

M.N.Ojha & Ors vs Alok Kumar Srivastav & Anr on 21 August, 2009

Equivalent citations: AIR 2010 SUPREME COURT 201, 2009 (13) SCC 623, 2010 (1) AIR JHAR R 100, (2009) 11 SCALE 573, 2009 (9) SCC 682, (2009) 4 EASTCRIC 1, (2010) 1 MADLW(CRI) 519, (2009) 4 MAD LJ(CRI) 999, (2010) 1 RECCRIR 108, 2010 CALCRILR 1 18, (2009) 44 OCR 468, (2009) 4 CURCRIR 82, (2009) 82 ALLINDCAS 134 (SC), (2009) 4 CHANDCRIC 178, (2009) 4 CIVLJ 913, (2010) 1 ALLCRIR 794, (2009) 67 ALLCRIC 257, (2009) 3 CRIMES 401, (2009) 2 BANKCLR 34, 2010 (1) SCC (CRI) 101, (2009) 1 CRILR(RAJ) 483, (2009) 2 ALD(CRL) 572, (2009) 2 MADLW(CRI) 1194, (2009) 2 NIJ 1, (2009) 3 ALLCRILR 470, (2009) 3 BOMCR(CRI) 77, (2009) 3 CHANDCRIC 250, (2009) 3 CIVILCOURTC 436, (2009) 3 CURCRIR 39, (2009) 3 DLT(CRL) 126, (2009) 3 EASTCRIC 162, (2009) 3 PUN LR 595, (2009) 3 RECCIVR 423, (2009) 3 RECCRIR 365, (2009) 43 OCR 802, (2009) 4 CIVLJ 1077, (2009) 4 MAD LJ(CRI) 73, (2009) 5 BOM CR 271, (2009) 65 ALLCRIC 922, (2009) 8 SCALE 431, 2009 ALLMR(CRI) 2165, 2009 CRILR(SC MAH GUJ) 483, 2009 CRILR(SC&MP) 483, 2010 (1) SCC (CRI) 1147

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Bench: B. Sudershan Reddy, R.V. Raveendran

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1582 OF 2009
(Arising out of SLP(crl.) No. 1875 of 2008)

M.N.Ojha & Ors.

...Appellants

Versus

Alok Kumar Srivastav & Anr.

...Respondents

JUDGMENT

B.SUDERSHAN REDDY,J.

Leave granted.

2. This appeal by grant of special leave is directed by the appellant, assailing the judgment and order dated 3.1.2007 passed by the High Court of Judicature at Patna in Criminal Miscellaneous No. 18838 of 2004 by which the High Court dismissed the petition for quashing the criminal proceedings arising out of Complaint Case No. 916 (c) of 2003 pending on the file of Sub-Divisional Judicial Magistrate, Patna.

3. The brief factual matrix of the case is as under:

On 21.12.1998; Punjab National Bank, Patna City sanctioned a loan amount of Rs. 5 lakhs to M/s. Nirmala Alankar House, Patna City, a proprietary concern owned by one Jatinder Mohan. The said Jatinder Mohan furnished security of five guarantors including the respondent-

complainant who in turn deposited Fixed Deposit Receipts (FDRs) worth Rs. 50,000/-, each duly signed authorizing the bank to appropriate the proceeds of FDRs along with interest if the timely payments are not made by the borrower. Each one of them had also executed and signed Agreement of guarantee jointly and severally guaranteeing to pay the bank after demand in writing all principal, interest, costs, charges and expenses due and which may at any time become due to the bank from the borrower, on accounts opened in respect of the said limits down to the date of payment and also all loss or damages, costs, charges and expenses occasioned to the bank by reason of omission, failure or default temporary or otherwise in such payment by the borrower. The guarantors further agreed that the bank may enforce the guarantee without enforcing, selling or realizing any of the securities kept under lien, hypothecated, pledged or mortgaged with it, notwithstanding that any bills or other instruments given by the borrower in the said account may be in circulation for collection and outstanding.

4. The bank in the month of March, 2000 having realized that the loan account became totally irregular since the borrower was not paying any amount whatsoever as undertaken in terms of the agreement. On 26.3.2002, the first appellant - Senior Manager having realized that the recovery of bank loan became impossible adjusted some amounts from the FDRs furnished by the guarantors as security towards the dues of the borrower. The bank vide its notice dated 27.12.2002 informed the borrower as well as the guarantors that the loan account should be regularized to which there was no response. This was followed by an FIR lodged by the bank with the concerned police station against the borrower and guarantors including the respondent for cheating and for misappropriation of hypothecated goods. The said case is pending trial.

5. The guarantors addressed a legal notice dated nil to the Deputy General Manager, Vigilance Cell, PNB, New Delhi, Zonal Manager, PNB, Patna and Regional Manager PNB, (Haridwar) alleging therein that they were put to serious inconvenience due to the misconduct on the part of Appellant no. 1. It was also alleged that no proper steps were taken against the borrower for realization of loan

amounts before proceedings against them and to encash the FDRs offered by them as sureties for recovery of loan.

6. In the said legal notice it was further alleged that one Prakash Mohan while he was working in Patna City Branch as assistant had managed a cash credit facilities for a sum of Rs. 5 lakhs in the name of his own brother Jitender Mohan and that both Prakash as well as appellant no. 1 have colluded with each other with a view to defraud the bank and "put the blame upon the innocent guarantors".

7. Thereafter, the complainant Alok Kumar Shrivastava who was one of the guarantors, being aggrieved by the action of the bank in appropriating the fixed deposit amount, filed a Complaint Case No. 916 of 2003 in the court of SDJM, Patna City under Section 409,422,426 and 120B IPC in which the other three guarantors were shown as witnesses. The learned SDJM, Patna City, took cognizance of the case vide order dated 22.3.2004; and directed non-bailable warrant of arrest against all appellants herein who were named as the accused persons in the complaint.

8. In the meanwhile, the bank initiated proceedings under the Public Demand Recovery Act for recovery of balance amounts payable by the borrower after adjustment of the fixed deposit amounts.

9. The appellants being aggrieved by the order of SDJM, Patna City, Patna preferred a petition under Section 482 of the Code of Criminal Procedure in the High court of Judicature at Patna to quash the criminal proceedings initiated against them by the respondent-complainant. The High Court disposed of the said petition summarily without assigning any reasons whatsoever in the following manner:

"Having considered the materials on record and facts stated in the complaint petition, I do not find any merit in this application and so the impugned order does not require any interference. The facts are to be examined and duly considered at the appropriate stage of trial."

Hence this appeal.

SUBMISSIONS:-

10 Shri Dhruv Mehta, learned counsel for the appellants submitted that the High Court failed to appreciate that the complaint has been lodged with a completely malicious intent to simply harass the appellants who were only discharging their duties as public servants which is nothing but an abuse of the process of law. The averments made in the complaint are totally indefinite in their nature and none of the ingredients of the offences alleged to have been committed are made out against the appellants. It was also contended that the summoning order has been passed by the learned SDJM without application of mind and contrary to the law laid down by this court in more than one judgment. It was submitted that the complaint was filed as a counter blast to the FIR already lodged by the bank on 20.2.2003 for cheating and misappropriation of hypothecated goods against the borrower and as well as the guarantors.

11. Though the respondent was served on 16.5.2007, he neither appeared in person nor through counsel.

12. The respondent-complainant is one of the guarantors who guaranteed repayment of the loan obtained by the borrower. There is no dispute that the loan account became totally irregular and the bank has been left with no option but to appropriate the FDRs along with interest accrued thereon. The action initiated was in terms of the documents executed by the complainant along with other guarantors. It is evident from the record that the bank had lodged FIR with the police on 20.2.2003, for cheating and misappropriation of hypothecated goods against the borrower as well as the guarantors. The police initiated action against the complainant and others based on the said FIR lodged by the first appellant on behalf of the bank. This fact is specifically admitted in the legal notice issued for and on behalf of the guarantors including the complainant. We have no doubt whatsoever in our mind that the complaint dated 3.12.2003; filed by the complainant against the appellants almost after 10 months of the FIR lodged by the first appellant on behalf of the bank is nothing but a clear abuse of the judicial process to harass the appellants. The complainant himself admitted in his complaint that the account in question was gradually becoming irregular and the Manager ought to have taken steps for sale of the hypothecated goods and appropriated the sale proceeds towards the recovery of loan amounts. It is the case of the complainant in his complaint that the first appellant should have appropriated the hypothecated goods first and only thereafter steps could have been taken for recovery of the balance amount if any from the guarantors. It was alleged that the Branch Manager in conspiracy with the brother of the borrower who is none other than an employee of the bank allowed the operation of the account till the things became "bad to worse". According to him, the Branch Manager conspired with the borrower and committed criminal breach of trust. Repeated assertions have been made in the complaint that all the accused persons in conspiracy with each other have diverted huge bank money in a fraudulent manner for their own benefit. Surprisingly enough neither the borrower nor his brother with whom the bank officers are alleged to have colluded is arrayed as accused. The complainant in his complaint freely used choicest expressions such as "fraud, collusion, conspiracy and cheating etc." but did not make any concrete allegations against the appellants suggesting commission of any offence. That a plain reading of the complaint and taking the allegations and averments made therein to be true on their face value do not reveal the commission of any offence whatsoever by the appellants who were only taking steps to realize the amount due to the bank from the borrower and in the process encashed the FDRs offered by the guarantors as security for the discharge of the loan. What is the crime they have committed even if they did not proceed against the hypothecated properties before realizing the FDRs offered by guarantors? Where is the misappropriation of money? Whom did they cheat?

13. In our considered view, criminal law has been set in motion by the complainant to harass the bank officers needlessly and to wreak personal vengeance in order to bring them under pressure not to further prosecute the proceedings already initiated by the appellants against the complainant on behalf of the bank.

14. In our considered opinion, the learned SDJM set the criminal law in motion against the appellants without even examining the allegations and averments made in the complaint filed by the respondent-complainant. The learned SDJM took cognizance of the case without considering the

allegations on merits. Had the learned SDJM perused the complaint properly he would have realized that the complainant himself had made a mention about the lodging of the FIR for criminal breach of trust and other offences against the respondent-complainant and others. Had he looked into the complaint properly, he would have certainly asked the complainant to furnish the copy of the said FIR. A copy of the legal notice issued on behalf of the respondent- complainant to the appellants was filed along with the complaint and a mention is made about it in the order passed by the learned SDJM. Had the learned SDJM perused the said legal notice, he would have realized that the complainant himself admitted about his execution of agreement of guarantee and other documents unconditionally agreeing to discharge the loan amount in case of failure of the principal borrower to pay the said amount to the bank. Had the learned SDJM applied his mind to the facts and circumstances and sequence of events and as well as the documents filed by the complainant himself along with the complaint, surely he would have dismissed the complaint. He would have realized that the complaint was only a counter blast to the FIR lodged by the Bank against the complainant and others with regard to same transaction. This Court in *Pepsi Foods Ltd. & Anr. Vs. Special Judicial Magistrate & Ors.* [(1998)5 SCC 749 held:

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is *prima facie* committed by all or any of the accused."

The case on hand is a classic illustration of non-application of mind by the learned Magistrate. The learned Magistrate did not scrutinize even the contents of the complaint, leave aside the material documents available on record. The learned Magistrate truly was a silent spectator at the time of recording of preliminary evidence before summoning the appellants.

15. The High Court committed a manifest error in disposing of the petition filed by the appellants under Section 482 of the Code without even advertting to the basic facts which were placed before it for its consideration. It is true that the court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure cannot go into the truth or otherwise of the allegations and appreciate the evidence if any available on record. Normally, the High Court would not intervene in the criminal proceedings at the preliminary stage/when the investigation/enquiry is pending. Interference by the High Court in exercise of its jurisdiction under Section 482 of Code of Criminal Procedure can only be where a clear case for such interference is made out. Frequent and uncalled

for interference even at the preliminary stage by the High Court may result in causing obstruction in progress of the inquiry in a criminal case which may not be in the public interest. But at the same time the High Court cannot refuse to exercise its jurisdiction if the interest of justice so required where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no fair-minded and informed observer can ever reach a just and proper conclusion as to the existence of sufficient grounds for proceeding. In such cases refusal to exercise the jurisdiction may equally result in injustice more particularly in cases where the Complainant sets the criminal law in motion with a view to exert pressure and harass the persons arrayed as accused in the complaint. It is well settled and needs no restatement that the saving of inherent power of the High Court in criminal matters is intended to achieve a salutary public purpose "which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. If such power is not conceded, it may even lead to injustice". [See: State of Karnataka Vs. L. Muniswamy (1977) 2 SCC 699]. We are conscious that inherent powers do not confer an arbitrary jurisdiction on the High Court to "act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases". [See: Kurukshetra University Vs. State of Haryana (1977) 4 SCC 451].

16. This is one case where the averments and allegations made in the complaint do not disclose the commission of any offence by the appellants or any one of them. They were merely discharging their duties to realize and recover the amounts due to the bank from the borrower as well as the guarantors. The complaint obviously has been filed as counter blast to the proceedings already initiated by the bank including the first information report lodged by the first appellant against the complainant and the borrower for the offences of cheating and misappropriation. Sequence of events undoubtedly suggests that the criminal proceedings have been maliciously instituted with an ulterior motive of wreaking vengeance on the appellants and with a view to spite them due to personal grudge. It was clearly intended to prevent the public servants from discharging their duties. The criminal law has been set in motion by the learned SDJM by mere asking to do so by the complainant. The High Court almost abdicated its duty in refusing to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure though the case on hand required its interference in order to prevent abuse of the process by a court subordinate to it. A clear case is made out requiring our interference to secure the ends of justice.

17. For all the aforesaid reasons, the impugned order of the High Court is set aside and the criminal proceedings arising out of Complaint Case No. 916 (c) of 2003 are quashed. The appeal is, accordingly, allowed.

.....J. (R.V. Raveendran)J. (B. Sudershan Reddy)
New Delhi;

August 21, 2009.

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