

Sohan Mahabir Prasad Saha and anr. Vs. Shyam Sunder Sevrampdas Bidawataka and anr.

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Court : Mumbai

Decided On : Mar-08-1982

Reported in : 1983(1)BomCR13

Judge : S.J. Deshpande, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482

Appeal No. : Criminal Application No. 1708 of 1981

Appellant : Sohan Mahabir Prasad Saha and anr.

Respondent : Shyam Sunder Sevrampdas Bidawataka and anr.

Advocate for Def. : R.M. Kedia, Adv. for respondent No. 1

Advocate for Pet/Ap. : Porus Mehta and ;Bhaskar N. Mehta, Advs.;For State: V.N. Damle, P.P.

Judgement :

S.J. Deshpande, J.

1. The petitioners are a company who are exporters and importers, carrying on business of garments. Petitioner No. 1 is the son and petitioner No. 2 is the mother. Respondent No. 1 is also a partnership firm carrying on business of supplying certain textiles.

2. Both the firms carry on their business at Bombay. The respondent herein filed a complaint alleging that the petitioners have dishonoured certain cheques which were issued in regard to payments of certain goods which they had supplied to them. It was alleged in the complaint that there were 7 cheques in the sum of Rs. 25,000/- amounting to total of Rs. 1,75,000/-. These cheques were issued on different dates i.e. between the 10th February to 19th February, 1980. Except one cheque, the other cheques which were post-dated cheques were dishonoured and the respondent could not get any payment against these cheques. Therefore, he filed a complaint in the Court of the Metropolitan Magistrate, 19th Court, Esplanade, Bombay. This is an extraordinary case. The respondent plaintiff is a firm carrying on business at Bombay. On 24th July, 1980 they initiated the present prosecution against the petitioners on the charge of cheating. Their main contention was that the cheques which were issued by the petitioners were dishonoured and petitioners have no intention to pay the amounts and, therefore, they rushed to the Criminal Court charging them with cheating. It is surprising that the firm could have taken such a hasty action in the

matter of recovery of certain dues. Assuming, for a while, that there was some plea that they were likely to be cheated by the firm, I have no doubt, in my opinion, that the respondent-complainant has abused the process of Court and with an ulterior motive to bring pressure upon the petitioners, has sought to move the Criminal Court. The complainant was filed on July 24, 1980 and it appears that this complaint was not prosecuted at all. There were adjournments and ultimately this complaint was dismissed on June 11, 1981. After this complaint was dismissed, the respondent again re-filed the complaint on July 1981 out of which the present petition arises.

3. The learned Magistrate registered the case as C.C. No. 140/S of 1980 and after recording the verification statements, passed the following order on July 24, 1980 :

'Issue summonses returnable on 28-8-1980'.

4. It is against this order that the present petition is filed by the petitioners who are accused in the complaint invoking the power under section 482 of Criminal Procedure Code. Mr. Bhaskar N. Mehta, the learned Advocate for the petitioners has urged that the liability, if at all, can be fixed or if it can be determined, is not a criminal liability at all. It is purely a civil dispute between the parties. The respondent on his own showing has not alleged in the complaint that the cheques were dishonoured for want of funds. The statement on oath given by the respondent before the Magistrate also appears to be very strange, which can arise given suspicion about the authenticity of his statement. But it is surprising that the respondent who was clearly made his statement, the Magistrate should have been at least very careful of the reckless way in which he has stated that I know accused Nos. 1 and 2 who are husband and wife respectively. I am referring to this statement only to show the utter carelessness and recklessness of the respondent in giving description of some minor facts. It appears to me that the respondent who is a director of the Company at least so accepted that the widow of 70 years would never become the wife of accused No. 1 who is her son. I am especially emphasizing this conduct, because in this case, I have material to show that the respondents have been thoroughly negligent and irresponsible in the matter of prosecution of their complaint. On July 24, 1980 the respondent moved the Criminal Court. If the respondent was really serious about the loss which is caused to him it was expected of him that he would have at least prosecuted that case. The dismissal of the earlier complaint which was prior to filing of fresh complaint but in the initial stages it did not charge the petitioners with the commission of offence for cheating. It is not possible that the respondents might have ignored this but it does appear on record that he chose to just prolonging the complaint till July 1981. Mr. Mehta, the learned Advocate for the petitioners-accused had also stated before me that his client was required to come from America to attend this complaint. I have no reason to disbelieve the statement made by the learned Advocate having regard to the liabilities of the firm. Firstly relying on it, it is quite possible that the accused might becoming from America and criminal process is issued in prudence of the process if they have chosen to come to India only for that purpose, it was really very painful. I find that the respondent should have neglected to prosecute them when they were available in this country and if the respondent was quite sure and the complaint was bona fide. I have no doubt in my opinion that the dismissal of earlier complaint was not motivated by any special difficulties but due to some negligence and it was not based on any sufficient ground at all. The present complaint which was filed on July 1981 is also curious. Bare reading of the complaint will show that there does lie a civil complaint. The respondent has stated in the complaint that he suspected the bona fides of the accused. I wonder that when his first cheque was

dishonoured on February 12, 1980 this suspicion goes un rebutted till the month of July 1980. On this simple ground alone the complaint deserves to be dismissed. Mr. Mehta also pointed out that his client has a running account with the firm of the respondent. The accompaniments to the petition Exh. 'A' and 'B' show that the petitioners were silent and it is not for want of funds that the cheques were dishonoured but their grievance was that there is a reference to the dispute of civil nature with regard to the nature and circumstances of the case. There is an affidavit on record to which Mr. Mehta has invited my attention which is the affidavit of the Director of the Company of the petitioner. In this affidavit it has been disclosed in para 4 that :---

'4. A perusal of the ledger entries will show that the goods were sold on credit and parties have maintained a mutual running and current account.'

In para 6 it was averred that:

'The cheques were dishonoured on account of our instructions and not for want of funds.'

There is a balance-sheet also attached by the company of Exh. 'A' which shows that the petitioners had obtained the benefit of overdraft facilities from the Bank and that balance-sheet shows that credit of more than 70,000/- rupees was found from 1975-76, and in 1977-78 also it shows a credit of 17,00,000/- rupees. There is a reference to the account of the petitioners in Vijaya Bank which shows a credit of Rs. 1,16,000/- and odd. There is no one to represent the respondents. They have been absent in this Court also. The complaint has followed the same phase as in the lower Court. I have no doubt in my opinion that this complaint is not bona fide at all and deserves to be dismissed.

5. It is true, at the initial stage of the issue of process, ordinarily High Court will not exercise its powers. But in an extraordinary case, this complaint is filed which is not bona fide and which is otherwise only an abuse of process to Court, this Court is bound to do justice to the party. This is an incident where the High Court should consider whether powers under section 482 should be exercised or not. In this connection, Mr. Mehta, the learned Advocate for the petitioners has invited my attention to a judgment of the Supreme Court reported in Trilok Singh v. Satya Deo Tripathi, : 1980CriLJ822 . The facts of this are quite similar to the one which I am dealing with. Here the earlier first information report was dismissed. I have mentioned in para 4 that the earlier first information report against the accused was dismissed and the dispute related to the recovery of price of trucks. The Supreme Court has observed that the proceedings initiated were merely an abuse of the process in the Court. The Supreme Court has further observed that :

'.....it was not a case where any processes ought to have been directed to be issued against any of the accused. On the well-settled principles of law it was a very suitable case where the criminal proceeding thought to have been quashed by the High Court in exercise of its inherent power.'

In this case also I find that the dispute raised by the petitioners is of civil nature and the criminal complaint which is filed is not well-founded. In my opinion, it lacks in bona fides and it may be of a very oppressive character, therefore, the theory which I have applied to this case that whether the complaint prima facie discloses any basis

for charge of cheating at all, is correct. The facts which I have narrated above clearly show that the dispute is of civil nature only. In my opinion, it would be nothing but a harassment to the petitioners if such complaint is allowed to be prosecuted. To allow such proceedings to continue, especially when respondent is very inactive and not taking any interest at all, is to allow a force to be enacted for harassment against the petitioners. As no offence is disclosed, as far as criminal act is concerned, assuming all the averments made by the respondents in the complaint are true, I do not find any justification for a criminal action.

6. In the result, I allow this petition and dismiss the complaint. The order of the learned Magistrate is quashed. Rule is made absolute. The State was represented by the learned Public Prosecutor, Shri Damle who has fairly conceded that this is a fit case where the High Court should exercise its powers under section 482. I appreciate the fairness of the Public Prosecutor in this matter. With these observations rule is made absolute.

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