

MAHESH CHOUDHARY

v.

STATE OF RAJASTHAN & ANR.
(Criminal Appeal No. 417 of 2009)

MARCH 3, 2009

[S.B. SINHA AND ASOK KUMAR GANGULY, JJ.]

Code of Criminal Procedure, 1973:

S.482 – Quashing of criminal proceedings – Power of High Court – Discussed – The question involved in the present case is essentially a civil dispute – Case for imposing criminal liability not made out – In view of the peculiar facts and circumstances of the case and in order to do complete justice, certain directions issued – Constitution of India, Article 142.

The firm in which the appellant was a partner, entered into an agreement with another firm whereby the latter firm was to receive 10% commission on the invoice value of each and every invoice and total sales made directly or indirectly by the firm. Alleging that the appellant has committed the offences of criminal breach of trust and/or of cheating and forgery by not paying commission to the firm on the sale of about Rs.9 crores through a sister concern, a Complaint Petition was filed. The Magistrate directed the Police to lodge FIR, and it was lodged. The Magistrate took cognizance of the offences against the appellant. Thereafter the appellant filed an application before the High Court for quashing of the order passed by the Magistrate. It was dismissed. Hence the appeal.

Dismissing the appeal, the Court

HELD:1. Indisputably, the question as to whether the complainant was entitled to a higher amount of

A commission in terms of the agreement dated 21.2.1973 is essentially a civil dispute. The complainant in terms of the said agreement was not only entitled to inspect the documents maintained by the accused but also to get the same audited. It is, therefore, difficult to hold as has rightly been opined by the Investigating Officer that a case for imposing a criminal liability on the accused on that score has been made out. While saying so, this Court is not unmindful of the limitations of the court's power under Section 482 of the Code of Criminal Procedure which is primarily for one either to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The court at that stage would not embark upon appreciation of evidence. The Court shall moreover consider the materials on record as a whole. [Para 15] [1012-H; 1013-A-C]

Kamaladevi Agarwal vs. State of W.B. & Ors. (2002) 1 SCC 555; *B.Suresh Yadav vs. Sharifa Bee & anr.* (2007) 13 SCC 107 and *R. Kalyani vs. Janak C. Mehta & ors.* 2008 (14) SCALE 85, referred to.

2. The charge-sheet, prima facie discloses commission of offences. A fair investigation was carried out by the Investigating Officer. The charge-sheet is a detailed one. If an order of cognizance has been passed relying on or on the basis thereof by the Magistrate, no exception thereto can be taken. This Court does not find any legal infirmity in the impugned orders. [Para 16] [1015-E-F]

3. Before this Court, it was stated that the appellant is ready and willing to get the disputes and differences between the parties settled. In that view of the matter and keeping in view the peculiar facts and circumstances of this case and with a view to do complete justice to the parties, in exercise of jurisdiction under Article 142 of the Constitution of India, it is directed that in the event the

appellant appears before the Magistrate within a period of four weeks and files an application for grant of bail, he shall be released on bail on such terms and conditions as the Magistrate may deem fit and proper. In the event, the appellant files an application for exemption from his personal appearance, the same may also be considered on its own merits. It would be open to the complainant to consider the offer of the appellant. [Para 17] [1015-G-H; 1016-A-B]

Case Law Reference:

(2002) 1 SCC 555 referred to Para 15

(2007) 13 SCC 107 referred to Para 15

2008 (14) SCALE 85 referred to Para 15

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 417 of 2009.

From the Judgment and Order dated 10.10.07 of the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in S.B. Criminal Misc. Petition No. 178 of 2007.

Jagdeep Dhankar, Sunil Kumar and Aneesh Mittal for the Appellants.

L.N. Rao, Siddharth Luttra, Randhir Singh, Braj Kishore Mishra, Aparna Jha and Vikram for the Respondent.

The Judgment of the Court was delivered by

S.B. SINHA, J.1. Leave granted.

2. Appellant was a partner of a firm known as M/s Saraswati Exports. He is also Director of a Company known as 'Saraswati Exim Pvt. Ltd.' (for short, "the company").

3. M/s S.N.Kapur Exports is a firm registered under the Indian Partnership Act, 1932 (for short, "firm"). The Complainant

A Vikram Kapoor (Respondent No.2 herein) is a partner thereof. The firm was engaged in manufacturing, selling and export of carpets, mats, etc. It developed various types of hand knotted new designs of carpets and acquired special skill therein.

B 4. Indisputably, the two firms entered into a contract on or about 1.4.2001 in terms whereof, inter alia, the firm agreed to help and assist the appellant with regard to production, i.e., designing, colouring, dyeing, finishing, etc. The firm also agreed to provide knowledge and know-how for the carpet production by the appellant for making their products readily saleable and more-marketable. The firm for the said purpose was to receive 10% commission on the invoice value of each and every invoice and total sales made directly or indirectly by the firm.

C Some of the clauses of the said agreement are as under:

D "9. That the SECOND PARTY shall have an office provided by the FIRST PARTY to carry out supervising of all the work of designing etc. and auditing/checking of account records/books.

E xxx xxx xxx

F 14. That the SECOND PARTY shall have right to auditing, checking of accounts books/records etc., through their auditor at any time and the FIRST PARTY will cooperate in this regard.

G 15. That if the sum due on account of 10% commission is not paid promptly as soon as the sum due becomes Rs. 3 Lacs, the SECOND PARTY shall on the strength of this agreement alone, file a law suit for the recovery of dues and bringing a stay from the law court of the business and its total activity till the full payment has been made along with 15% interest for the period of delay and full cost of law suit has been cleared and paid in full

H

by the FIRST PARTY.

A

xxx xxx xxx

23. That the FIRST PARTY has an assurance from SECOND PARTY that sales (export sales of Hand Knotted Carpet) will be done with the help of SECOND PARTY.

B

24. That the FIRST PARTY is singly taking up to produce only Hand Knotted Carpets without any compromise in execution of quality. Any defective carpets produced by the FIRST PARTY shall be entirely FIRST PARTY's responsibilities.

C

25. That neither FIRST PARTY nor SECOND PARTY can enter into such agreement with any one else."

D

5. The said agreement continued till 31.3.2003. Indisputably again with effect from 1.4.2003, another agreement has been entered into by and between the parties thereto whereby and whereunder it was agreed that the appellant would pay a sum of Rs.17 lakhs per month to the firm for a period of two years. It is furthermore not in dispute that whereas the firm claims a sum of Rs.4,49,85,581/- towards commission payable to it towards export but only a sum of Rs.3,21,06,910/- has been paid.

E

6. Inter alia alleging that the appellant herein has committed the offences of criminal breach of trust and/or of cheating and forgery, on the premise that he had made sale of about Rs.9 crores in the year 2002-2003 through a sister concern wherefor no commission was paid although the technical know-how was made available by the firm, a complaint petition was filed in the court of Judicial Magistrate No. 22, Jaipur City, Jaipur on or about 13.08.2004.

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7. The learned Magistrate directed the officer-in-charge of the Brahmpuri Police Station to lodge a First Information Report

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A (FIR). Pursuant thereto or in furtherance thereof, a FIR was lodged. On completion of investigation, a detailed charge-sheet has been submitted on or about 8.1.2007. In the said charge-sheet, it was, inter alia, opined that no manipulation in the records has been committed for showing sale of carpet through
B the sister concern, stating:

“Even it is assumed that the sale made by Saraswati Exim is the indirect sale of Saraswati Export, yet no commission is payable to Shri Kapoor on the sale of tufted carpets and hand knotted carpets purchased from other firms. No such
C fact has come into light from the entire records of sale made by Saraswati Export and Saraswati Exim that sale made by Saraswati Export has been shown to be the sale made by Saraswati Exim by committing any manipulation in the records.

D
8. Analyzing the terms of the contract, it was stated that the complainant did not raise any protest from time to time with regard to the purported breaches thereof on the part of the appellant and in any event, the same gives rise to a civil
E dispute.

9. It was, however, found that different invoices were presented to the bank showing different amounts and quantities vis-à-vis the firm, stating:

F “...Thus, partners of Saraswati Export by showing the amount of commission in the invoices falsely and wrongly and by deducting the amount of commission from the total sale value in wrong and false manner have shown the less sale turnover and consequently, an offence under Section
G 420, 467, 468 IPC is found proved for paying less commission than the actual due commission to Shri Kapoor and commission of breach of trust.

H 3. Invoice No. 1610/23.4.02 which has been submitted by Saraswati Export with the bank, rate of carpets is shown

at higher rate and the rate of carpet in the invoice given to the complainant is shown lower. Thus, no satisfactory explanation regarding difference in the sale rate of carpet in the copies of the above invoices is available on record. However, in comparison to the annual sale turnover of Saraswati Export, difference of total sale value of US \$ 34096.00 of the above one bill and difference amount 2005 US \$ is ignorable, but it is proved that Shri Mahesh Chaudhary by making the false entry in the invoices has saved the commission of 200.5 US \$ payable to Shri Kapoor and has not paid the same to Shri Kapoor against which offence punishable under Sections 420, 467, 468 IPC is found proved.”

10. The learned Chief Judicial Magistrate took cognizance of the offences against the appellant by an order dated 9.1.2007. Appellant thereafter filed an application for quashing of the said order before the Rajasthan High Court which has been dismissed by reason of the impugned judgment.

11. Mr. Jagdeep Dhankar, learned Senior Counsel appearing on behalf of the appellant, would submit:

- (i) The transaction in terms of the aforementioned agreement dated 21.2.1973 having continued upto 31.3.2003 and a sum of Rs.3,21,06,910/- having been paid by way of commission to the firm, the charge-sheet even if given face value and taken to be correct in its entirety does not constitute offences punishable under Sections 420, 467 and 468 of the Indian Penal Code.
- (ii) The observations made in the charge-sheet against the appellant being related to about 200 US \$ only, it is absurd to think that the appellant would commit such an offence.
- (iii) In any event, the disputes and differences between

A the parties being pertaining to breach of contract resulting in civil dispute, the same should be directed to be resolved through arbitration or any other dispute resolution mechanism.

B 12. Mr. L.N. Rao, learned Senior Counsel appearing on behalf of the respondent, on the other hand, would contend:

(i) Appellant illegally and wrongfully diverted the business to its sister concern and, thus, cheated the respondent No.2 of a huge amount of commission.

C (ii) In any event, a charge-sheet having been filed upon arriving at a finding that the accused had committed an offence of forgery in respect of invoices, which are valuable security, this Court should not interfere with the impugned order.

D 13. The principle providing for exercise of the power by a High Court under Section 482 of the Code of Criminal Procedure to quash a criminal proceeding is well known. The court shall ordinarily exercise the said jurisdiction, inter alia, in the event the allegations contained in the FIR or the Complaint
E Petition even if on face value are taken to be correct in their entirety, does not disclose commission of an offence.

F 14. It is also well settled that save and except very exceptional circumstances, the court would not look to any document relied upon by the accused in support of his defence. Although allegations contained in the complaint petition may disclose a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to
G continue. For the purpose of exercising its jurisdiction, the superior courts are also required to consider as to whether the allegations made in the FIR or Complaint Petition fulfill the ingredients of the offences alleged against the accused.

H 15. Indisputably, the question as to whether the complainant

was entitled to a higher amount of commission in terms of the agreement dated 21.2.1973 is essentially a civil dispute. The complainant in terms of the said agreement was not only entitled to inspect the documents maintained by the accused but also to get the same audited. It is, therefore, difficult to hold as has rightly been opined by the Investigating Officer that a case for imposing a criminal liability on the accused on that score has been made out. While saying so, we are not unmindful of the limitations of the court's power under Section 482 of the Code of Criminal Procedure which is primarily for one either to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The court at that stage would not embark upon appreciation of evidence. The Court shall moreover consider the materials on record as a whole.

In *Kamaladevi Agarwal vs. State of W.B. & ors.* [(2002) 1 SCC 555], this Court opined:

"7. This Court has consistently held that the revisional or inherent powers of quashing the proceedings at the initial stage should be exercised sparingly and only where the allegations made in the complaint or the FIR, even if taken at the face value and accepted in entirety, do not prima facie disclose the commission of an offence. Disputed and controversial facts cannot be made the basis for the exercise of the jurisdiction."

It was furthermore observed that the High Court should be slow in interfering with the proceedings at the initial stage and that merely because the nature of the dispute is primarily of a civil nature, the criminal prosecution cannot be quashed because in cases of forgery and fraud there would always be some element of civil nature.

This Court in *B.Suresh Yadav vs. Sharifa Bee & anr.* [(2007) 13 SCC 107] opined as under:

"13. For the purpose of establishing the offence of

A cheating, the complainant is required to show that the
accused had fraudulent or dishonest intention at the time
of making promise or representation. In a case of this
nature, it is permissible in law to consider the stand taken
by a party in a pending civil litigation. We do not, however,
B mean to lay down a law that the liability of a person cannot
be both civil and criminal at the same time. But when a
stand has been taken in a complaint petition which is
contrary to or inconsistent with the stand taken by him in a
civil suit, it assumes significance. Had the fact as
C purported to have been represented before us that the
appellant herein got the said two rooms demolished and
concealed the said fact at the time of execution of the deed
of sale, the matter might have been different. As the deed
of sale was executed on 30.9.2005 and the purported
D demolition took place on 29.9.2005, it was expected that
the complainant/first respondent would come out with her
real grievance in the written statement filed by her in the
aforementioned suit. She, for reasons best known to her,
did not choose to do so."

E Recently in *R. Kalyani vs. Janak C. Mehta & ors.* [2008
(14) SCALE 85], this Court laid down the law in the following
terms:

F "9. Propositions of law which emerge from the said
decisions are:

(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
G 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.

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(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. A

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

10. It is furthermore well known that no hard and fast rule can be laid down. Each case has to be considered on its own merits. The Court, while exercising its inherent jurisdiction, although would not interfere with a genuine complaint keeping in view the purport and object for which the provisions of Sections 482 and 483 of the Code of Criminal Procedure had been introduced by the Parliament but would not hesitate to exercise its jurisdiction in appropriate cases. One of the paramount duties of the Superior Courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint." C D E

16. The charge-sheet, in our opinion, prima facie discloses commission of offences. A fair investigation was carried out by the Investigating Officer. The charge-sheet is a detailed one. If an order of cognizance has been passed relying on or on the basis thereof by the learned Magistrate, in our opinion, no exception thereto can be taken. We, therefore, do not find any legal infirmity in the impugned orders. F

17. We, however, must place on record that before us Mr. Dhankar stated that the appellant is ready and willing to get the disputes and differences between the parties settled. In that view of the matter and keeping in view the peculiar facts and circumstances of this case and with a view to do complete justice to the parties, we, in exercise of our jurisdiction under G

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- A Article 142 of the Constitution of India, direct that in the event the appellant appears before the learned Magistrate within a period of four weeks from date and files an application for grant of bail, he shall be released on bail on such terms and conditions the learned Magistrate may seem fit and proper. In
- B the event, the appellant files an application for exemption from his personal appearance, the same may also be considered on its own merits. It would be open to the complainant to consider the offer of the appellant.

- C 18. Subject to the aforementioned directions, the appeal is dismissed.

G.N.

Appeal dismissed.