

V. Ravi Kumar vs The State Rep. By Inspector Of Police on 14 December, 2018

Author: Indira Banerjee

Bench: Indira Banerjee, R. Banumathi

REPORTABLE

THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 111 OF 2011

V. Ravi Kumar

...Appellant

VERSUS

State, Rep. by Inspector of Police,
District Crime Branch, Salem,
Tamil Nadu & Ors.

...Respondents

JUDGMENT

Indira Banerjee, J.

This appeal is against the final judgment and order dated 20-03-2006 passed by the High Court of Judicature at Madras, inter alia, allowing Criminal Original Petition No.27039 of 2005 filed under Section 482 Cr.P.C. and quashing the criminal proceedings being Crime No.54 of 2005 against the petitioners before the High Court and also against the first accused company, which was not party before the High Court.

2. The appellant, Shri Ravi Kumar carries on business of cotton ginning and conversion of cotton into yarn at Salem, Tamil Nadu as proprietor of “SARAVANA YARN TRADERS”.

3. The appellant as proprietor of “SARAVANA YARN TRADERS” entered into transactions with Sri. Rajendran Mills Ltd., Salem (hereinafter referred to as “the Mill”). The respondent No.2/accused No.2 is the Managing Director of the Mill and the respondent No.3/accused No.3 Sri Sundaram is its

Chairman, respondent No. 4/accused No.4 Sri Sundar is the son of the Managing Director being the respondent No.2/accused No.2 and is in charge of the affairs of the Mill. The respondents/ accused Nos.5 to 13 are also responsible for administering the Mill.

4. In December 2001, the Mill requested the appellant to supply cotton lint to the Mill for conversion of the same into yarn. The appellant and the respondents entered into transactions in 2001. Later, in January 2002, a Memorandum of Understanding in writing was executed between the appellant and the Mill.

5. The appellant has alleged that pursuant to the Memorandum of Understanding, the appellant supplied 1,03,920 Kgs of cotton lint to the Mill for conversion into yarn. The appellant has further alleged that respondent No.2/accused No.2 Shri Chokalingam had, from out of the said quantity of cotton lint, purchased lint weighing about 47,164 kgs of the value of Rs.26,93,289/- on credit basis and the balance which was worth Rs.35,26,561.69 had been entrusted to the Mill for conversion into yarn.

6. According to the appellant, the Mill did not take any step to convert the lint into yarn in spite of repeated requests. The appellant later came to know that all the accused had connived with each other and in criminal breach of trust sold the entire cotton lint weighing about 1,08,920/- kgs of the value of about Rs.62,19,850.50 and appropriated the sale proceeds thereof.

7. On 20-05-2004, the appellant lodged a complaint at the Edapadi Police Station, Salem district against respondents for offences under Sections 420 and 409 read with Section 34 of the Indian Penal Code.

8. As the Police failed to register any case, the appellant invoked Section 156(3) of the Cr.P.C. to seek orders of the learned Judicial Magistrate II, Sankagiri for registration of the complaint.

9. Even after orders under Section 156(3) of the Cr.P.C., the Police did not register any complaint. Thereafter, the appellant filed a petition being Crl. O.P. No.7715 of 2005 praying for direction on the Inspector of Police to register a case on the basis of the complaint made by the appellant.

10. It is stated that since the amount involved exceeded the limit for invocation of the pecuniary jurisdiction of the local Police Station, the Superintendent of Police transferred the investigation to the District Crime Branch and the same was registered as Crime No.54/2005 under Sections 420, 409 and 34 IPC on 22-06-2005.

11. According to the appellant, since the police did not conduct the investigation properly, the appellant was constrained to file Crl. O.P. No.23354 of 2005 in the High Court of Madras for direction on the Investigation Officer of Crime No.54 of 2005 to arrest the accused mentioned in the FIR, complete the investigation and file a final report.

12. By an order dated 29-08-2005, the High Court disposed of the criminal original petition by directing the respondent to file a final Report within three months from the date of receipt of a copy

of the said order.

13. It is pleaded that as the Police could not complete the investigation within three months as directed, it filed Criminal Miscellaneous Petition being Crl.M.P. No.9149 of 2005 in Crl. O.P. No.23354 of 2005 for extension of time, by a further period of six months, for completion of investigation in Crime No.54 of 2005.

14. On 22-09-2005 respondent Nos.2 to 13 filed Crl. O.P. 27039 of 2005 under Section 482 Cr.P.C. in the High Court for quashing FIR No. 54 of 2005 alleging that the allegations in the complaint did not prima facie make out the offences for which the respondents had been charged.

15. The respondent State filed its counter affidavit to the aforesaid application under Section 482 Cr.P.C. and prayed that the said application be dismissed. In the affidavit in opposition, it was contended that investigation revealed that the accused persons had forged documents using blank letter head, papers and cheque leaves of the appellant given to him before entering into business transactions. As such ingredients of Sections 468, 471, 420, 409 and 120 (b) IPC were to be found. Furthermore, there was evidence that one of the accused mentioned in the FIR namely Prasanna Chakravarthy had deposed about the forged letter prepared by him on the instruction of Kasi Viswanathan, Meiyappan, Rajarathinam, and Jayapal.

16. On 18-10-2005, the appellant, as a de facto complainant, filed an application numbered Crl.M.P. No.8370 of 2005 for intervention in Crl. O. P. No.27039/2005.

17. By an order dated 24-11-2005, the High Court granted the police six months' time for completing the investigation in FIR No.54 of 2005 and for filing final report therein.

18. On 30-11-2005, the High Court referred the matter to the Conciliation and Mediation Centre for resolution of the dispute between the parties, in the absence of the appellant, being the complainant.

19. The appellant opposed the conciliation proceedings contending that the offences were non-compoundable whereupon the case was again referred back to the High Court for decision on merits.

20. By the impugned order dated 20-03-2006, the High Court allowed the application under Section 482 Cr.P.C. observing that the complainant had, without assigning any reason, withdrawn the first complaint and launched prosecution by filing a fresh complaint; that the complaint arose out of a commercial transaction; and that the complainant would have to approach the Civil Court for recovering dues if at all arising out of commercial transaction.

21. The short question in this appeal is whether the High Court should have quashed the criminal proceedings being Crime No.54 of 2005 on the grounds that the appellant had withdrawn an earlier complaint without assigning reasons; the transactions being commercial in nature, the ingredients of an offence under the Sections referred to above were absent; and that the remedy of the appellant lay in filing a civil suit.

22. There is no provision in the Criminal Procedure Code or any other statute which debars a complainant from making a second complaint on the same allegations, when the first complaint did not lead to conviction, acquittal or discharge. In *Shiv Shankar Singh v. State of Bihar and Anr.*¹, this Court held:

“18. Thus, it is evident that the law does not prohibit filing or entertaining of the second complaint even on the same facts provided the earlier complaint has been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint or the complete facts could not be placed before the court or where the complainant came to know certain facts after disposal of the first complaint which could have tilted the balance in his favour. However, the second complaint would not be maintainable wherein the earlier complaint has been disposed of on full consideration of the case of the complainant on merit.”

23. As held by this Court in *Jatinder Singh and Others v. Ranjit Kaur*², it is only when a complaint is dismissed on merits after an inquiry, that a second complaint cannot be made on the same facts. Maybe, as contended by the respondents, the first complaint was withdrawn without assigning any reason. However, that in itself is no ground to quash a second complaint. 1 (2012) 1 SCC 130 2 2001 (2) SCC 570

24. In *Pramatha Nath Talukdar and Anr. v. Saroj Ranjan Sarkar*³, this Court dealt with the question whether the second complaint by the respondent should have been entertained when the previous complaint had been withdrawn. The application under Section 482 Cr.P.C. was allowed and the complaint dismissed by the majority Judges observing that an order of dismissal under Section 203 Cr.P.C. was no bar to the entertainment of second complaint on the same facts, but it could be entertained only in exceptional circumstances, for example, where the previous order was passed on an incomplete record or a misunderstanding of the nature of the complaint or the order passed was manifestly absurd, unjust or foolish or where there were new facts, which could not, with reasonable diligence, have been brought on record in previous proceedings.

25. In *Poonam Chand Jain and Anr. v. Fazru*⁴, this Court relied upon its earlier decision in *Pramatha Nath* (supra) and held that an order of dismissal of a complaint was no bar to the entertainment of second complaint on 3 AIR 1962 SC 876 4 (2010) 2 SCC 631 the same facts, but it could be entertained only in exceptional circumstances, such as, where the previous order was passed on incomplete record, or on a misunderstanding of the nature of the complaint or was manifestly absurd, unjust or foolish or where there were new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings.

26. In *Poonam Chand Jain* (supra) this Court further held that:-

“...this question again came up for consideration before this Court in *Jatinder Singh v. Ranjit Kaur*. There also this Court by relying on the principle in *Pramatha Nath* held that there is no provisions in the Code or in any other statute which debars a complainant from filing a second complaint on the same allegation as in the first

complaint. But this Court added when a Magistrate conducts an enquiry under Section 202 of the Code and dismisses a complaint on merits a second complaint on the same facts could not be made unless there are “exceptional circumstances”. This Court held in para 12, if the dismissal of the first complainant then there is no bar in filing a second complaint on the same facts. However, if the dismissal of the complaint under Section 203 of the Code was on merit the position will be different.”

27. In *M/s Jayant Vitamins Ltd. v. Chaitanyakumar and Another*⁵ this Court held that in the absence of 5 (1992) 4 SCC 15 compelling and justifiable reasons, it was not permissible for the Court to stop investigation by quashing an FIR.

28. In *Zandu Pharmaceutical Works Limited and Ors v. Mohd. Sharaful Haque and Another*⁶ this Court referred to *State of Haryana and Ors. v. Bhajan Lal and Ors.*⁷ and summarized and illustrated the category of cases in which power under Section 482 of the Criminal Procedure Code could be exercised. This court observed and 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 6 2005 (1) SCC 122 7 (1992) Supp. 1 SCC 335 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 Act concerned (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 Act concerned, 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."

29. There can be no doubt that a mere breach of contract is not in itself a criminal offence, and gives rise to the civil liability of damages. However, as held by this Court in *Mridaya Ranjan Prasad Verma and Ors. v. State of Bihar and Anr.*⁸, the distinction between mere breach of contract and cheating, which is a criminal offence, is a fine one. While breach of contract cannot give rise to criminal prosecution for cheating, fraudulent or 8 (2000) 4 SCC 168 dishonest intention is the basis of the offence of cheating. In this case, in the FIR, there were allegations of fraudulent and dishonest intention including allegations of fabrication of documents, the correctness or otherwise whereof can be determined only during trial when evidence is adduced.

30. Exercise of the inherent power of the High Court under Section 482 of the Criminal Procedure Code would depend on the facts and circumstances of each case. It is neither proper nor permissible for the Court to lay down any straitjacket formula for regulating the inherent power of the High Court under Section 482 of the Cr.P.C.

31. Power under Section 482 Cr.P.C. might be exercised to prevent abuse of the process of law, but only when, the allegations, even if true, would not constitute an offence and/or were frivolous and vexatious on their face.

32. Where the accused seeks quashing of the FIR, invoking inherent jurisdiction of the High Court, it is wholly impermissible for the High Court to enter into the factual arena to adjudge the correctness of the allegations in the complaint. Reference may be made to the decision of this Court, inter alia, in *State of Punjab v. Subhash Kumar and Ors.*⁹ and *Janata Dal v. H.S. Chowdhary and Ors.*¹⁰

33. In *Vesa Holdings (P) Ltd. and Anr. v. State of Kerala and Ors.*¹¹, this Court observed:

"12. The settled proposition of law is that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception."

13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not."

34. In *Vesa Holding (P) Ltd. (supra)*, this Court found that there was nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat, which was a condition precedent for an offence under Section 420 IPC. The complaint was found not to disclose any criminal offence at all.

35. It is well settled that a judgment is a precedent for the issue of law which is raised and decided. Phrases and sentences in a judgment are to be understood in the context of the facts and circumstances of the case and 9 (2004) 13 SCC 437 10 (1992) 4 SCC 305 11(2015) 8 SCC 293 the same cannot be read in isolation.

36. As observed above, every breach of contract does not give rise to an offence of cheating. The language and tenor of Vesa Holdings (P) Ltd. (supra), particularly, the observation that breach of contract would give rise to an offence of cheating only in those cases where there was any deception played at the very inception, is to be understood in the context of the facts of that case and accordingly construed. The phrase “in those cases where there was any deception played at the very inception” cannot be read out of context. This is not a case of breach of contract simplicitor but there are serious allegations of forgery of documents, use of blank letter- head, papers and cheque leaves of the appellant.

37. In this case, it cannot be said that there were no allegations which prima facie constitute ingredients of offences under Sections 420, 409 and 34 of the Indian Penal Code in complaint. There were clear allegations of fraud and cheating which prima facie constitute offences under Section 420 of the Indian Penal Code. The correctness of the allegations can be adjudged only at the trial when evidence is adduced. At this stage, it was not for the High Court to enter into factual arena and decide whether the allegations were correct or whether the same were a counter-blast to any proceedings initiated by the respondents.

38. In Jatinder Singh (supra), this Court clearly held that if dismissal of the complaint was not on merit, but on default of the complainant, moving the Magistrate again with a second complaint on the same facts is maintainable. But if the dismissal of the complaint under Section 203 of the Code was on merits, the position could be different.

39. The failure to mention the first complaint in the subsequent one is also inconsequential as held, in effect, in Jatinder Singh (supra). Mentioning of reasons for withdrawal of an earlier complaint is also not a condition precedent for maintaining a second complaint. In our considered opinion, the High Court clearly erred in law in dismissing the complaint, which certainly disclosed an offence prima facie. At the cost of repetition, it is reiterated that it was not for the High Court to enter the factual arena and adjudicate the merits of the allegations.

40. The appeal is, therefore, allowed and the impugned order of the High Court quashing the complaint is set aside. The first respondent shall proceed with further investigation in accordance with law.

.....J. (R. BANUMATHI)J. (INDIRA BANERJEE) NEW
DELHI DECEMBER 14, 2018