

Shri Mahavir Prashad Gupta & Anr. vs State Of National Capital Territory Of ... on 27 September, 2000

Equivalent citations: AIR2000SC3101, 2000CRILJ4665, 2000(6)SCALE525, (2000)8SCC115, AIR 2000 SUPREME COURT 3101, 2000 AIR SCW 3417, 2001 CRI LJ (NOC) 98, 2000 CRILR(SC MAH GUJ) 765, 2000 (1) JT (SUPP) 128, 2000 (6) SCALE 525, 2000 CRIAPPR(SC) 535, 2000 (8) SCC 115, 2000 SCC(CRI) 1453, 2000 CRILR(SC&MP) 765, 2000 (9) SRJ 327, (2001) SC CR R 6, (2000) 3 PAT LJR 770, (2000) 2 EASTCRIC 1375, (2001) 1 EASTCRIC 123, (2000) 4 RECCRIR 480, (2000) 4 CURCRIR 84, (2000) 6 SUPREME 580, (2001) 1 ALLCRIR 471, (2000) 6 SCALE 525, (2001) 1 UC 74, (2000) 41 ALLCRIC 868, (2000) 4 ALL WC 3245, (2000) 4 ALLCRILR 756, (2000) 4 CRIMES 73

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Bench: K.T. Thomas, R.P. Sethi, S.N. Variava

ORDER

S.N. Variava, J.

1. This Special Leave 'Petition is against an Order dated 4th February, 2000 passed by the High Court of Delhi in Criminal Writ Petition No. 905 of 1997.

2. Briefly stated the facts are as follows: On 6th November, 1997 2nd Respondent filed a complaint with the Station House Officer, Police Station, Vasant Vihar, New Delhi. In the complaint it was stated that 2nd Respondent had handed over a consignment of 400 Video Cassettes Recorder and 8 sets of 20" Colour Televisions with remote and woofers packed in 417 packages to M/s. Road Transport Corporation (hereinafter called the said firm) for transporting to Guwahati in Assam. In the complaint it was mentioned that the said firm had sent Vehicle No. DBL-4365 to the complainant's godown and loaded the consignment in the vehicle, It was also stated that the said firm issued Lorry Receipt No. 52806 dated 14th October, 1997. It was stated that the consignment had not been delivered. It was stated that the complainant had learnt that the consignment was never sent to Guwahati and was kept by the said firm. In the complaint it was claimed that there was breach of trust and forgery on the part of Petitioners who were the proprietors of the said firm. On the basis of this complaint the police called the Petitioners at the Vasant Vihar Police Station on 8th November, 1997. The Petitioner appeared before the police and brought the attention of the police to a letter dated 27th October, 1997 sent by the Petitioners. Thereafter the police registered a FIR on 9th November, 1997.

3. The Petitioners had in the meantime applied for anticipatory bail. The same was refused by the Court. No Appeal or Revision was filed against the Order refusing anticipatory bail.

4. On 16th December, 1997 the Petitioners filed this Criminal Writ Petition No. 905 of 1997 in the High Court of Delhi. In this Petition it was prayed that the FIR registered by the Police be quashed. It was claimed that 2nd Respondent and the Police are acting in abuse and excess of authority conferred by law and are subjecting the Petitioners to harassment of criminal proceedings without there being any sufficient ground for taking action against the Petitioners. To be remembered that in the Criminal Procedure Code there are sufficient provisions which enable a party to move the High Court if there is abuse of the process of law. The Petitioners could have utilised those provisions. Also anticipatory bail had been refused to the Petitioners. The Order refusing grant of anticipatory bail was accepted by the Petitioners as they filed no Appeal or Revision. There was thus no justification for invoking Article 226 of the Constitution of India. The Petition was ultimately dismissed by the High Court of Delhi. However, by this method the Petitioners have managed to stall a proper enquiry for the last over 2 1/2 years.

5. The law on the subject is very clear. In the case of State of Bihar and Anr. v. Murad Ali Khan reported in 1988 (4) SCC 655, it has been held that jurisdiction under Section 482 of the CrPC has to be exercised sparingly and with circumspection. It has been held that at an initial stage a Court should not embark upon an enquiry as to whether the allegations in the complaint are likely to be established by evidence or not. Again in the case of State of Haryana v. Bhajan Lal reported in 1992 Supp (1) SCC 335, this Court has held that the power of quashing criminal proceedings must be exercised very sparingly and with circumspection and that too in the rarest of rare cases. It has been held that the Court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR of the complaint. It has been held that the extraordinary or inherent powers did not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

6. Mr. P. Chidambaram, learned senior counsel submitted that even before the complaint was filed by the 2nd Respondent the said firm had addressed a Notice dated 12th September, 1997 to one J.R. Consumer Electronics Pvt. Ltd. calling upon them to pay outstanding amounts which were due and payable. He points out that a copy of this Notice was also sent to 2nd Respondent. Mr. Chidambaram submitted that there was a demand of R. 50 crores by the Excise Department and therefore the 3rd Respondent, who was in charge of that Company, closed it down and opened the 2nd Respondent Company. He submits that J.R. Consumer Electronics Pvt. Ltd. and the 2nd Respondent are both Companies of the 3rd Respondent. He submitted that these Companies had used the said firm for transport of their goods and had not paid charges. He submits that cheques issued by these parties had bounced. He submits that there were large amounts due to the said firm by these Companies and thus the Notice dated 12th September, 1997 had been sent. He submits that thereafter on 27th October, 1997 the said firm had sent another Notice to J.R. Consumer Electronics Pvt. Ltd., 2nd Respondent and the 3rd Respondent pointing out that over a crore of rupees was due and payable by them to the said firm and that a number of cheques issued by them had bounced. He points out that in the notice it was stated that the said firm was exercising their lien over the goods till their dues were paid. He submitted that a copy of this Notice had also been sent to the Police

Station. He submitted that those Notices had been sent and received by those Companies much prior to the complaint dated 6th November, 1997. He submitted that these facts show that there was no case of breach of trust and/or of forgery. He submits that the complaint was a false complaint made merely with the intention of misusing process of law and subjecting the Petitioners to undue harassment. He submitted that on these facts the Police should have refused to register a FIR and should have directed the parties to settle their disputes and differences in a Civil Court.

7. At this stage it is to be noted that none of these facts can be gathered from the complaint. Further, even if these facts are correct, the alleged exercise of lien is not in respect of amounts due in respect of the consignment withheld but dues in respect of prior consignments which had already been delivered. It is not Petitioners case that payment had not been made in respect of the consignments withheld by them. Also to be noted that goods are of 2nd Respondent. Yet they are withheld also for dues of J.R. Consumer Electronics Pvt. Ltd. Except for the say so of the Petitioners, it had not been established that the two Companies were one- and the same.

8. In support of his submission Mr. Chidambaram relied upon Punjab National Bank v. Surendra Prasad Sinha reported in 1993 Supp (1) SCC 648. In that case a Bank had given a loan to a person. The Respondent (therein) and his wife were guarantors. They had executed a security bond and handed over a Fixed Deposit Receipt to the Bank, The principal debtor did not repay the debts. The Bank adjusted, on maturity of the F.D.R., the outstanding debt due from the amount of the F.D.R. The balance amount was credited to the Savings Bank account of the Respondent therein. The Respondent therein lodged a complaint against the Bank, impleading the Chairman and Managing Director and a host of Officers claiming that the Bank had embezzled the amount entrusted to it and that the Officers had abetted commission of the crime. It was claimed that the Bank and its Officers had committed offences under Sections 409, 109 and 114 IPC The Magistrate issued a process against the Bank and its Officers. The High Court refused to quash the proceedings. This Court, however, allowed the Appeal and quashed the proceedings. This Court held as follows:

It is also salutary to note that judicial process should not be an instrument of oppression or headless harassment. The complaint was laid impleading the Chairman, the Managing Director of the Bank by name and a host of officers. There lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded then only process would be issued. At that stage the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance. Considered from any angle we find that the respondent had abused the process and laid complaint against all the appellants without any prima facie case to harass them for vendetta.

There can be no dispute with the proposition of law. However, to be noted that all the facts were gathered from the complaint itself. The complaint did not disclose any offence. The contract of guarantee between the parties entitled the Bank to adjust the debt of the principal debtor from the amount of the F.D.R. In this case, the complaint only discloses that goods have been entrusted to the firm for transporting to Guwahati; that the transporter has accepted the goods, issued a Lorry Receipt but has not delivered the goods. The complaint does not disclose any further fact. It would have been dereliction of duty on the part of the Police to look at facts outside the complaint.

9. Mr. Chidambaram also relied on *Sunil Kumar v. Escorts Yamaha Motors Ltd.* . This again was a case under Sections 482 and 154 of the Criminal Procedure Code. In that case the High Court had quashed the FIR on the ground that it did not make out any offence. The High Court so quashed the proceedings on the ground that a complaint had been made with the sole intention of pre-empting the filing of a complaint under Section 138 of the Negotiable Instruments Act. This Court refused to interfere with the Order of the High Court. It is, however, to be noted that the FIR itself, on the fact of it, did not make out any offence. The FIR itself indicated that the complainant had instituted the criminal proceedings with the ulterior motive for wreaking vengeance and pre-empting filing of criminal complaint against him under Section 138 of the Negotiable Instruments Act. So here also the facts were carved out from the complaint itself.

10. Mr. Chidambaram also relied the case of *Hridayal Ranjan Prasad Verma v. State of Bihar* reported in (2000) 4 SCC 168. In this case there was transaction of sale of land by the Appellant to Respondent No. 2. The cheques had been issued by Respondent No. 2 in favour of the Appellant. Those cheques were dishonored for insufficiency of funds. The Appellant had lodged complaint/FIR under Sections 406, 420 and 120B IPC As a counter blast, Respondent No. 2 filed a complaint alleging offences under Sections 418, 420, 423, 469, 504 and 120-B. IPC This Court held as follows:

8. In the case of *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335, this Court in the backdrop of interpretation of various relevant provisions of the CrPC under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 Cr. PC gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice, making it clear that it may not be possible to lay down any precise, clearly- defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised.

102. (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.

9. In the decision this Court added a note of caution to the effect that the power of quashing a criminal proceeding should be exercised "very sparingly and with circumstances and that too in the rarest of rare cases.

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16. Judged on the touchstone of the principles noted above, the present case, in our considered view warrants interference inasmuch as the ingredients of the offence of cheating punishable under Section 420 IPC and its allied offences under Sections 418 and 423 has not been made out. So far as the offences under Sections 469, 504 and 120-B are concerned even the basic allegations making out a case thereunder are not contained in the complaint. That being the position the case comes within the first category of cases enumerated in State of Haryana v. Bhajan Lal and as such warrants interference by the Court. Reading the averments in the complaint in entirety and accepting the allegations to be true, the ingredients of intentional deception on the part of the accused right at the beginning of the negotiations for the transaction has neither been expressly stated nor indirectly suggested in the complaint. All that Respondent 2 has alleged against the appellants is that they did not disclose to him that one of their brothers had filed a partition suit which was pending. The requirement that the information was not disclosed by the appellants intentionally in order to make

Respondent 2 part with the property is not alleged expressly or even impliedly in the complaint. Therefore the core postulate of dishonest intention in order to deceive the complainant-Respondent 2 is not made out even accepting all the averments in the complaint on their face value. In such a situation continuing the criminal proceeding against the accused will be, in our considered view, an abuse of the process of the court. The High Court was not right in declining to quash the complaint and the proceeding initiated on the basis of the same.

Undoubtedly there could be interference in rarest of rare cases. However, one such would be when the complaint itself does not disclose any offence. In this case, as set out hereinabove, the complaint merely pointed out that the goods had been entrusted to the Petitioners and that the same, even though accepted and even though Lorry Receipt had been issued, were not delivered and were withheld. On those facts Police had to enquire whether there was any criminal breach of trust and forgery as claimed. On these facts it could not be said that the police should not have registered a FIR and/or to make an enquiry.

11. In our view, the High Court was right in dismissing the Petition. No case has been made out for interference at all. As the Petitioners have stalled enquiries for the last over 2 1/2 years, we direct that the Police should now complete the investigation as expeditiously as possible and submit the final report in accordance with law. It is clarified that the Police are at liberty to seize and/or attach the goods and remove the same from the godown of the Petitioners to some other place, if they so choose.

12. The Petition stands dismissed. The Petitioners shall pay cost of the Petition to the Respondents.