

S. Chari Vs R.K. Khatri and Another

Court: Allahabad High Court

Date of Decision: Oct. 14, 1999

Acts Referred: Criminal Procedure Code, 1973 (CrPC) " Section 200, 202, 482

Negotiable Instruments Act, 1881 (NI) " Section 138

Penal Code, 1860 (IPC) " Section 417, 420, 465, 468, 471

Citation: (1999) 3 ACR 2275

Hon'ble Judges: G.P. Mathur, J

Bench: Single Bench

Advocate: Shashank Sekhar and A.D. Giri, for the Appellant; A.G.A. and Viresh Misra, for the Respondent

Judgement

G.P. Mathur, J.

This petition u/s 482, Code of Criminal Procedure has been filed for quashing the proceedings of Criminal Case No.

1150/IX/97 of 1997 pending in the Court of Judicial Magistrate,, Sadar, Mathura.

2. R.K. Khatri (complainant opposite party No. 1) filed a criminal complaint against the Applicant Section Chart (accused in the complaint) on

17.7.97. The case of the complainant in brief is that he is working as Deputy Manager in A.T.V. Projects India Ltd. Since 1995: that Section

Chart Managing Director of M/s. Nagarjuna Finance Ltd. held negotiations with the complainant regarding supply of a Plate Bending Machine and

a Diesel Generator Set under a hire-purchase agreement for Rs. 2.50 crores: that the complainant had always asked for supply of a good quality

machine made by a reputed company: that S. Chari delivered the machines at the site of the factory at 3 p.m. on 1.3.1995 and assured that the

same were of good quality and would give good performance: that, however, within a short time the machines developed trouble and could not

give the desired results that the complainant had been paying the instalments towards the price of the machines regularly: that the complainant wrote

several letters to S. Chari but he did not give any reply: that S. Chari deliberately and purposely gave old machines and thereby cheated the

complainant: that S. Chari after taking into confidence the Chairman of the Company obtained his signature on blank papers which were being

misused by him; that both the machines had stopped working and were lying idle but S. Chari was neither taking them back nor was he returning

the money and had thereby committed cheating and forgery : that the complainant lodged a report with Superintendent of Police, Mathura but the

police was taking no action. It was accordingly prayed that the accused be summoned and punished under Sections 417, 420, 465, 468, 471,

I.P.C. After recording statement of complainant u/s 200, Code of Criminal Procedure and of two other witnesses u/s 202, Code of Criminal

Procedure the learned Magistrate passed an order on 29.10.1997 taking cognizance of the offence. He issued process against the accused under

Sections 420, 465, 468 and 471, I.P.C. and also issued non-bailable warrants of arrest against him for his appearance in court on 1.12.1997.

3. The case of the accused Applicant as set up in the petition, in brief, is that the Plate Bending Machine and Diesel Generator Set had not been

supplied by M/s. Nagarjuna Finance Ltd. as alleged in the complaint. The aforesaid machines had already been installed in the factory of M/s.

A.T.V. Projects India Ltd. by 10.5.1994. The machines had in-fact been selected by M/s. A.T.V. Projects India Ltd. and were supplied by M/s.

Vidiani Engineering Ltd. New Delhi M/s. A.T.V. Projects India Ltd. had approached M/s. Nagarjuna Finance Ltd. for giving them advance of Rs.

2.50 crores for purchase of the machinery and in connection therewith, a hire-purchase agreement was executed on 4.2.95. Under the said

agreement, M/s. A.T.V. Projects India Ltd. had to repay the amount in monthly instalments. Regarding the advance of Rs. 50 lakhs made by

Nagarjuna Finance Ltd. to M/s. A.T.V. Projects India Ltd., the latter had to repay the whole instalments in 36 monthly instalments of Rs.

1,87,847.22 commencing from 15.2.95 and ending on 15.1.1998. The case of the accused Applicant further is that M/s. A.T.V. Projects India

Ltd. gave three cheques dated 15.3.96, 15.4.96 and 15.5.96 for Rs. 1,87,847.22 each drawn on Bank of India, Mathura, but all the cheques

were dishonoured with the endorsement of Bank insufficient balance. A notice was sent to M/s.. A.T.V. Projects India Ltd. to repay the amount

within 15 days but nothing was paid. Thereafter M.S. Nagarjuna Finance Ltd. filed a criminal complaint u/s 138 Negotiable Instruments Act

against (1) M/s. A.T.V. Projects India Ltd. Mathura (2) Suresh Chaturvedi Vice Chairman and (3) Mahesh Chaturvedi Chairman of M/s. A.T.V.

Projects India Ltd. in the Court of XV Metropolitan Magistrate, Hyderabad which was registered as CrI. Case No. 430, 1996. The learned 15th

Metropolitan Magistrate, Hyderabad by his judgment and order dated 16.9.97 convicted the accused u/s 138 Negotiable Instruments Act and

sentenced M/s. A.T.V. Projects India Ltd. to pay a fine of Rs. 5,000-and Mahesh Chaturvedi Chairman of the Co. to undergo six months R.I. and

a fine of Rs. 5,000. It is thus submitted that the proceedings of criminal case instituted against S. Chari Managing Director of Nagarjuna Finance

Ltd. are an abuse of the process of Court and they are liable to be quashed.

4. I have heard Sri A.D. Giri, learned senior Advocate, on behalf of the accused Applicant, Sri Viresh Misra on behalf of the complainant opp.

party and have perused the record.

5. It may be stated at the very outset that the fact that M/s. Nagarjuna Finance Ltd. had filed Criminal Case No. 643 of 1996 against (1) M/s.

A.T.V. Projects India Ltd. (2) Suresh Chaturvedi and (3) Mahesh Chaturvedi Vice-Chairman and Chairman respectively of the company in the

Court of Metropolitan Magistrate, Hyderabad and the fact the accused Nos. 2 and 3 were convicted and sentenced by the judgment and order

dated 16.9.97 is not denied on behalf of the complainant of the present case. According to the Applicant, the appeal preferred against the

conviction and sentence was also dismissed by the learned Sessions Judge, Hyderabad, but the said fact is disputed by learned Counsel for the

complainant and according to him, the appeal has not yet been decided. It is noteworthy that the complaint giving rise to the present proceedings

was instituted by R. K. Khatri on 17.7.97 in the Court of J. M. Sadar, Mathura, and in the said case, order issuing process against the accused

Applicant S. Chari was passed on 29.10.1997, i.e., subsequent to the conviction of M/s. A.T.V. Projects India Ltd. and Mahesh Chaturvedi by

the Court at Hyderabad. The complaint at Mathura had been filed shortly before the Court at Hyderabad was to pronounce final judgment in the

case. The specific case of the complainant in the complaint is that negotiation regarding supply of Plate Bending Machine and Diesel Generator Set

under a hire-purchase agreement for Rs. 2.50 crores took place between S. Chari and the Company on 4.2.1995 and that S. Chari supplied the

machinery at the site of the factory at Mathura on 1.3.95. Along with the present petition, several documents have been filed by the Applicant

which clearly show that the case set up by the complainant that the machinery was supplied by S. Chari on 1.3.1995 is not correct. Annexure-IV

to the petition is a certificate given by Sanjay Roop Kishore and Co. Chartered Accountant which has also been signed by the authorised signatory

for M/s. A.T.V. Projects India Ltd. and it reads as follows:

Certified that the Plate Bending Machine with its control panel & accessories has been installed on 10.5.1994.

6. Annexure-V is a copy of letter dated February 22, 1995 sent by the A.T.V. Projects India Ltd. to M/s. Nagarjuna Finance Ltd. at New Delhi

and it is being reproduced below:

M/s. Nagarjuna Finance Limited, BMC House Cannought place, New Delhi.

Sub: Request for Hire Purchase for Rs. 250 lacs for Plate Bending Roll Machine with accessories and control panel.

Dear Sir,

This is to certify that the above mentioned asset is under installation and will be commissioned in March 95. We also certify that Nagarjuna Finance

Limited, will have first charge on the above asset. We have not claimed any depreciation or any other such benefits against the same.

Thanking you,

Yours faithfully,

For A.T.V. Projects India Limited.

SD.

Authorised Signatory.

7. Annexure-VI is a certificate given by Roop Kishore and Co. Chartered Accountants on 15.2.1995 which reads as follows:

Certified that the Plate Bending Machine with its control panel and accessories has been installed on dated 10.5.94 in M/s. ATV Projects India

Ltd.

This is also certified that our firm is Internal Auditor of the above said company.

8. The contents of Annexures-IV, V and VI mentioned above have not been denied in the counter-affidavit filed on behalf of the complainant.

These documents show that the Plate Bending Machine and its accessories were under the process of installation in May, 1994 and had been

installed in the factory of M/s. A.T.V. Projects India Ltd. by February 1995. Annexure-X to the rejoinder-affidavit filed by the Applicant is a

certificate dated 15.2.1995 given by the authorised signatory of A.T.V. Projects India Ltd. on its letter head and it reads as follows:

This is to certify that no charge has been created against Plate Bending Machine with Its control panel & other accessories which has been installed

on dated 10.5.1994. We also furnish undertaking that we would not create any charge on the above said machine except Nagarjuna Finance

Limited who are supposed to be first charge holder of the machine.

In para 15 of the rejoinder-affidavit, it is averred that M/s. Nagarjuna Finance Ltd. had financed the requisite amount of Rs. 2.50 crores and Rs.

50 lakhs to M/s. A.T.V. Projects India Ltd. under the hire purchase agreement dated 4.2.1995. It is further averred that the amounts were paid by

cheques and demand drafts and a detailed statement is given in Annexure-XI regarding payment of Rs. 50 lakhs and the details of payment of Rs.

2.50 crores has been given in Annexure-XII to the rejoinder-affidavit. In these, documents, the number of the cheques and demand drafts and

names of the Bank on which they were issued have been given in detail. The correctness of these documents has not been disputed from the side

of the complainant-opposite party.

9. One important thing which emerges from the averments made in the petition, rejoinder-affidavit and the documents filed along with them, the

correctness of which has not been disputed from the side of the complainant opp. party, is that M/s. Nagarjuna Finance Ltd., actually paid Rs.

2.50 crores and Rs. 50 lakhs, (total amount of Rs. 3 crores) to M/s. A.T.V. Projects India Ltd. in cash. If the case set up in the complaint was

correct and M/s. Nagarjuna Finance Ltd. had supplied the Plate Bending Machine and Diesel Generator Set, there was no occasion for it to have

paid a further sum of Rs. 3 crores to M/s. A.T.V. Projects India Ltd. In the complaint, statement of the witnesses examined under Sections 200

and 202, Code of Criminal Procedure and also in the counter-affidavit filed in reply to the petition, there is not even a whisper regarding payment

of the price of the machinery supplied to M/s. A.T.V. Projects India Ltd. Thus, from the material placed on the record of the present petition, the

correctness of which has not been disputed and which is virtually admitted, it is established beyond doubt that the Plate Bending Machines and

Diesel Generator set had been installed in the factory premises of M/s. A.T.V. Projects India Ltd. in Mathura much before 1.3.95, the date on

which it is alleged that the same were supplied by S. Chari, It is also established that M/s. Nagarjuna Finance Ltd. had advanced Rs. 2.50 crores

and Rs. 50 lakhs (total Rs. 3 crores) to M/s. A.T.V. Projects India Ltd. in cash in order to pay the price of the machinery to the party from whom

the machinery was bought.

10. In the hire-purchase agreement dated 4.2.1995. copy of which has been filed as Annexure-VII to the petition. M/s. Nagarjuna Finance Ltd.

has been described as owner and M/s. A.T.V. Projects India Ltd. has been described as hirer. The agreement has been signed by both the sides

and the opening part of the agreement contains a recital to the following effect;

Whereas the hirer requires for the purpose of business, the various machinery (hereinafter referred to as the "the machinery" described in general

terms in the schedule(s) hereto and that may hereafter be annexed hereto from time to time, and whereas the hirer represented to the owner that if

the owner shall acquire the aforesaid machinery, the hirer would take it on hire purchase, on such terms and conditions as the owner may

prescribe.

A reading of the hire-purchase agreement also shows that the machinery had already been installed at the factory premises of M/s. A.T.V. Projects

India Ltd. from much before and only later on M/s. Nagarjuna Finance Ltd. was asked to acquire the aforesaid machinery so that M/s. A.T.V.

Projects India Ltd. may take it on hire as the former had advanced money to the latter.

11. The facts mentioned above clearly show that the case set up by the complainant R.K. Khatri in the complaint is not correct and is absolutely

false. The complaint has been filed shortly before the judgment in the Court of Metropolitan Magistrate, Hyderabad, was going to be delivered in

the complaint instituted by M/s. Nagarjuna Finance Ltd. against M/s. A.T.V. Projects India Ltd. and Mahesh Chaturvedi u/s 138, Negotiable

Instruments Act as the three cheques for Rs. 1,87,847.22 each issued by the later had been dishonoured. The complainant apprehending

conviction in the aforesaid case at Hyderabad instituted the present complaint at Mathura in order to put pressure on M/s. Nagarjuna Finance Ltd.

12. Sri Viresh Misra, learned Counsel for the complainant has contended that in a petition u/s 482, Code of Criminal Procedure, it is not

permissible for the Court to look into the material filed by the accused and the Court has to confine itself only to the allegations in the complaint and

the evidence which had been adduced in support of the complaint. As a general proposition of law, there can be no exception to the submission

made by Sri Misra. However, in the present case, the material relied upon by the accused-Applicants is by way of documentary evidence whose

correctness has not been disputed in the counter-affidavit. The documents which have been reproduced in the earlier part of the judgment are not

the documents of the accused-Applicant but have been written by the authorised signatory of M/s. A.T.V. Projects India Ltd. and their chartered

accountant. The statement of accounts giving the amount and number of cheques or demand drafts and the name of the Bank while making

payment of Rs. 2.50 crores and Rs. 50 lakhs by M/s. Nagarjuna Finance Ltd. to M/s. A.T.V. Projects India Ltd. has not been disputed by the

complainant-opposite party in the affidavits filed in this Court. The inference regarding falsity and mala fide of the complaint has been drawn from

the admitted documents, most of which were written on behalf of the Company of which the complainant is the employee. I may clarify here that I

have not entered into the realm of appreciation of evidence but have merely referred to the own documents of the complainant from which no other

inference is possible. In P.S. Rajya Vs. State of Bihar, , the Supreme Court looked into and considered the admitted documents though forming

the defence of the accused while exercising inherent powers of the Court. In Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao

Chandrojirao Angre and Others, , it was held as follows:

The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to

whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special

features which appear in a particular case to consider, whether it is expedient and in the interest of justice to permit a prosecution to continue. This

is so on the basis that the Court cannot be utilised for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction

are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into

consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

13. In *Sardar Trilok Singh and Others Vs. Satya Deo Tripathi*, it was held that a hire-purchase agreement entered into by the parties is binding on

them and a dispute arising out of such an agreement is basically a civil dispute. It was further held that obtaining signature of a person on a blank

sheet of paper by itself is no offence. Applying the principles laid down in the authorities cited above, I am clearly of the opinion that the

proceedings instituted by R.K. Khatri against S. Chari in the Court of J.M. Mathura is a clear abuse of the process of Court and they deserve to

be quashed by this Court.

14. In the result the petition succeeds and is hereby allowed. The proceedings of Crl. Case No. 1180/IX/97 of 1997, *R.K. Khatri v. S. Chari*)

pending in the court of J.M. Sadar, Mathura are quashed.