

Calcutta High Court

Asok Kumar Yagnik vs State Of West Bengal And Anr. on 19 May, 2005

Equivalent citations: 2005 CriLJ 3620

Author: A K Bisi

Bench: A K Bisi

ORDER Ashit Kumar Bisi, J.

1. By the instant revision application under Sections 397/401 read with Section 482 of the Code of Criminal Procedure the petitioner has sought quashing of the proceeding of Complaint Case No. 385/2004 under Sections 463/465/467/469/471 of the Indian Penal Code pending before the learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas.

2. The factual matrix leading to filing of the instant revision application may briefly be narrated thus.

3. The complainant presently O.P. No. 2 filed the petition of complaint in the Court of learned Chief Judicial Magistrate, Alipore, South 24-Parganas against the present petitioner alleging commission of offences punishable under sections 463/465/467/469/471 of the Indian Penal Code. As per the allegations made in the complaint in the month of April, 2001 the complainant under the compelling circumstances instituted Title Suit No. 80/2001 in the Court of the learned Civil Judge (Senior Division), 2nd Court, Alipore being a suit for specific performance of contract for sale and damages and for permanent injunction against Ramanjot Chowhan and another. Sometime in the month of February, 2003 necessity arose for the complainant to move a petition for injunction in the said title suit and since the complainant was/is mostly staying away she entrusted the present petitioner/accused to look after her said suit upon interaction with the advocate of the complainant Shri Partha Sarathi Chakraborty.

4. Further allegations of the complainant are that on 31st January, 2004 the complainant withdrew her briefs of the said suit from the said advocate Shri Partha Sarathi Chakraborty after full and final settlement of his professional charges. After receiving the briefs of the said suit the complainant to her utter surprise noticed that the brief was incomplete and copies of various applications filed for and on her behalf before the said Civil Court were missing and as such she prayed-for permission from the learned Civil Court to inspect the records of the said suit. On inspection of the records of the said suit the complainant to her utter dismay noticed and detected that her signatures were forged in the injunction petition dated 28th February, 2003 and in some other petitions filed subsequently on 21st March, 2003 and 23rd April, 2003 respectively. Those subsequent applications relate to her prayer for extension of interim injunction. It has been alleged that during the period when such applications containing the forged signatures were filed in the said Civil Court the accused had been looking after the said suit on behalf of the complainant in consultation with the said advocate who was engaged earlier on behalf of the complainant. She further detected that all the aforementioned applications so filed on her behalf in the said suit were all applications on affidavit, purportedly sworn by the complainant, but all signatures of the complainant appearing in those applications were forged and not signatures of the complainant at all, although her the then advocate Shri Partha Sarathi Chakraborty identified such forged signatures of the complainant in

those applications. Since these applications containing all forged signatures of the complainant which were identified by Shri Partha Sarathi Chakraborty, advocate were filed in the said suit during the period when the accused was entrusted by the complainant to look after the interest of the complainant involved In the said suit upon deliberations and interactions with the said advocate, the complainant has strong reasons to believe that none else but the accused forged the signatures of the complainant or caused those to be forged in the said applications so filed in the aforesaid suit.

5. The learned Additional Chief Judicial Magistrate, Alipore took cognizance of the offences on the complaint filed by the complainant, examined the complainant under Section 200 of Cr. P.C. and issued process under Sections 463/465/467/469/471 of the Indian Penal Code against the accused. Aggrieved by continuance of the impugned proceeding being complaint Case No. 385/2004 pending before the learned Additional Chief Judicial Magistrate, Alipore, 24 Parganas and the order dated 8th March, 2004 whereby the process was issued, the accused/petitioner has preferred the instant revision application.

6. Appearing for the petitioner Mr. Sekhar Basu, learned advocate has contended that the impugned proceeding is a gross abuse of the process of Court and as such the same is liable to be quashed. He has further urged that the provisions of Sections 463/465/467/469/471 of the Indian Penal Code have no manner of application so far as the present case is concerned having regard to the fact that the petitioner had no intention to deceive or cause injury to opposite party No. 2/complainant in any manner nor there was any intention of the petitioner to commit fraud. As argued by Mr. Basu, even if the allegations made in the complaint are taken to be true, such course of action was adopted by the petitioner with the bona fide intention to give benefit to the present opposite party No. 2 in the said title suit Instituted by her and the interim order of injunction passed therein was extended by the learned Court in the said title suit in absence of present opposite party No. 2 who authorised the petitioner to take all necessary steps on her behalf in the said suit during her absence.

7. Mr. Basu, on behalf of the petitioner has drawn my attention to the offence of forgery as defined in Section 363 of the Indian Penal Code which lays down that, whoever makes any false document or part of a document with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery. The offence of making a false document is defined in Section 464 of the Indian Penal Code which provides inter alia that a person is said to make a false document if he dishonestly or fraudulently signs a document with the intention of causing it to be believed that such document or part of a document was signed by or by the authority of a person by whom or by whose authority he knows that it was not signed. Mr. Basu has drawn my attention to Section 24 of the Indian Penal Code which explains the term 'dishonestly' and Section 25 of the Indian Penal Code which explains the term 'fraudulently'. He has urged that a person is said to do a thing dishonestly if he does it with the intention of causing wrongful gain to one person or wrongful loss to another person and a person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise,. As contended by him, in the present case the act of the petitioner/accused complained of by the opposite party No. 2/complainant does not at all indicate that by such act any wrongful loss. was caused to the complainant or any wrongful gain was obtained by the accused. Likewise, he has

contended that such act as alleged cannot be said to be an act done by the petitioner/accused with intent to defraud the complainant. It has been emphasised by Mr. Basu that the act alleged to have been done by the petitioner/accused is an act from which the complainant derived benefit by getting an order of injunction which has been extended from time to time and such act can in no way come within penal amplitude of forgery and no prima facie case under Sections 463,465,467,469,471 of the Indian Penal Code is made out in the complaint.

8. Mr. Basu has cited *Jibrial Diwan v. State of Maharashtra*, where at pages 3424-3425 : (1997 Cri LJ 4070) (para 3) the Supreme Court held as follows :--

"It bears repetition that the appellant was not the forgerer of those documents. Section 471 enjoins that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document. Section 465 provides that whoever commits forgeiy, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Now the words 'dishonestly' and 'fraudulently' have been defined respectively in Sections 24 and 25 of the Indian Penal Code. 'Dishonestly' has been defined to mean that whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing 'dishonestly'. The word 'fraudulently' has been defined to mean that a person is said to do a thing fraudulently if he does that thing with an intent to defraud but not otherwise. This Court in *Dr. S. Dutt v. State of U. P.*, , has explained the words 'intent to defraud' as being not synonymous with the words 'intent to deceive'. It requires some action resulting in a disadvantage which but for the deception the person defrauded would have avoided. Here By the delivery of forged letters, there is neither any wrongful gain to anyone nor any wrongful loss to another. The act of the appellant could not thus be termed to have been done dishonestly. Likewise the appellant cannot be said to have any intention to defraud because his action resulted in no disadvantage to any one which but for the deception the person defrauded would have acted otherwise. The basic ingredients of the act done 'dishonestly' or 'fraudulently' being missing, the charge under Section 471 read with 465, IPC was totally misplaced and the High Court fell into an error in convicting the appellant on those 'charges.'"

9. 'Mr. Basu has argued that if there is no injury to the person alleged to have been decieved there cannot be any element of the offence of forgery. He has cited *Dr. Vimla v. The Delhi Administration*, in support of his contention.

10. Mr. Basu has further contended that since in the instant case on the face of the complaint no offence is constituted, the proceeding initiated against the accused in the Initial stage can be quashed. He has cited *Municipal Corporation of Delhi v. Ram Kishan Rohtagi*, and *Pepsi Foods Ltd. v. Special Judicial Magistrate*, 1998 SCC (Cri) 1400 : (1998 Cri LJ 1) in support of his contention. He has also urged that the basic facts which constitute the offence of forgery have not at all been stated in the complaint and if such basic facts are not stated in the complaint, the preceding is liable to be quashed. In this context he has cited *J. Th Zwart v. Indrani Mukherjee*, 1990 (1) Cal HN 62.

11. Mr. Bhaskar Sen, learned senior advocate appearing on behalf of opposite party No. 2 has opposed the contentions raised by Mr. Basu on behalf of the petitioner. Mr. Sen has pointed out at the outset that it is well settled by a catena of decisions that when the Magistrate takes notice of the accusations and applies his mind to the allegations made in the complaint or police report, as the case may be, and on being satisfied that the allegations, if proved, would constitute an offence decides to initiate Judicial proceedings against the alleged offender he is said to have taken cognizance of the offence. So the law is well settled that the Court takes cognizance of the offence and not the offender. He has cited *Kishun Singh v. State of Bihar*, in support of his contention. In this context Mr. Sen has also referred to *Anil Saran v. State of Bihar* where at page 145 : (1996 Cri LJ 408 at page 409) (para 5) the Supreme Court has held that cognizance of the offence takes place when the Magistrate takes judicial notice of the offence and whether the Magistrate has taken cognizance of offence on a complaint or on a police report or upon information of a person other than the police officer, depends upon further action taken pursuant thereto and the attending circumstances of the particular case including the mode in which the case is sought to be dealt with or the nature of the action taken by the Magistrate.

12. It has been next urged by Mr. Sen that this Court should not embark upon an enquiry as to reliability or genuineness or otherwise of the allegations made in the complaint and the power of quashing a criminal proceeding should be exercised very sparingly in the rarest of rare cases. He has further contended that the High Court in exercise of its inherent power under Section 482 of the Code of Criminal Procedure cannot appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. He has cited *State of Madhya Pradesh v. Awadh Kishore Gupta*, AIR 2004 SC 517 where at page 523 : (2004 Cri LJ 598) (para 11.) the Supreme Court observed as follows :-

"...It would be erroneous to assess the material before it and conclude .that the complaint cannot be proceeded with. In proceeding instituted on complaint, exercise of the inherent power to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court...."

13. Mr. Sen has drawn my attention to the allegations of forgery contained in paragraphs 6 to 11 of the petition of complaint and contended that the said allegations in the light of the statement made on oath of the complainant disclose the ingredients of the offence of forgery and as such there cannot be any ground for quashing of the impugned proceeding.

14. I have carefully considered the rival contentions raised by Mr. Basu on behalf of the petitioner and Mr. Sen on behalf of opposite party No. 2. It appears from the allegations contained in the complaint that O. P. No. 2/complainant entrusted the petitioner/accused to look after Title Suit No. 80/2001 instituted by her in the Court of the learned Civil ...Judge (Senior Division), 2nd Court, Alipore. It has been alleged by O. P. No. 2/complainant that she withdrew her briefs of the said suit from her erstwhile advocate Shri Partha Sarathi Chakraborty and having received the briefs of the said suit, she to her utter surprise noticed that the brief was incomplete and copies of various applications filed on her behalf before the Court concerned were missing, whereupon she made a prayer to the Court for permitting her to inspect the records of the said suit. On inspection of the records of the said suit the complainant is alleged to have detected that her signatures were forged in the injunction petition dated ;28th February, 2003 and thereafter in subsequent petitions filed on 21st .March, 2003 and 23rd April, 2003 respectively in the said suit. As mentioned hereinbefore, Mr. Basu on behalf of the petitioner/accused has urged that the petitioner being the constituted attorney of opposite party No. 2 had no intention to deceive her by Signing her name in the petitions as alleged but the same was done only with a view to strengthen the case of the complainant and since there was no intention to commit fraud or to deceive opposite party No. 2 the provisions of Sections 463,465,467,469 and 471 of the Indian Penal Code have no manner of application in the instant case. To repudiate the aforementioned contentions raised by Mr. Basu, Mr. Sen on behalf of opposite party No. 2 has argued that by such act of forging the signatures of the opposite party No. 2/complainant the petitioner/accused caused wrongful loss to Mrs, Ramanjot Chowhan who is the defendant in the said title suit. He has laid stress on the expression 'any person' as used in Section 24 and Section 463 of the Indian Penal Code and urged that such expression is of wide import and since the act complained of has caused wrongful loss to the defendant in the said title suit it cannot be said that the complaint does not disclose any ingredient of the offence of forgery.

15. On perusal of the complaint as a whole I find that there is allegation that the 'accused (petitioner) forged the signatures of the complainant (O.P. No. 2) in the aforesaid applications in the abovementioned title suit Instituted by the complainant as plaintiff against the person concerned who is the defendant in the said suit. Even if the order of injunction was passed by the learned Court in favour of the complainant on the aforesaid petitions containing allegedly forged signatures of the complainant, it cannot be lost sight of the fact that such act complained of was performed with a view to induce the learned Court concerned to believe that those petitions contained genuine signatures of the complainant who is the plaintiff in the said suit. Buckley, J. in In Re. London and Glove Finance Corporation Ltd. (1903) 1 Ch 728 at p. 732 brings out the ingredients of fraud in the following manner as quoted in Dr. Vimla (supra) :--

"To deceive is, I apprehend, to induce a man to believe that thing is true which is false, and which the person practising the deceit knows or believes to be false. To defraud is to deprive by deceit: it is by deceit to induce a man to act to his injury. More tersely it may be put, that to deceive is by falsehood to Induce a state of mind to defraud is by deceit to induce a course of action."

(Emphasis supplied)

18. The above observation makes it abundantly clear that if a person by resorting to falsehood induces a state of mind, he is said to deceive and if that person by deceitful means induces a course of action he is said to have committed fraud.

17. In *S.P. Chengalvaraya Naidu v. Jagannath* the Supreme Court has observed that a fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another and it is a deception in order to gain by another's loss. As mentioned earlier, in the case on hand as per the allegations made in the complaint the petitioner/accused forged the signatures of the opposite party No. 2/complainant in the respective petitions filed in the said title suit and falsely induced the Court to believe that those were the genuine signatures of the complainant and obtained the order by adopting such deceitful means causing loss to the party concerned against whom the interim order of injunction was obtained.

18. From all that has been stated above I am of the view that the allegations made in the complaint make out the offence *prima facie* and as such there is no justifiable ground for quashing the impugned proceeding by this Court in exercise of the power of revision. The abovenoted decisions cited by Mr. Basu on behalf of the petitioner have no manner of application in the facts and circumstances of the instant case.

19. For the foregoing reasons I find no merit in the instant revision application which is accordingly dismissed. Interim order of stay granted earlier stands vacated. However, I make it clear that I have not entered into the merits of the case and it is for the learned trial Court to decide the case on merits at appropriate stage without being influenced by any observation made by this Court.

20. Let a copy of this order be sent down to the learned Court below forthwith.

21. Urgent xerox certified copy of this order, if applied for, be given to the parties as expeditiously as possible.