
(1995) 01 MAD CK 0013

Madras High Court

Case No: Criminal O.P. No. 8835 of 1992 and Criminal M.P. No's. 4844 and 7498 of 1992

Jairaj Shetty

APPELLANT

Vs

Vs Thapar Water Base Ltd.

RESPONDENT

Date of Decision: Jan. 23, 1995

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 420, 467, 471

Citation: (1995) 1 LW(Cri) 385

Hon'ble Judges: Rengasamy, J

Bench: Single Bench

Advocate: K.A. Panchapagesan, for the Appellant; Poornam for King Partridge, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Rengasamy, J.

This petition is filed u/s 482 Code of Criminal Procedure to quash the proceedings in C.C. No. 1613/92 on the file of the

Chief Metropolitan Magistrate, Madras, against the Petitioner. The Respondent has given a complaint against this Petitioner for the offences under

Sections 420, 467 and 471 Indian Penal Code. He granted a contract work to the Petitioner herein at Nellore, Andhra Pradesh, for the execution

work of prawn aquaculture project. He has stated in the complaint that as amounts had to be disbursed to this Petitioner for the execution of the

work, he obtained bank guarantees from the Petitioner, that the Petitioner furnished bank guarantees drawn on UCO Bank, Mangalore, on the

strength of which, he disbursed Rs. 42,30,000, that subsequently as he found that the Petitioner did not complete the work in time, resulting in huge

loss, he terminated the contract and when letters were sent to UCO Bank for payment of the guaranteed amount, UCO Bank informed that no

guarantee was given by them and then only he came to know that the bank guarantees given by the Petitioner were forged documents to deceive

him. On the basis of these allegations, the complaint is taken on file. The Petitioner filed O.P. No. 118/91 for certain reliefs under the Arbitration

Act invoking the arbitration clause in the agreement whereas the Respondent filed O.P. No. 6/92 u/s 33 of the Arbitration Act alleging that the

contract is vitiated by fraud and therefore the clauses therein could not be invoked.

2. While disposing of O.P. No. 6/92, this Court observed that all questions raised by the parties including the alleged fraud and misrepresentation

while furnishing the bank guarantee, shall be decided by the arbitrator. Taking refuge under this clause, the Petitioner has come forward with this

petition to quash the proceedings viz., C.C. No. 1613/92 as this Court has given direction to decide all alleged fraud and misrepresentation by the

arbitrator.

3. The learned Counsel for the Petitioner Mr. Panchapagesan submitted that though O.P. No. 6/92 was filed by the Petitioner for declaration that

the arbitration clause in the agreement could not be invoked by both parties, as the agreement itself was vitiated by fraud and misrepresentation,

the Respondent has invited the order of this Court that such allegations have to be decided by the arbitrator that as this direction of the court is

binding upon both parties the Respondent at this stage, cannot proceed with the complaint given against the Petitioner till the arbitrator had decided

the points alleged by the Respondent, that at the most, the Respondent is entitled to approach the criminal Court, only if the arbitrator gives a

finding accepting the allegations of the Respondent and therefore till then the criminal proceedings against the Petitioner is not maintainable.

4. The learned Counsel appearing for the Respondent complainant contended that the criminal proceedings against the Petitioner is a statutory

remedy to try the Petitioner for the commission of the offence, that this right of the Respondent cannot be taken away by any court and therefore

the proceedings cannot be quashed and this petition is not maintainable.

5. The allegation of the Respondent against the Petitioner are very serious and those allegations do constitute the offences alleged in the complaint.

It is the allegation of the Respondent complainant that only on the strength of the Bank guarantee furnished by the Petitioner herein, he disbursed a

sum of Rs. 42,30,000, but after the termination of the contract, he found that the bank guarantees purported to have been issued on behalf of the

Petitioner by UCO Bank, Mangalore, were forged documents, as the bank denied the execution of those bank guarantees. Only on the basis of

the bank guarantees, the Respondent disbursed such a huge amount to the Petitioner. So, the Respondent contends that, not only a forged

document was produced by the Petitioner for receiving Rs. 42,30,000 from him but by the fraudulent representation of the Petitioner, he was made

to enter into an agreement with the Petitioner for giving the contract work to him and he was actually deceived by the Petitioner. So, these

allegations certainly make out a prima facie case for the offences under Sections 420, 467 and 471 Indian Penal Code against the Petitioner herein.

The learned Counsel for the Petitioner Mr. Panchapagesan also does not dispute the prima facie case against the Petitioner for the abovesaid

offences. But his only contention is that in view of the direction given by this Court in O.P. No. 6/92, the enquiry for the abovesaid offences cannot

be taken up by the criminal court at this stage before the arbitrator had decided the allegations against the Petitioner. This Court while disposing of

O.P. No. 6/92 has observed as follows:

All questions raised by the parties including the alleged fraud and misrepresentation in the matter of furnishing bank guarantees by the first

Respondent shall be decided by the arbitrator appointed by the Petitioner in terms of Clause 8.20 of the tender document.

It should be borne in mind that O.P. No. 6/92 was filed under the Arbitration Act to invite the findings of the court that the arbitration clause in the

agreement was not enforceable for the reason that the contract itself was vitiated by fraud. Therefore, O.P. No. 6/92 relate to the relief in respect

of the terms of the agreement between the parties. When this Court disposed of that petition with certain directions, such directions are confined to

the relief sought for in that petition namely the civil right of the parties. As the Respondent complainant contended that he was misled by the bank

guarantee, which, according to him, was not genuine, and under the misconception that the bank guarantee was furnished by the Petitioner herein

he entered into the agreement with the Petitioner, this Court in O.P. No. 6/92 has ordered that the validity of the agreement on the basis of the

alleged fraud, misrepresentation including the furnishing of the bank guarantee, shall be decided by the arbitrator in terms of the clause found in the

tender agreement. Therefore the direction given by this Court does not in any way touch upon the criminal prosecution of the Petitioner herein for

the alleged offences committed by him. When the remedy sought for in O.P. No. 6/92 is purely confined to the agreement between the parties and

this Court also had adverted to the question, only relating to that relief, the order passed therein also can be only in relation to the relief sought for

in that proceedings even though incidentally it may touch upon certain other aspects also. So, the enquiry by the arbitrator referred to in the order

of this Court cannot be in relation to the offences alleged to have been committed by the Petitioner, but purely on the civil rights of the parties and

the validity of the agreement entered into between them. Therefore, at no stretch of imagination it can be taken that only after the decision of the

arbitrator, the criminal court gets powers to enquire into the alleged commission of the offences by the Petitioner. The arbitrator appointed as per

the direction in O.P. No. 6/92 is not a competent person to give a ruling or finding as to the commission of the offence and punish him according to

law. Section 4 of the Code of Criminal Procedure reads,

All offences under the Indian Penal Code (Act 45 of 1860) shall be investigated, enquired into, tried and otherwise dealt with according to the

provisions hereinafter contained.

When the Code empowers the criminal courts to enquire into the offences and try and deal with the accused person according to the provisions of

the Code, no one on earth can take away this right of the criminal court. Now the complaint is filed and pending before the Chief Metropolitan

Magistrate, Egmore, Madras, who is the competent authority to enquire and try he offender. This proceedings cannot be prevented by an order of

the Civil Court that someone (arbitrator) should give a certificate for the trial of this case. Such an argument is not only untenable but also ridiculous.

6. No doubt there may be parallel enquiry on different forums on the same question. For example in the Motor Accident Cases, the Accident

Claims Tribunal tries the case for the purpose of awarding compensation to the victim of the accident and for the very same incident, the criminal

court also tries the offender for the rash and negligent driving of the vehicle. Similarly in the cases of criminal misappropriation or breach of trust,

the civil court may pass a decree against a person alleged to have misappropriated the funds and the criminal court also separately tries him for the

commission of the offence of breach of trust or misappropriation. For the reason that the Civil court has granted the decree against such person,

the criminal court cannot skip over the trial envisaged under the Code and simply impose punishment on the finding of the civil court or the civil

court cannot straight-away grant a decree on the basis of the conviction of a person for the misappropriation or breach of trust. They are parallel

enquiries functioning on the authority of the powers conferred on them under the statutes. The standard of proof required for these parallel

enquiries are different and sometimes there may be conflicting views also. But that cannot be helped because in both the forums, they are enquiring

the matter independently and decide the question on the materials available before them. In *M.S. Sheriff Vs. The State of Madras and Others*, the

Apex Court observes as follows:

... No hard and fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal courts is a

relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other,

or even relevant, except for certain limited purposes, such as, sentence or damages. The only relevant consideration here is the likelihood of

embarrassment.

As observed above, the decision of one court will be relevant in the other proceedings only for certain limited purposes. When such is the position,

it is not sane to contend that only after the finding given by the arbitrator appointed under the Arbitration Act, the criminal court should start

functioning in its process of enquiry to try an offender. In P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, the Supreme Court

has observed as follows:

In the criminal case, all the ingredients of the offence in question have to be established in order to secure the conviction of the accused. The

criminal Court no doubt has to give due regard to the result of any proceeding under the Act having a bearing on the question in issue and in an

appropriate case, it may drop the proceedings in the light of an order passed under the Act. It does not, however, mean that the result of a

proceeding under the Act would be binding on the criminal court. The Criminal Court has to judge the case independently on the evidence placed

before it.....

Therefore, the observation in O.P. No. 6/92 by this Court can in no way affect the statutory functioning of a criminal court or make it await for the

clearance of the arbitrator appointed to work out the civil rights of the parties because, by then, the proceedings cannot be initiated as it would be

barred by limitation under the Code. I find no merit in this petition to quash the proceedings and therefore the same is liable to be dismissed.

7. In the result, the petition CrI.O.P. No. 8835 of 1992 is dismissed. Consequently, CrI.M.P. Nos. 4844 and 7498 of 1992 are also dismissed.