

J. Vedhasingh vs R.M. Govindan on 11 August, 2022

Author: J.K. Maheshwari

Bench: J.K. Maheshwari, S. Abdul Nazeer

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2022
ARISING OUT OF SLP (CRL.) NO.2864 OF 2019

J. Vedhasingh

.... APPELLANT(S)

VERSUS

R.M. Govindan & Ors.

.....RESPONDENT(S)

JUDGMENT

J.K. Maheshwari, J.

Leave granted.

2. The instant appeal has been filed assailing the final order dated 06.12.2018 passed by the High Court of Madras in CRL.O.P. No. 6750 of 2017, whereby the High Court allowed the criminal petition filed by the respondents no.1 to 4 under Section 482 of Code of Criminal Procedure, 1973 (for short "Cr.P.C") and quashed proceedings under Sections 120B, 406, 420 and 34 of the Indian Penal Code, 1860 (for short "IPC") being C.C. No. 33 of 2017 pending before Judicial Magistrate Court No. III, Coimbatore.

3. The brief facts necessary for the instant appeal are that the appellant herein was working as a Civil Engineer in Saudi Arabia. On his return back to India in the year 2011, he purchased a site from respondent no.2 who is the father of respondent no.1 in Coimbatore. Apart from this, the respondents owned 7 other house sites in total in V.C.K. Layout, Trichy Road, Coimbatore City, which all were mortgaged to Tamil Nadu Industrial Investment Corporation, way back from 12.10.2006. Appellant contended that the respondents approached and asked him to invest money for the development of the land of the said 7 sites and assured that profit shall be divided amongst the appellant and respondents. Pursuant to it a profit sharing agreement was executed between the parties. The appellant made the investment of a sum of Rs.62,32,754/- but neither profit was shared nor any piece of land was given to the appellant. Consequently, the appellant asked to repay the amount. Under guise of assurance of repayment by respondent no.1, the appellant did not

lodge any criminal prosecution as per his request. The respondent no.1 handed over a cheque dated 09.09.2015 for an amount of Rs.87,00,000 in lieu of repayment of principal sum and interest.

4. On presenting the said cheque to the bank it was dishonored on account of insufficient funds on 09.09.2015. Being aggrieved, a demand notice was issued on 30.10.2015 and complaint under Section 138 of Negotiable Instruments Act, 1881 (for short "NI Act") being S.T.C. No.792 of 2015 renumbered as C.C. No.199 of 2016 on the file of Fast Track Magistrate No.1 of Coimbatore (for short "138 Proceedings") was lodged by the appellant on 07.12.2015. Prior to initiating 138 proceedings, the appellant lodged a complaint under section 156(3) Cr.P.C being CMP No. 5083 of 2015 before Judicial Magistrate No. III Coimbatore on 30.10.2015. The Magistrate directed respondent no. 5 to register the FIR but by filing a report dated 29.01.2016, it was said that no offence is made out against the respondents. The appellant challenged the same by filing CRL.O.P. No. 6766 of 2016 before the High court of Madras and also prayed for direction against respondent no.5 to conduct fresh investigation. The High Court disposed of the same with an observation that the appellant may raise objection on closure report by way of protest petition. In pursuance thereof, the appellant filed a protest petition being Crl.M.P. No. 3891 of 2016, which was allowed by the Magistrate vide order dated 24.09.2016 directing the respondent no. 5 to register the case against the respondent no. 1 to 4 and to complete the investigation. Thereafter only, the respondent no.5 registered the case against respondent no.1 to 4 at Crime No.49 of 2016 for the offences under Sections 120B, 406, 420 and 34 of IPC on 01.10.2016, and after investigation, challan was filed before the competent Magistrate on which cognizance was taken by him.

5. The respondents, being aggrieved by the same, filed CRL.O.P. No. 6750 of 2017 before the High Court of Madras for quashment of the aforesaid proceedings. The High Court by the impugned order allowed the said petition and quashed the proceedings taking into consideration that proceedings under Section 138 of the N.I. Act pertaining to the same cause of action and on the same facts and grounds are pending, prior to the registration of the present proceedings. It was observed that, looking to the allegations made in the FIR, only offence under section 138 of NI Act can be made out and continuance of the present proceedings for offences under sections 406, 420, 120B and 34 of IPC would amount to abuse of process of the Court. The said order passed by the High Court is assailed by the appellant in the instant appeal.

6. Learned senior counsel Mr. S. Nagamuthu contends that in the facts of the present case the plea of double jeopardy or bar of Section 300(1) of Cr.P.C. would attract only when the earlier offence and the later offence is same or have same ingredients. The identity of the allegations on fact is not relevant, in fact, the identity of the ingredients of the offence is relevant. The plea taken by respondent no.1 to 4 that a person who is previously acquitted cannot be tried for the same offence subsequently, shall apply only when it is shown that acquittal for the previous charge would lead to acquittal in the subsequent charge. In an offence under Section 138 of the NI Act, requirement to prove mens rea is not necessary although for an offence under Section 420, fraudulent and dishonest intention i.e. mens rea is relevant to prove. In support of the said contention, reliance has been placed on the judgment of Sangeetaben Mahendrabhai Patel v. State of Gujarat and Anr, (2012) 7 SCC 621. The said judgment has also been relied in the case of M/s V.S. Reddy and Sons v. Muthyala Ramalinga Reddy and Anr. (Crl Appeal No. 1285 of 2015) decided on 28.09.2015.

Therefore, urged the quashment of the proceedings for an offence under Sections 420, 406, 120(B) and 34 IPC as directed by the High Court is wholly unjustified.

7. On the other hand, learned counsel for the respondents contends that as per the judgment of Kolla Veera Raghav Rao v. Gorantla Venkateswara Rao and Anr, (2011) 2 SCC 703, this Court has held that if the offences are different and the facts are the same, the prosecution under Section 420 of the IPC is barred by virtue of Section 300(1) of the Cr.P.C. Further reliance has been placed on a judgment of this Court in the case of G. Sagar Suri and Anr. v. State of UP and Others, (2000) 2 SCC 636, wherein also the offences under Section 138 of NI Act as well as the offence under Sections 406 and 420 of IPC were allegedly committed by the accused of that case. After lodging the complaint under Section 138 of NI Act, a petition under Section 482 before the High Court was filed for quashment of the complaint which was dismissed. On filing the special leave petition before this Court, it was allowed and the Court directed that the prosecution under Sections 420 and 406 is not tenable and quashed.

8. After having heard learned counsel appearing on behalf of the appellant as well as the respondents who have advanced their contentions relying upon the judgments of this Court. The reliance placed by the appellant is on a judgment of Sangeetaben Mahendrabhai Patel (supra) wherein this Court has considered various judgments. The relevant portion of the judgment of Sangeetaben Mahendrabhai Patel (supra) is reproduced as thus:

“35. The learned counsel for the appellant has further placed reliance on the judgment in G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] wherein during the pendency of the proceedings under Section 138 of the NI Act, prosecution under Sections 406/420 IPC had been launched. This Court quashed the criminal proceedings under Sections 406/420 IPC, observing that it would amount to the abuse of process of law. In fact, the issue as to whether the ingredients of both the offences were same, had neither been raised nor decided. Therefore, the ratio of that judgment does not have application on the facts of this case.

36. Same remained the position so far as the judgment in Kolla Veera Raghav Rao v. Gorantla Venkateswara Rao [(2011) 2 SCC 703 : (2011) 1 SCC (Cri) 882 : (2011) 1 SCC (Civ) 547] is concerned. It has been held therein that once the conviction under Section 138 of the NI Act has been recorded, the question of trying the same person under Section 420 IPC or any other provisions of IPC or any other statute is not permissible being hit by Article 20(2) of the Constitution and Section 300(1) CrPC.

37. Admittedly, the appellant had been tried earlier for the offences punishable under the provisions of Section 138 of the NI Act and the case is sub judice before the High Court. In the instant case, he is involved under Sections 406/420 read with Section 114 IPC. In the prosecution under Section 138 of the NI Act, the mens rea i.e. fraudulent or dishonest intention at the time of issuance of cheque is not required to be proved. However, in the case under IPC involved herein, the issue of mens rea may be relevant. The offence punishable under Section 420 IPC is a serious one as the sentence of 7 years can be imposed.

38. In the case under the NI Act, there is a legal presumption that the cheque had been issued for discharging the antecedent liability and that presumption can be rebutted only by the person who draws the cheque. Such a requirement is not there in the offences under IPC. In the case under the NI Act, if a fine is imposed, it is to be adjusted to meet the legally enforceable liability. There cannot be such a requirement in the offences under IPC. The case under the NI Act can only be initiated by filing a complaint. However, in a case under IPC such a condition is not necessary.

39. There may be some overlapping of facts in both the cases but the ingredients of the offences are entirely different. Thus, the subsequent case is not barred by any of the aforesaid statutory provisions.

40. The appeal is devoid of any merit and is accordingly dismissed.” On perusal of the same, it is clear that the judgment of G. Sagar Suri (supra) has been considered but because the issue regarding the ingredient of both offences were same was not raised or decided, it has been said that the ratio of that judgment does not have application in the facts of the case. Similarly, the judgment of Kolla Veera Raghav Rao (supra) has also been considered but distinguished on fact while observing that when a conviction under Section 138 of the NI Act has been recorded, the prosecution to try the same person under Section 420 of the IPC is not permissible as per Section 300(1) of Cr.P.C. The judgment of Sangeetaben Mahendrabhai Patel (supra) has been relied in the case of M/s. V.S. Reddy and Sons (supra).

9. Learned counsel for the respondents have relied upon the judgment of G. Sagar Suri (supra) and contended that the said issue has been settled more than two decades prior. The relevant paragraphs of the said judgment are reproduced as thus:

“13. In the circumstances of the case in hand the conclusion is inescapable that invoking the jurisdiction of a criminal court for allegedly having committed offences under Sections 406/420 IPC by the appellants is certainly an abuse of the process of law. In the counter-affidavit filed on behalf of the complainant it is now admitted that none of the two appellants is a Director of Ganga Automobiles Ltd. Only in respect of the first appellant it is stated that he is the authorised signatory of that Company and that in fact he had signed the cheques which were returned dishonoured. Apart from making the omnibus statement that the first appellant with dishonest intentions and misrepresentations got a loan of Rs 50,00,000 from the complainant Company for Ganga Automobiles Ltd. there is nothing said as to what were those misrepresentations and how the complainant Company was duped. The only part attributed to the second appellant is that the first appellant along with Ashwani Suri, Managing Director and Mukender Singh, Director approached the complainant in June 1996 and had represented that they and Shalini Suri, Shama Suri (Appellant 2), Charanjit Singh and M.L. Kampani were the Directors of Ganga Automobiles Ltd. There is nothing stated in the counter-affidavit about the role, if any, played by the second appellant. A complaint under Section 138 of the Negotiable Instruments Act has already been filed by the complainant. There is no allegation of any corrupt practice by any of the accused as if they duped the Finance Company in

parting with the amount of Rs 50,00,000. As normally understood, the business of a finance company is to invite deposits, pay interest on that and also to give loans and earn interest. A finance company also advances short-term loans. In that case it is essentially a commercial transaction. After the first two cheques were dishonoured two cheques were again issued, which again were dishonoured resulting in filing of complaint under Section 138 of the Negotiable Instruments Act. None of the respondents has been able to explain as to why offences under Sections 406/420 IPC were not added in the complaint filed under Section 138 of the Negotiable Instruments Act and why resort was had to filing of a separate first information report. A certain motive has been attributed to the investigating officer but we think we need not go into that. There is also no answer as to why the investigation against the three other Directors was still stated to be pending when the same role is assigned to all the accused. In the FIR it is Sukhvinder Singh, who first approached the complainant, but later it is Mukender Singh. There is no answer as to why there are two different names. As to who are the Directors of Ganga Automobiles Ltd. could have been easily found by the complainant after going through the records of the Registrar of Companies and also about its status. As noted above, in the subsequent statement by the complainant he does not assign any role to the first appellant. The allegation that in the first instance three persons contacted the complainant Company, who told the complainant of other Directors with whom the complainant conversed on telephone appears to be rather improbable.

14. We agree with the submission of the appellants that the whole attempt of the complainant is evidently to rope in all the members of the family particularly those who are the parents of the Managing Director of Ganga Automobiles Ltd. in the instant criminal case without regard to their role or participation in the alleged offences with the sole purpose of getting the loan due to the Finance Company by browbeating and tyrannising the appellants with criminal prosecution.

A criminal complaint under Section 138 of the Negotiable Instruments Act is already pending against the appellants and other accused. They would suffer the consequences if offence under Section 138 is proved against them. In any case there is no occasion for the complainant to prosecute the appellants under Sections 406/420 IPC and in his doing so it is clearly an abuse of the process of law and prosecution against the appellants for those offences is liable to be quashed, which we do.

15. The appeal is allowed and the judgment of the High Court dated 6th 1999 is set aside and prosecution of the appellants under Sections 406/420 IPC in Criminal Case No. 674 of 1997 (now Criminal Case No. 6054 of 1998) and pending in the Court of Chief Judicial Magistrate, Ghaziabad is quashed.”

10. Similarly in the case of Kolla Veera Raghav Rao (supra) this Court reaffirmed the view taken in the said case. The relevant paragraphs are reproduced as thus:

“4. It may be noticed that there is a difference between the language used in Article 20(2) of the Constitution of India and Section 300(1) CrPC. Article 20(2) states:

“20. (2) No person shall be prosecuted and punished for the same offence more than once.” On the other hand, Section 300(1) CrPC states: “300. Person once convicted or acquitted not to be tried for same offence.—(1) A person who has once been tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub□ section (1) of Section 221, or for which he might have been convicted under sub□ section (2) thereof.”

5. Thus, it can be seen that Section 300(1) CrPC is wider than Article 20(2) of the Constitution. While Article 20(2) of the Constitution only states that “no person shall be prosecuted and punished for the same offence more than once”, Section 300(1) CrPC states that no one can be tried and convicted for the same offence or even for a different offence but on the same facts.

6. In the present case, although the offences are different but the facts are the same. Hence, Section 300(1) CrPC applies. Consequently, the prosecution under Section 420 IPC was barred by Section 300(1) CrPC.”

11. In that case, on similar set of allegations, cognizance under Section 138 of NI Act on filing a private complaint was taken and accused were tried, while in other complaint it is alleged that the offence under Sections 406 and 420 is also made out, however, as directed by Court separate prosecution was lodged. On filing the quash petition, this Court held that on the same set of allegations two different offences i.e., under NI Act and IPC cannot be proceeded with and the proceedings under Sections 420 and 406 of IPC is liable to be quashed.

12. On perusal of the judgment of Sangeetaben Mahendrabhai Patel (supra) relied in the case of M/S. V.S. Reddy and Sons (supra) by the appellant and the judgments relied upon by the respondents in the case of G. Sagar Suri (supra) and Kolla Veera Raghav Rao (supra) as afore quoted, the facts and the allegations were similar and that too the prosecution for the offences under Section 138 of the NI Act and, under Sections 406 and 420 of the IPC were also similar. In the judgment of Sangeetaben Mahendrabhai Patel (supra) it was held that the requirement to prove an offence under the NI Act and an offence under the IPC is different, and it was observed that there may be some overlapping of facts but the ingredients of the offences are entirely different, therefore, the subsequent cases are not barred by any statutory provisions. While in the case of G. Sagar Suri (supra) and Kolla Veera Raghav Rao (supra), the Court concluded that as per Section 300(1) Cr.P.C. no one can be tried and convicted for the same offence or even for a different offence on the same facts, therefore, the prosecution under Section 420 of the IPC is barred by Section 300(1) of Cr.P.C and accordingly liable to be quashed. It is to observe that in the case of Sangeetaben Mahendrabhai Patel (supra) the judgments of G. Sagar Suri (supra) and Kolla Veera Raghav Rao (supra) have been

referred but distinguished on the ground that it was not raised and decided that ingredients of both offences were not same, and the bar of Section 300(1) of Cr.P.C. would not attract. It is relevant to note here that the judgments cited by both the parties are rendered by benches having the strength of two Judges. In our considered view, the bench of this Court in the case of Sangeetaben Mahendrabhai Patel (supra) followed in M/s. V.S. Reddy and Sons (supra) has taken a different view from the previous judgments of G. Sagar Suri (supra) and Kolla Veera Raghav Rao (supra) rendered by the bench of the same strength. The view taken in both the cases are conflicting to each other. Needles to observe that it is a trite law, if any issue is decided in a previous judgment by a bench of the same strength, conflicting view in the subsequent judgment should not be rendered on the pretext that the issue has not been raised or considered in the previous judgment. In this regard the judgment in District Manager, APSRTC, Vijaywada v. K. Sivaji, (2001) 2 SCC 135, Chandra Prakash v. State of U.P., 2002 AIR SCW 1573 can be profitably referred whereby it is observed that judicial decorum demands that if judgments passed by two judges' bench of equal strength are conflicting, the issue of law involved must be referred to a larger bench as the same is desirable to avoid confusion and maintain consistency of law. In our view, the aforesaid judgments cited by the respective parties are conflicting, however, to avoid any further confusion and to maintain consistency, we deem it appropriate to refer this issue for decision by the larger bench to answer the following questions:

(1) Whether the ratio of the judgment, in the case of G. Sagar Suri (supra) and Kolla Veera Raghav Rao (supra) lay down the correct law?

or The view taken in the case of Sangeetaben Mahendrabhai Patel (supra) as followed in M/s V.S. Reddy and Sons (supra) which is subsequent and conflicting, lay down the correct proposition of law?

(2) Whether on similar set of allegations of fact the accused can be tried for an offence under NI Act which is special enactment and also for offences under IPC unaffected by the prior conviction or acquittal and, the bar of Section 300(1) Cr.P.C. would attract for such trial?

13. In view of the above discussion, in our view, the judgments relied by learned counsel for both the parties are in conflict with each other on the legal issue. Therefore, the above questions of law have been formulated for answer by a larger bench for decision. In such circumstances, we request the Registry to place the file before Hon'ble the Chief Justice of India for orders.

.....J. (S. ABDUL NAZEER)J. (J.K. MAHESHWARI) NEW DELHI;

AUGUST 11, 2022.