Alpic Finance Ltd vs P. Sadasivan And Anr on 16 February, 2001

Equivalent citations: AIR 2001 SUPREME COURT 1226, 2001 (3) SCC 513, 2001 AIR SCW 823, 2002 AIR - KANT. H. C. R. 650, 2001 (2) LRI 177, 2001 ALL MR(CRI) 446, 2001 (2) SCALE 75, 2001 SCC(CRI) 565, (2001) 1 CGLJ 503, 2001 CRILR(SC&MP) 217, (2001) 2 JT 588 (SC), 2001 (3) SRJ 386, (2001) ILR (KANT) 4377, (2001) 2 MADLW(CRI) 676, (2001) 1 RECCRIR 756, (2001) 2 SUPREME 69, (2001) 1 CHANDCRIC 189, 2001 CRILR(SC MAH GUJ) 217, (2001) SC CR R 342, 2001 CHANDLR(CIV&CRI) 490, (2001) 1 CURCRIR 254, (2001) 1 ALLCRIR 726, (2001) 2 SCALE 75, (2001) 42 ALLCRIC 568, (2001) 1 ALLCRILR 639, (2001) 1 CRIMES 293, (2001) 1 BANKCLR 364, 2001 (1) ANDHLT(CRI) 234 SC, (2001) 1 ANDHLT(CRI) 234

Bench: S. Rajendra Babu, K.G. Balakrishnan

CASE NO.:
Appeal (crl.) 194 of 2001

PETITIONER:
ALPIC FINANCE LTD.

Vs.

RESPONDENT:
P. SADASIVAN AND ANR.

DATE OF JUDGMENT: 16/02/2001

BENCH:
S. Rajendra Babu & K.G. Balakrishnan.

JUDGMENT:

Balakrishnan, J.

L...I...T.....T.....T.....T.....T.....T.....T..J Leave granted.

The appellant is a registered company having its head office at Mumbai. It is a non-banking financial institution functioning under the regulation of the Reserve Bank of India. It is carrying on business, inter alia, of leasing and hire purchase. The first respondent is the Chairman and founder

trustee of a trust by name 'Visveswaraya Education Trust'. The second respondent, wife of the first respondent is also a trustee. The trust runs a dental college by name Rajiv Gandhi Dental College. The respondents entered into an agreement with the appellant company whereby the appellant agreed to finance the purchase of 100 hydraulically operated dental chairs. The total cost of the chairs was around Rs. 92,50,000/-. The appellant company agreed to finance the respondents for the purchase of these chairs through a lease agreement and as per the agreement, the respondents were liable to pay rentals quarterly. The respondents agreed to pay quarterly a sum of Rs. 7,50,000/- for the first year; Rs. 12,50,000/- for the second year; Rs. 8,00,000/- for the third year and Rs. 6,25,000/- for the fourth year. As per the agreement, the appellant company, the lessors would have sole and exclusive right, title and interest in the dental chairs supplied till the entire hire purchase amount was paid. In accordance with the agreement, the appellant made payments to M/s. United Medico Dental Equipments and they delivered the dental chairs to the respondents. The appellant company alleged that the respondents were not regular in making the payments and committed default in payment of the instalments and that the bank had dishonoured certain cheques issued by the respondents. The appellant company also alleged that on physical verification, certain chairs were found missing from the premises of the respondents and thus they have committed cheating and caused misappropriation of the property belonging to the appellant. The appellant company filed a private complaint under Section 200 Cr. P.C. before the Chief Metropolitan Magistrate, Bangalore alleging that the respondents had committed offences under Sections 420, 406 and 423 read with Section 120-B I.P.C. In that proceedings, the appellant company moved an application under Section 93 Cr. P.C. to issue a search warrant to seize the property in dispute and also to hand over these items to the complainant. The learned Magistrate took cognizance of the alleged complaint and issued summons to the respondents and passed an order on the application filed under Section 93 of the Cr. P.C. to have a search at the premises of the respondents and to take possession of the properties involved in the case. These proceedings were challenged by the respondents under Section 482 Cr.P.C. before the learned Single Judge of the Karnataka High Court at Bangalore. The learned Single Judge was pleased to quash the entire proceedings and directed the appellant company to return all the properties seized by the Police pursuant to the warrant issued by the learned Magistrate. Thus, the order of the learned Magistrate taking cognizance and issuing process to the respondents as well as the order of search and the direction for restoration of the property to the appellant company were set aside. Aggrieved by the same, the appellant company has preferred this appeal.

We heard the learned counsel on either side. Learned senior Counsel for the appellant company Mr. P.S. Mishra argued in detail and contended that the learned Single Judge has seriously erred in quashing the proceedings under Section 482 Cr. P.C. The learned counsel for the appellant company contended that the allegations in the complaint clearly made out offences punishable under Section 420, 406, 423, 424 read with Section 120-B I.P.C. The learned Counsel for the respondents, on the other hand, contended that the complaint was filed only to harass the respondents and it was motivated by mala fide intention. It was argued that the entire transaction was of civil nature and that the respondents have made a substantial payment as per the hire purchase agreement and the default, if any, was not willful and there was no element of misappropriation or cheating. The respondents also denied having removed any of the items of the disputed property clandestinely to defeat the interest of the appellant. The short question arising for consideration is whether the

learned Single Judge was justified in invoking the powers under Section 482 Cr.P.C. in setting aside the proceedings pending before the Magistrate.

Contours of the power under Section 482 Cr. P.C. have been explained in series of decisions by this Court. In Smt. Nagawwa vs. Veeranna Shivalingappa Konjalgi and Others 1976(3) SCC 736, it was held that the Magistrate while issuing process against the accused should satisfy himself as to whether the allegations in the complaint, if proved, would ultimately end in the conviction of the accused. It was held that the order of Magistrate issuing process against the accused could be quashed under the following circumstances: -

(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) Where the discretion exercised by the magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and (4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of complaint by legally competent authority and the like.

In State of Haryana and Ors. vs. Bhajan Lal and Others 1992 Supp. (1) SCC 335, a question came up for consideration as to whether quashing of the FIR filed against the respondent Bhajan Lal for the offences under Section 161 & 165 of IPC and Section 5(2) of the Prevention of Corruption Act was proper and legal. Reversing the order passed by the High Court, this Court explained the circumstances under which such power could be exercised. Apart from reiterating the earlier norms laid down by this Court, it was further explained that such power could be exercised where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. However, this court in Rupan Deol Bajaj (Mrs.) and Anr. vs. Kanwar Pal Singh Gill & Anr. 1995 (6) SCC 194, held that "at the stage of quashing FIR or complaint, the High Court is not justified in embarking upon an enquiry as to the probability, reliability or genuineness of the allegations made therein." In a few cases, the question arose whether a criminal prosecution could be permitted when the dispute between the parties is of predominantly civil nature and the appropriate remedy would be civil suit. In one case reported in Madhavrao Jiwajirao Scindia and Others vs. Sambhajirao Chandrojirao Angre and Others 1988(1) SCC 692, this Court held that if the allegations in the complaint are both of a civil wrong and a criminal offence, there would be certain situations where it would predominantly be a civil wrong and may or may not amount to a criminal offence. That was a case relating to a trust. There were three trustees including the settlor. A large house constituted part of the trust property. The respondent and the complainant were acting as Secretary and Manager of the Trust and the house owned by the trust was in the

possession of a tenant. The tenant vacated the building and the allegation in the complaint was that two officers of the trust, in conspiracy with one of the trustees and his wife, created documents showing tenancy in respect of that house in favour of the wife of the trustee. Another trustee filed a criminal complaint alleging that there was commission of the offence under Section 406, 467 read with Sections 34 and 120-B of the Indian Penal Code. The accused persons challenged the proceedings before the High Court under Section 482 of the Code of Criminal Procedure and the High Court quashed the proceedings in respect of two of the accused persons. It was under those circumstances that this court observed :

> "Though a case of breach of trust may be both a civil wrong and a criminal offence but there would be certain situations where it would predominantly be a civil wrong and may or may not amount to a criminal offence. The present case is one of that type where, if at all, the facts may constitute a civil wrong and the ingredients of the criminal offences are wanting. Having regard to the relevant documents, including the trust deed as also the correspondence following the creation of the tenancy, the submissions advanced on behalf of the parties, the natural relationship between the settlor and the trustee as mother and son and the fall out in their relationship and the fact that the wife of the co-trustee was no more interested in the tenancy, it must be held that the criminal case should not be continued."

In another case recently decided by this Court in Trisuns Chemical Industry vs. Rajesh Agarwal and Other 1999(8) SCC 686, the complainant company had alleged that the directors of another company offered to supply "toasted soyabean extractions" for a price higher than the market price. The Complainant Company had to pay the price in advance as demanded by the accused company. Complainant paid the amount through cheques. However, the accused supplied the commodity, which was of most inferior and sub-standard quality and the complainant suffered a loss of Rs. 17 lakhs. The Complainant alleged that he was induced to pay the price on the representation that the best quality commodity would be supplied. A criminal complaint was filed alleging commission of the offence punishable under Section 420-A. The Magistrate forwarded the complaint for investigation under Section 156(3) Cr. PC. The accused directors moved the High Court for quashing the complaint alleging that the dispute was purely of a civil nature and hence no prosecution should have been permitted. The High Court accepted this plea and the complaint was quashed. But this court held in para 8 and 9 of the judgment as follows:

> ".....merely because an act has a civil profile is not sufficient to denude it of its criminal outfit. .... We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act, which amounted to an offence, albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of

> its own. Pre-emption of such investigation would be justified only in very extreme cases."

In Pratibha Rani vs. Suraj Kumar 1985(2) SCC 370, the question arose that when the civil as well as criminal remedy is available to a party, can a criminal prosecution be completely barred. In this case, the matter related to the Stridhan property. The complainant alleged that her husband, father-in-law and other relatives misappropriated her jewellery and other valuable articles entrusted to them by her parents at the time of marriage. The complainant alleged that these dowry articles were meant for her exclusive use and that the accused misbehaved and maltreated her and ultimately he turned her out without returning the dowry articles. The accused filed a criminal miscellaneous petition under Section 482 for quashing the Criminal proceedings and the High Court quashed the same. The accused contended that the dispute was of a civil nature and no criminal prosecution would lie. Under that circumstance, this court held in paragraph 21 at page 382 as under: -

> "... There are a large number of cases where criminal law and civil law can run side by side. The two remedies are not mutually exclusive but clearly coextensive and essentially differ in their content and consequence. The object of the criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect the civil remedies at all for suing the wrongdoer in cases like arson, accidents, etc. It is an anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import...."

The facts in the present case have to be appreciated in the light of the various decisions of this Court. When somebody suffers injury to his person, property or reputation, he may have remedies both under civil and criminal law. The injury alleged may form basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between the parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have right to sue for damages or compensation and at the same time, law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating. Here the main offence alleged by the appellant is that respondents committed the offence under Section 420 I.P.C. and the case of the appellant is that respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is true which is false and which the person practicing the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. There is no allegation that the respondents made any willful misrepresentation. Even according to the appellant, parties entered into a valid lease agreement and the grievance of the appellant is that the respondents failed to discharge their contractual obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the respondents and thereby the respondents parted with the property. It is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the

transaction, he fails to pay his debt, he does not necessarily evade the debt by deception. Moreover, the appellant has no case that the respondents obtained the article by any fraudulent inducement or by willful misrepresentation. We are told that respondents, though committed default in paying some installments, have paid substantial amount towards the consideration.

Having regard to the facts and circumstances, it is difficult to discern an element of deception in the whole transaction, whereas it is palpably evident that the appellant had an oblique motive of causing harassment to the respondents by seizing the entire articles through magisterial proceedings. We are of the view that the learned judge was perfectly justified in quashing the proceedings and we are disinclined to interfere in such matters.

The appeal is dismissed with no order as to costs.