one year after filing of the civil suit, we may for the purpose of finding out as to whether the said allegations are prima facie cannot notice the correspondences exchanged by the parties and other admitted documents. It is one thing to say that the Court at this juncture would not consider the defence of the accused but it is another thing to say that for exercising the inherent jurisdiction of this Court, it is impermissible also to look to the admitted documents. Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the Court. Superior Courts while exercising this power should also strive to serve the ends of justice.

18. Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of the said jurisdiction. Yet again, the High Court at that stage would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the criminal proceedings would amount to an abuse of the process of Court or that the complaint petition is filed for causing mere harassment to the accused. While we are not oblivious of the fact that although a large number of disputes should ordinarily be determined only by the civil courts, but criminal cases are filed only for achieving the ultimate goal namely to force the accused to pay the amount due to the complainant immediately. The Courts on the one hand should not encourage such a practice; but, on the other, cannot also travel beyond its jurisdiction to interfere with the proceeding which is otherwise genuine. The Courts cannot also lose sight of the fact that in certain matters, both civil proceedings and criminal proceedings would be maintainable.

19. The High Court, however, in this case went into various facts including the backdrop of dispute between the parties. It proceeded on the basis that in view of the demerger scheme, the conduct of the appellant in keeping mum for a long time for getting the unused blank cheques returned is tell tale. It entered into the question as to whether the complaint petition was filed only with a view to pre-empt the respondents herein to take recourse to the remedies available to them to initiate a criminal proceeding under Section 138 of the Negotiable Instruments Act or the complaint petition in effect and substance should be permitted to be raised only by way of defence. What has failed to attract the attention of the High Court was that maintainability of a criminal proceeding like the present one should not be determined only upon raising a presumption in terms of Section 139 of the Negotiable Instruments Act, it being a rebuttable one.

20. The High Court, in our opinion, should have further taken into consideration the fact that in the event, the defence of the appellant is accepted in the criminal case, it will have no remedy to prosecute the respondents again. To contend that the acquittal of the appellant would have been the springboard for filing a complaint will not be correct. Nobody knows when the criminal case would come to an end. In a given situation, even it may become barred by limitation. It must also be borne in mind that commercial expediencies may lead a person to issue blank cheques. The course of

action in the aforementioned situation, in our opinion, which could be taken recourse to was to make an attempt to find out as to whether the complaint petition even if given face value and taken to be correct in its entirety constitutes an offence under Section 420, 406, 463 of the Indian Penal Code or not.

21. Ingredients of cheating are;

(i) deception of a person either by making a false or misleading representation or by other action or omission; and

(ii) fraudulent or dishonest inducement of that person to either deliver any property to any person or to consent to the retention thereof by any person or to intentionally induce that person 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.

A bare perusal of Section 415 read with Section 420 of the Indian Penal Code would clearly lead to the conclusion that fraudulent or dishonest inducement on the part of the accused must be at the inception and not at a subsequent stage.

22. For the said purpose, we may only notice that blank cheques were handed over to the accused during the period 2000-2004 for use thereof for business purposes till the dispute between the parties admittedly arose much thereafter i.e. in 2005.

In *B. Suresh Yadav Vs. Sharifa Bee* [2007 (12) SCALE 364], it was held;

3. For the purpose of establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. In a case of this nature, it is permissible in law to consider the stand taken by a party in a pending civil litigation. We do not, however, mean to lay down a law that the liability of a person cannot be both civil and criminal at the same time. But when a stand has been taken in a complaint petition which is contrary to or inconsistent with the stand taken by him in a civil suit, it assumes significance. Had the fact as purported to have been represented before us that the appellant herein got the said two rooms demolished and concealed the said fact at the time of execution of the deed of sale, the matter might have been different. As the deed of sale was executed on 30.9.2005 and the purported demolition took place on 29.9.2005, it was expected that the complainant/first respondent would come out with her real grievance in the written statement filed by her in the aforementioned suit. She, for reasons best known to her, did not choose to do so. No case for proceeding against the respondent under Section 420 of the Indian Penal Code is therefore, made out.

23. Filling up of the blanks in a cheque by itself would not amount to forgery. Whereas in the complaint petition, allegations have been made that it was respondent Nos. 2 and 3 who had entered into a conspiracy to commit the said offence as indicated hereinbefore, in the counter affidavit, it

has been alleged that the employees of the Respondent Company did so.

Although, Section 120B of the Code has been added, there does not exist any averment that the respondent Nos. 2 and 3 have entered into any conspiracy with their employees. No case for proceeding with the offence of forgery against the respondents has, thus, also been made out.

24. However, a case for proceeding against the respondents under Section 406 has, in our opinion, been made out. A cheque being a property, the same was entrusted to the respondents. If the said property has been misappropriated or has been used for a purpose for which the same had not been handed over, a case under Section 406 may be found to have been made out. It may be true that even in a proceeding under Section 138 of the Negotiable Instruments Act, the appellant could raise a defence that the cheques were not meant to be used towards discharge of a lawful liability or a debt, but the same by itself in our opinion would not mean that in an appropriate case, a complaint petition cannot be allowed to be filed.

We cannot also lose sight of the fact that the respondents were keeping watch over the matter. As soon as a first information report was lodged, a notice was immediately sent. A quashing application was filed within a few days for the lodging of the first information report. The investigation was not allowed to take place at all. Whereas it would have been the duty of the Court to uphold and/or to protect the personal liberty of an accused in a case; but where the first information report prima facie discloses commission of a cognizable offence, the High Court, ordinarily, shall not have interfered with investigation thereof by the statutory authority. We, therefore, allow the appeal in part.

25. The investigation by the Officer-in-Charge of Mahankali Police Station may now be confined to the charge under Section 406 of the Indian Penal Code.

26. We hope and trust that the investigation shall be completed and a final report shall be filed before the appropriate court at an early date. In the event, any chargesheet is filed and the cognizance of the offence is taken, both the cases should be tried by the same Court, one after the other, and judgment in both the cases must be delivered at the same time.

27. This appeal is allowed to the aforementioned extent and with the aforementioned observations and directions.