

Joseph Salvaraj A vs State Of Gujarat & Ors on 4 July, 2011

Equivalent citations: AIR 2011 SUPREME COURT 2258, 2011 (15) SCC 449, (2011) 3 CURCRIR 113, (2011) 3 KER LJ 10, AIRONLINE 2011 SC 554

Author: Deepak Verma

Bench: Deepak Verma, Dalveer Bhandari

Crl. A. @ S.L.P. (Crl.) No.2409 of 2007

1

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1251 OF 2011

[Arising out of S.L.P. (Crl.) No.2409 of 2007]

Joseph Salvaraj A.

....Appellant

Versus

State of Gujarat & Ors.

...Respondents

J U D G M E N T

Deepak Verma, J.

1. Leave granted.

2. Respondent No. 4 - complainant, Living Water Finney, lodged an FIR on 05.09.2006 at 22.15 hrs with Odhav Police Station, Ahmedabad City, complaining therein that the Appellant has committed offences under Section 406, 420 and 506(1) of the Indian Penal Code (hereinafter shall be referred to as 'IPC').

3. Respondent No.4 was working as Administrative Officer in "Amaaru Family Education Trust" at Ahmedabad and claimed that he has been residing Crl. A. @ S.L.P. (Crl.) No.2409 of 2007 there, leading life peacefully. He also stated that Shri Dharmendra P. Rami @ Laldubhai was running business of Siti Cable in Bapi Nagar area at Ahmedabad, was known to him for many years and both of them enjoyed good relations with each other.

4. Sometime in the year 2005, complainant had gone to Hyderabad at his wife's place where he had the occasion to watch "God TV" which influenced him deeply and profoundly touching his holy spirit.

He wanted to share his experience with the Christian community of Ahmedabad so that they may also be blessed through this religious channel. On his return to Ahmedabad, he approached cable operator Mr. Lalubhai, owner of Siti Cable as mentioned above and requested him to have this channel also in the bouquet of channels offered by him. He also contacted the Appellant's Company directly, requesting it to allow broadcasting of "God TV" in certain areas of Ahmedabad through Siti Cables, Ahmedabad.

Crl. A. @ S.L.P. (Crl.) No.2409 of 2007

5. Eventually, with the aid and enterprise of Mr. Lalubhai, they were able to commence broadcasting of "GOD TV" in the eastern zone of Ahmedabad.

6. Initially, Mr. Lalubhai quoted Rs. 30 lacs for persuading all the three operators to commence the telecast of "GOD TV" in their respective areas in Ahmedabad but the same was settled for Rs. 10 lacs.

Thus, according to the complainant, Mr. Lalubhai (and 2 other cable operators) had agreed to broadcast, religious channel "God TV" at Ahmedabad, after the Appellant had agreed to pay a sum of Rs. 10 lacs to Mr. Lalubhai.

7. However, it appears that there was no Agreement in writing executed and entered into between Mr. Lalubhai and the Appellant. Furthermore, there has not been any Agreement between complainant and either of the aforesaid two parties. According to him, on his own, he had acted only as a mediator.

8. From time to time, the Complainant kept reminding the appellant about payment of the amount Crl. A. @ S.L.P. (Crl.) No.2409 of 2007 of Rs. 10 lacs to Mr. Lalubhai. But according to the Complainant, the appellant deliberately avoided his communications. In the meanwhile, the cable operators who had started telecasting "God TV" were also pressurizing the Complainant for the said

amount.

9. As mentioned hereinabove for about five months, they enjoyed watching "God TV" without any disruption but thereafter the reception signals of the said channel developed some technical snag. Thus, from October 2005, on account of poor quality of receivers, the reception was also not clear and was blurred. He once again contacted the Appellant who agreed to send receiver to the Complainant. After having received the said receiver, it was delivered to Mr. Lalabhai but as per the Complainant's version, by that time the amount of Rs. 10 lacs as agreed to between Mr. Lalabhai and the present Appellant was still not paid. Having failed to elicit a verbal response, the Complainant thereafter wrote a series of letters and sent e-mails to the Appellant, Crl. A. @ S.L.P. (Crl.) No.2409 of 2007 ultimately culminating in a notice dated 21.06.2006, to which the Appellant replied on 18.07.2006, denying all accusations and liabilities. Then the problem started and Respondent No. 4 lodged the FIR against the Appellant as mentioned hereinabove.

10. After completion of the investigation, as per the FIR lodged by the Complainant on 05.09.2006, the Appellant was arrested at Chennai for commission of the said offences on 17.11.2006. He was thus constrained to file an application under Section 437 of the Code of Criminal Procedure, 1973 (hereinafter shall be referred to as the 'Code') for grant of bail to him. The same was granted to him on the conditions mentioned in the order dated 22.11.2006.

11. The Appellant, thereafter, was constrained to file the petition under Section 482 of the Code in the High Court of Gujarat at Ahmedabad, with a prayer for quashing of the FIR bearing C.R. No. I-371/2006 registered with Odhav Police Station and to stay Crl. A. @ S.L.P. (Crl.) No.2409 of 2007 further investigation in the case. The said application came to be considered before the learned Single Judge on 11.1.2007. By that time, charge sheet was already filed before the Competent Criminal Court. Thus, learned Single Judge, was of the opinion that it was not a fit case to be entertained and refused to hear the petition on merits, even though the appellant was given liberty to file an application for his discharge before the Trial Court. It may be noted that even in its impugned order the learned Single Judge has emphasized that he had not considered the case on merits. Thus the Appellant's petition was dismissed and interim order granted in his favour was vacated.

12. Now the Order dated 11.01.2007 passed by the learned Single Judge of the High Court in Appellant's Criminal Application No. 1977 of 2006, is subject matter of challenge in this Appeal.

13. We have accordingly heard Mr. Huzefa Ahmedi with Crl. A. @ S.L.P. (Crl.) No.2409 of 2007 Mr. Shamik Sanjanwala for the Appellants Ms. Jesel, for respondent No 1,2 and 3 and Ms. Aparna Bhat for respondent No.4 - Complainant at length. Perused the record.

14. Learned counsel for the Appellant contended that even after going through the FIR, no case under Section 406 or 420 of the Penal Code was made out.

The FIR was filed by a person who is indisputably not a contracting party and at best by his own admission, had acted only as a mediator, and had no cause of action to file the complaint. He has

failed to produce any evidence worth the name in support of his allegation and legally acceptable that the contract was concluded, where under the Appellant was obliged to pay a sum of Rs. 10 lacs to Mr. Lalabhai.

15. The allegations in the F.I.R. clearly discloses a civil dispute between the parties and the FIR seems to have been filed only with an intention to harass and humiliate the Appellant. This was a pre-emptive move by the Complainant.

Crl. A. @ S.L.P. (Crl.) No.2409 of 2007

16. A summary Civil Suit under Order 37 Rule II of Code of Civil Procedure (hereinafter to be referred as 'CPC') has already been filed by Dharmendra P. Rami @ Laldbhai against the Appellant and the Respondent No.4, Complainant herein, before the City Civil Court, Ahmedabad claiming a sum of Rs. 10 lacs together with interest thereon. In the said suit an unconditional leave to defend has already been granted to the Appellant and the matter is still pending. In the light of the aforesaid submissions, it was contended that it is a fit case where the FIR deserves to be quashed otherwise the same would amount to abuse of the process of law.

17. On the other hand, the learned counsel for Respondents especially Respondent No. 4, contended that intention to cheat the complainant was clearly made out by the action of the Appellant, ultimately resulting in lodging of F.I.R.

against Appellant and Respondent No.4 both. Learned Single Judge was fully justified in rejecting the Crl. A. @ S.L.P. (Crl.) No.2409 of 2007 Appellant's Petition as it was not a fit case to invoke the jurisdiction conferred on the court under Section 482 of the CrPC. Thus, a prayer was made that no case for interference was made out and the Appeal be dismissed.

18. In the light of the rival contentions we have to examine whether cognizance of the offences could have been taken by the Competent Criminal Court in the light of the averments made by the complainant in the FIR.

19. Even though the learned counsel appearing for contesting parties have cited numerous authorities in support of their respective contentions, but in view of the well settled legal position of law, by long catena of cases of this Court, on this and related points, we are not dealing with each one of them separately and independently. However, the ratio and gist of these would be reflected in our order.

20. In the instant case, we have to first examine Crl. A. @ S.L.P. (Crl.) No.2409 of 2007 whether any of the ingredients under Section 406, 420 or 506 (1) of the IPC have been made out to enable the Court to take cognizance thereof against the appellant or not. Bare perusal of the FIR lodged by the complainant, would indicate that he had got in touch with the appellant so as to extend the benefit of Appellant's Channel "GOD TV" to his other brethren residing at Ahmedabad. For the said purposes, he had met the owner of Siti Cable, Bapi Nagar in Ahmedabad and negotiated a settlement for a sum of Rs. 10 lacs on behalf of the Appellant's Company as the fee to be paid to Siti

cable by Appellant for telecast of channel "God TV" in Ahmedabad. Further grievance of the Complainant was that despite the telecast of "GOD TV", the Appellant, as promised, failed to pay a sum of Rs. 10 lacs to the owners of Siti cables. This is what has been mentioned in nutshell in the complainant's FIR. We have grave doubt, in our mind whether on such averments and allegations, even a prima facie case of the aforesaid offences could be CrI. A. @ S.L.P. (CrI.) No.2409 of 2007 made out against the present appellant.

21. Criminal breach of trust is defined under Section 405 of the IPC and 406 thereof deals with punishment to be awarded to the accused, if found guilty for commission of the said offence i.e. with imprisonment for a term which may extend to three years, or with fine, or with both.

22. Section 420 of the IPC deals with cheating and dishonestly inducing delivery of property. Cheating has been defined under Section 415 of the IPC to constitute an offence. Under the aforesaid section, it is inbuilt that there has to be a dishonest intention from the very beginning, which is sine qua non to hold the accused guilty for commission of the said offence. Categorical and microscopic examination of the FIR certainly does not reflect any such dishonest intention ab initio on the part of the appellant.

23. Section 506 of the IPC deals with punishment for criminal intimidation. Criminal intimidation, insult CrI. A. @ S.L.P. (CrI.) No.2409 of 2007 and annoyance have been defined in Section 503 of the IPC but the FIR lodged by complainant does not show or reflect that any such threat to cause injury to person or of property was ever given by the Appellant to the Complainant.

24. Thus, from the general conspectus of the various sections under which the Appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the Complainant's FIR. Even if the charge sheet had been filed, the learned Single Judge could have still examined whether the offences alleged to have been committed by the Appellant were prima facie made out from the complainant's FIR, charge sheet, documents etc. or not.

25. In our opinion, the matter appears to be purely civil in nature. There appears to be no cheating or a dishonest inducement for the delivery of property or breach of trust by the Appellant. The present FIR is an abuse of process of law. The purely civil CrI. A. @ S.L.P. (CrI.) No.2409 of 2007 dispute, is sought to be given a colour of a criminal offence to wreak vengeance against the Appellant. It does not meet the strict standard of proof required to sustain a criminal accusation.

26. In such type of cases, it is necessary to draw a distinction between civil wrong and criminal wrong as has been succinctly held by this Court in Devendra Vs. State of U.P., 2009 (7) SCC 495, relevant part thereof is reproduced hereinbelow:

"A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out."

27. In fact, all these questions have been elaborately discussed by this Court in the most oft quoted judgment reported in 1992 (Suppl) 1 SCC 335 State of Haryana Vs. Bhajan Lal, where seven cardinal principles have been carved out before cognizance of offences, said to have been committed, by the accused *Crl. A. @ S.L.P. (Crl.) No.2409 of 2007* is taken. The case in hand unfortunately does not fall in that category where cognizance of the offence could have been taken by the court, at least after having gone through the F.I.R., which discloses only a civil dispute.

28. The Appellant cannot be allowed to go through the rigmarole of a criminal prosecution for long number of years, even when admittedly a civil suit has already been filed against the Appellant and Complainant-

Respondent No. 4, and is still subjudice. In the said suit, the Appellant is at liberty to contest the same on grounds available to him in accordance with law as per the leave granted by Trial Court. It may also be pertinent to mention here that the complainant has not been able to show that at any material point of time there was any contract, much less any privity of contract between the Appellant and Respondent No. 4 -

the Complainant. There was no cause of action to even lodge an FIR against the Appellant as neither the Complainant had to receive the money nor he was in any *Crl. A. @ S.L.P. (Crl.) No.2409 of 2007* way instrumental to telecast "GOD TV" in the central areas of Ahmedabad. He appears to be totally a stranger to the same. Appellant's prosecution would only lead to his harassment and humiliation, which cannot be permitted in accordance with the principles of law.

29. Thus, looking to the matter from all angles, we are of the considered opinion that the prosecution of the Appellant for commission of the alleged offences would be clear abuse of the process of law.

30. The FIR under the circumstances deserves to be quashed at the threshold. We accordingly do so. The Appeal is, therefore, allowed. The order of learned Single Judge is set aside. The FIR dated 05.09.2006 lodged by Respondent No. 4 - Complainant with Odhav Police Station, Ahmedabad stands quashed and all criminal proceedings emanating therefrom also stand quashed. The parties to bear their respective costs.

.....J. [DALVEER BHANDARI] *Crl. A. @ S.L.P. (Crl.) No.2409 of 2007*J.
[DEEPAK VERMA] New Delhi July 4, 2011