

# **Vijayander Kumar & Ors vs State Of Rajasthan & Anr on 11 February, 2014**

**Author: Shiva Kirti Singh**

**Bench: Shiva Kirti Singh, Ranjan Gogoi, P. Sathasivam**

REPORTABLE

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1297 OF 2004

VIJAYANDER KUMAR & ORS.                      ... APPELLANTS

VS.

STATE OF RAJASTHAN & ANR.                      ... RESPONDENTS

## **J U D G M E N T**

**SHIVA KIRTI SINGH, J.**

The appellants have preferred this appeal against the dismissal of their petition under Section 482 of the Criminal Procedure Code (for brevity `Cr.P.C.') by the High Court of judicature for Rajasthan at Jodhpur. The High Court declined to interfere with the order of learned Chief Judicial Magistrate, Sriganganagar, dated 22.05.2000 in Case No. 63/2000, taking cognizance of offence under Section 420 read with Section 120-B of the Indian Penal Code.

2. Respondent No.2, Surendra Singhla, lodged a police case against the appellants as well as one Satish Singhla on 28.04.1998. According to the averments and allegations in the written report, the informant is a partner of the Firm M/s. Rajshree Cotton Corporation, Sriganganagar, working as broker as well as dealer in the sale and purchase of cotton. The appellants are Directors of M/s. R.P. Taxfab Limited, Modi Nagar, who purchased cotton through informant firm from time to time. As per the accounts, the informant firm was to receive a sum of Rs.47,28,115.80/-. The accused persons without taking the informant into confidence, entered into an agreement for transfer of management, assets and liabilities of M/s. R.P. Taxfab Limited in favour of accused Satish Singhla and two others who became the new Directors. The management of the Company was transferred on 24.02.1998 and on 27.02.1998 the informant was called by the appellants and told that the outstanding amount payable by the appellants shall be paid by the new Directors. The informant did

not agree to this. On next date, the appellants through a demand draft for Rs.10,00,000/- (rupees ten lacs) and returned cotton yarn worth Rs.13,26,560/- settled the dues in part and for the remaining dues they persuaded the informant to accept four post-dated cheques issued by the new Director Satish Singhla. The informant accepted the cheques on being assured by the accused persons that when presented on due dates the cheques shall be honoured. On such persuasion and trust, the informant signed some typed papers showing that he had agreed to receive the balance amount from the new Directors of the Company and had received draft and goods from the appellants.

3. Besides the aforesaid allegations and averments in the written information, the informant has also alleged that he would not have signed the said papers nor received the post-dated cheques but for the assurances given by the accused persons in presence of two witnesses. It is further alleged that when the informant presented cheque dated 25.03.1998 for a sum of Rs.5,00,000/- (rupees five lacs) through his bank, the said cheque was dishonoured because accused Satish Singhla had got the payment of the cheque stopped and that all the accused by mutual consent (conspiracy) have played a fraud and cheated him by making false statement and holding false assurances whereby they induced him to sign some papers. Allegedly, the accused had full knowledge even before issuing the cheques that these shall not be honoured and they had such dishonest intention from the beginning.

4. It is not in dispute that when the cheque bounced, the respondent no.2 gave a legal notice and initiated a separate complaint under Section 138 of the Negotiable Instruments Act, 1881, besides lodging of the present FIR on 28.4.1998. The complaint filed against the appellants under the Negotiable Instruments Act stands quashed by the High Court on the basis that they had not issued the cheques in question. The appellants' earlier petition under Section 482 of the Cr.P.C. for quashing of FIR vide Criminal Miscellaneous Petition No. 466 of 1998 was dismissed by the High Court by order dated 12.02.1999 which is reported in 1999 Criminal law Journal 1849 (Vijayander Kumar and Ors. Vs. State of Rajasthan and Another). A perusal of that judgment discloses that the High Court considered in detail the averments and allegations in the FIR and came to the conclusion that in view of allegations and attending circumstances, at that stage it was not possible to hold that the appellants cannot be liable for commission of any offence. The High Court held that there was a case worth investigation.

5. Subsequently, the police concluded investigation and submitted final report to the effect that the case is of civil nature. The learned Chief Judicial Magistrate, Sriganganagar, rejected the final report and after hearing the parties took cognizance of the offence under Section 420 read with Section 120-B of the IPC against all the five accused vide his order dated 22.05.2000.

6. The challenge to that order through a petition under Section 482 of the Cr.P.C. has been rejected by the High Court by the order under Appeal.

7. Learned senior counsel for the appellants drew our attention to some letters and communications such as annexure P.1 and P.2 both dated 27.02.1998 and annexure P.10 dated 24.02.1998 to support his contention that on 24.02.1998 itself the change in the management was brought to the notice of the informant with an intimation that a liability of Rs.23,00,000/- (rupees twenty three lacs) has

been transferred to the new management which they shall pay and thereafter, on 27.02.1998 the informant received payment from the appellants as well as accepted the post-dated cheques on 27.02.1998 itself. On that basis it has been contended that wrong averments and allegations have been made in the FIR. It is further case of the appellants that the allegations and averments do not make out any criminal offence.

8. On behalf of the appellants reliance has been placed upon judgments of this Court in the case of *Thermax Limited and Others Vs. K.M.Johny and Others*[1] and in case of *Dalip Kaur and Others vs. Jagnar Singh and another*[2]. There can be no dispute with the legal proposition laid down in the case of *Anil Mahajan vs. Bhor Industries Limited*[3] which has been discussed in paragraph 31 in the case of *Thermax Limited (supra)* that if the complaint discloses only a simple case of civil dispute between the parties and there is an absolute absence of requisite averment to make out a case of cheating, the criminal proceeding can be quashed. Similar is the law noticed in the case of *Dalip Kaur (supra)*. In this case the matter was remanded back to the High Court because of non-consideration of relevant issues as noticed in paragraph 10, but the law was further clarified in paragraph 11 by placing reliance upon judgment of this Court in *R.Kalyani vs. Janak C.Mehta*[4]. It is relevant to extract paragraph 11 of the judgment which runs as follows:

“11. There cannot furthermore be any doubt that the High Court would exercise its inherent jurisdiction only when one or the other propositions of law, as laid down in *R. Kalyani v. Janak C. Mehta* is attracted, which are as under:

“(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be ground to hold that the criminal proceedings should not be allowed to continue.”

9. Learned senior counsel for the appellants also placed reliance upon judgment of this Court in the case of *Devendra and Others vs. State of Uttar Pradesh and Another*[5], only to highlight that a second petition under Section 482 of the Cr.P.C. can be entertained because order of Magistrate taking cognizance gives rise to a new cause of action. This issue does not require any deliberation because learned senior counsel for the respondent no.2, the informant, has not raised any objection to the maintainability of petition under Section 482 of the Cr.P.C.

10. Contra the submission advanced on behalf of the appellants, learned counsel for the respondent no.2 has submitted that there is no merit in the contention advanced on behalf of the appellants that the FIR discloses only a civil case or that there is no allegation or averment making out a criminal offence. For that purpose he relied upon judgment of the High Court rendered in the facts of this very case reported in 1999 Criminal Law Journal, 1849, already noted earlier.

11. No doubt, the views of the High Court in respect of averments and allegations in the FIR were in the context of a prayer to quash the FIR itself but in the facts of this case those findings and observations are still relevant and they do not support the contentions on behalf of the appellants. At the present stage when the informant and witnesses have supported the allegations made in the FIR, it would not be proper for this Court to evaluate the merit of the allegations on the basis of documents annexed with the memo of appeal. Such materials can be produced by the appellants in their defence in accordance with law for due consideration at appropriate stage.

12. Learned counsel for the respondents is correct in contending that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may also be available to the informant/complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint discloses a criminal offence or not. This proposition is supported by several judgments of this Court as noted in paragraph 16 of judgment in the case of Ravindra Kumar Madhanlal Goenka and Another vs. Rugmini Ram Raghav Spinners Private Limited[6]

13. On considering the facts of the present case it is found that the facts were properly noticed by the High Court on earlier occasion while examining the petition preferred by the appellants for quashing of FIR of this case. The same view has been reiterated by the High Court in the order under appeal for not interfering with the order of cognizance by the learned Magistrate. Hence, we do not find any good ground to interfere with the criminal proceedings against the appellants at this stage. The appeal is, therefore, dismissed. No costs.

14. It is, however, made clear that observations in this order or in the order under appeal are only for deciding the issues raised at the present stage and shall not affect the defence of the appellants at a subsequent stage of the proceeding.

.....C.J.I. (P. SATHASIVAM) .....J.  
(RANJAN GOGOI) .....J. (SHIVA KIRTI SINGH) New Delhi;

February 11, 2014.

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- [1] (2011) 13 SCC 412
- [2] (2009) 14 SCC 696
- [3] (2005) 10 SCC 228
- [4] (2009) 1 SCC 516
- [5] (2009) 7 SCC 495

[6] (2009) 11 SCC 529

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