
Gourishankar Mishra Vs State of West Bengal and Another

C.R.R. No. 1024 of 2005

Court: Calcutta High Court

Date of Decision: Sept. 9, 2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) â€” Section 92#Criminal Procedure Code, 1973 (CrPC) â€”
Section 156(3), 482#Penal Code, 1860 (IPC) â€” Section 120B, 138, 34, 408, 417

Citation: (2006) 2 CHN 565 : (2006) 202 ELT 754

Hon'ble Judges: S.P. Talukdar, J

Bench: Single Bench

Advocate: A. Haradhan Banerjee, Abhra Mukherjee, P.K, Roy and Yasser Md. Arafat, for the
Appellant; Asimesh Goswami and Krishna Ghosh, for the Respondent

Final Decision: Dismissed

Judgement

S.P. Talukdar, J.

This arises out of an application u/s 482 of the Code of Criminal Procedure. The petitioner by filing such application has

sought for quashing of the First Information Report, being Chandrakona P.S. Case No. 128/2004 dated 1st December, 2004 u/s

417/418/419/420/ 467/468/469/34/120B of the Indian Penal Code, which has been registered as G.R. Case No. 416/2004 before
the learned

Court of SDJM, Ghatal, District-West Midnapore.

2. The present petitioner along with four others, as plaintiffs, filed a suit before the learned Court of Additional District Judge of
Contai, being Title

Suit No. 3/2000 against K.G. George and others. The present petitioner/plaintiff No. 1 is Deputy Manager (General) of the West
Bengal Region

of Bethel Homely Savings Corporation and also a depositor of the Bethel Homely Savings Corporation, posted at Contai,
Midnapore. The

plaintiffs are interested in the trust in respect of which the said suit had been filed and they applied for leave of the learned Court
u/s 92 of the Code

of Civil Procedure. A Deed of Trust was executed on 15.10.1980 by K.G. George and others as trustees and by the said Trust Deed a Trust was

created for public purpose of charitable nature and style of Bethel Charitable Trust. Its object is to organize, propagate and inaugurate any scheme

with a view to enabling the persons belonging to the middle class and weaker sections of the society and help them to form and cultivate the habit

of small savings as well as to help women and children belonging to the middle class of the society and to provide them and/or to assist them to

build careers in the fields of art, commerce, medicine and technology, etc. The major business of the Bethel Homely Savings Corporation is to

accept deposits from the public by way of investment of different types, i.e., daily deposit, monthly deposit or fixed deposit and to advance loans.

The said Corporation for this purpose used to issue advertisement in daily newspapers and monthly magazines to solicit depositors. The plaintiffs

deposits amounting to Rs. 33 crores had been accepted by the Corporation in the three regions, West Bengal, Bihar and Orissa. Out of it, Rs. 19

crores were deposited in the West Bengal region and the same had been withdrawn by the Head Office at Rourkella without any resulting benefit

for the West Bengal region by way of advance to the borrowers or otherwise in the West Bengal region. The family of the defendant No. 1, in the

said suit had no other source of income and by misappropriating the income of the Trust, the defendant No. 2, being the wife of the defendant No.

1 had established a mining business in the district of Sundergarh in Orissa. Such act of misappropriation of Trust fund certainly demands removal of

the trustees and appointment of new trustees particularly for the West Bengal region. By the same process of misappropriation, the defendant No.

1 and his son, defendant No. 3, had been illegally running a school by utilizing the Trust fund in Rourkella in the name and style of St. Thomas

School. The trustees are guilty of mismanagement of the Bethel Homely Savings Corporation. It collected huge amount of deposits in the name of

Bethel Green Growth Limited through the branches of Corporation. About Rs. 10 lakhs were collected for the said Scheme from the West Bengal

region, but the Scheme has failed. Stock Exchange Board of India by a press release dated 18.11.1997 had cancelled registration and had

directed the company to return the entire deposits to the depositors. A cheque issued by the Trust bounced thereby giving rise to a criminal case,

being No. C/838/99 u/s 420 IPC read with Section 138 of the Negotiable Instruments Act against the defendant No. 1. In the said suit, the

petitioner filed an application for injunction as well as for an order directing the defendants not to alienate or change the nature and character of the

schedule property and also for an order not to disturb the functioning of the branches within West Bengal as well as other reliefs. An injunction

application was filed before the learned Court of Additional District Judge, Contai and the learned Court by order dated 5.9.2000 passed an

interim order till the disposal of the injunction application. Being aggrieved by the said order, an appeal has been filed before the High Court, being

F.M.A.T. No. 3978/2000 and by order dated 22.2.2001, the Hon"ble Court has directed the parties to maintain status quo with regard to the

properties of the Trust. Various applications have subsequently been filed in the pending suit. The petitioner through his employee Nabakumar

Ganguly, lodged a complaint before the Contai Police Station against the defendant No. 1 of the said suit and one Chacko Mathai u/s

467/468/471/420/120B of the Indian Penal Code. It was alleged that the accused persons taking advantage of the control over the management of

the Trust properties outside West Benyal were manufacturing various false documents like fixed deposit receipts, other valuable securities

receipts. The said case is under investigation after being registered as G.R. Case No. 185/2003 before the learned Court of C.J.M., Midnapore.

The revisional application filed by the accused persons being C.R.R. 751/2004 was dismissed by order dated 22.12.2004 with direction upon the

Investigating Officer to proceed with the investigation and to submit report in final form as expeditiously as possible.

3. In order to put pressure upon the petitioner for lodging the aforesaid complaint, one Sushil Maity lodged a complaint claiming to be the General

Manager-cum-Chief Vigilance Officer of Bethel Homely Savings Corporation. He claimed to have been appointed by the defendant No. 2. The

petitioner was arrested in connection with the said case and was, thereafter, released on bail, Chargesheet had been submitted in the said case

being Contai PS. Case No. 34/2004 dated 17.02.2004 u/s 408/468/471/477A/120B of the Indian Penal Code. This was followed by filing of

another case by the present opposite party No. 2. He claimed to be the employee of the said Bethel Homely Savings Corporation. On the basis of

his complaint relating to the self-same incident Chandrakona P.S. Case No. 46/2004 dated 01.05.2004 was started. Chargesheet was also issued

in connection with the said case. The present petitioner was released on bail after being detained in connection with the said case. An application

for cancellation of bail was filed, but the same was rejected by the Hon"ble Court. Thereafter, the defendant No. 2 in the said civil suit set up the

opposite party No. 2 herein to lodge a complaint against the present petitioner and others over the self-same facts and transactions, being Misc.

Petition No. 33/2004 before the learned SDJM, Ghatal, West Midnapore and the said complaint was also referred to police for investigation after

treating the same as First Information Report u/s 156(3) of the Code of Criminal Procedure. This gave rise to Chandrakona P.S. Case No.

128/2004 dated 01.12.2004. Allegations made in the said complaint do not satisfy the ingredients of the offences u/s

417/418/419/468/467/469/34/120B of the Indian Penal Code. There was nothing in the said complaint, which was not alleged earlier as against

the present petitioner. Thus, cases had been filed one after another with the ulterior motive to compel the present petitioner to withdraw the civil

suit. In absence of any new allegation, there could hardly be any justification for the police authority to proceed with investigation on the basis of

such third complaint as after completion of investigation chargesheets had already been filed in the earlier cases. Moreover, the allegations made in

such complaint are so inherently absurd that the same do not call for any investigation. In the circumstances, the present application was filed

praying for quashing of the proceeding, being Chandrakona P.S. Case No. 128/2004 dated 01.12.2004 u/s

417/418/419/420/467/468/469/34/120B of the Indian Penal Code.

4. The learned Counsel for the petitioner Mr. Haradhan Banerjee submitted that further proceeding of the case, being Chandrakona P.S. Case

No. 128/2004 will be an abuse of the process of the Court. He also submitted that such cases had been filed implicating the present petitioner one

after another with the sole motive to create pressure upon him so that he decides not to proceed further with the civil suit, as referred to earlier.

Mr. Banerjee contended that the allegations in the First Information Report if taken at their face value and in their entirety, do not prima facie

constitute any offence or make out a case against the present petitioner. He further submitted that the third complaint cannot be treated to be an

information first in point of time and as such, registration of the First Information Report and investigation of the case are wholly without

jurisdiction. Accordingly, he contended that there cannot be any investigation on the basis of such third Complaint, which is thus, liable to be

quashed. It was then submitted that the General Manager of the said Corporation issued a notification and circulated it to all the branches within

West Bengal region for changing the signature and, accordingly, facsimile signature was introduced in terms of the said notification and this was

accepted by the Regional Development Council. It was further submitted that even if it is assumed that the signature of the petitioner facsimile and

non-facsimile are different, it cannot be presumed that such signatures will automatically prove the case cheating. Mr. Banerjee categorically

asserted that no further investigation can be allowed to proceed on the basis of third complaint in the backdrop of the fact that two other cases

over the self-same allegations had already been started on the basis of the chargesheets submitted.

5. In this context he referred to the decision in the case of Krishna Chandra Chaudhury Vs. The State of West Bengal, Relying upon the decision in

the case of M.S. Banga Vs. State of West Bengal and Another, it was submitted that when remedies available in Civil Court and in absence of

prima facie material against the petitioner, there can be no justification for allowing a criminal proceeding to continue. Reference was also made to

the decision in the case of Suresh v. Mahadevappa Shivappa Danannava and Anr. reported in 2005(2) Sup 59. It was submitted that in order to

attract the offence u/s 420 of IPC, it is necessary to establish that the person concerned had fraudulent and dishonest intention at the time of

making promise. On the other hand, it was submitted on behalf of the opposite parties that there are sufficient materials in the complaint, which was

referred to police for investigation and as such, there can be no reason for this Court to interfere in the matter of investigation in exercise of this

Court's power u/s 482 of the Code of Criminal Procedure.

6. In this context reference was made to the decision in the case of M. Krishna v. State of Karnataka reported in 1999 SCC(Cri) 397. In that

case it was held that second FIR cannot be said to be illegal by itself. The Investigating Authority, however, is required to take into account the

result of earlier investigation. In the said case the Apex Court held that it could not be a ground for quashing of the entire proceeding. Reference

was also made to the decision in the case of Kamaladevi Agarwal Vs. State of West Bengal and Others, wherein it was held that pendency of civil

action in different Courts even though higher in status and authority, cannot be made a basis for quashing of the proceeding in exercise of power u/s

482 of the Code of Criminal Procedure. The learned Counsel for the opposite parties submitted that the First Information Report must not be

thwarted at the initial stage unless material do not disclose an offence. It was also submitted that it is necessary to read First Information Report as

a whole and it is to be seen whether it is indicative of an offence broadly. It need not be mathematically accurate. Attention of the Court was drawn

to a Single Bench decision of this Court in the case of Monoranjan Mondal v. Union of India and Ors. reported in 2004 C. Cr LR 292. Reference

was made to the decision in the case of Kari Choudhary v. Sita Devi and Ors. reported in 2002 SCC (Cri) 269, where the Apex Court held that

the ultimate object of every investigation is to find out whether the offences alleged have been committed and, if so, who have committed it. It was

further observed that ""investigating agency is not precluded from further investigation in respect of an offence in spite of forwarding a report under

Sub-section (2) of Section 173 on a previous occasion"".

7. At the time of hearing of this matter the Case Dairy was also placed by the learned Counsel for the opposite party State of West Bengal. After

careful perusal of the materials in the Case Dairy and after giving due regard to the facts and circumstances of the case. I find no rational

justification for standing in the way of further proceeding of the case. It appears that the offences alleged in the petition of complaint, which was

referred to police for investigation, are rather serious in nature and deserve and demand thorough and effective investigation. Attention of the Court

was drawn to certain statements recorded by the police in course of investigation of the case. Having regard to the scope and ambit of the present

application, I do not think it necessary to deal with the same in setails, as it is not desirable, nor proper, from the point of view of interest of justice.

But there is no shadow of doubt that the allegations made against the present petitioner are rather grave and need be properly and effectively

explored and exposed. The Court can no doubt quash a proceeding in exercise of its power u/s 482 of the Code of Criminal Procedure, but such

a power is to be exercised discreetly, it is necessary to exercise power u/s 482 of the Code of Criminal Procedure in order to prevent, abuse of

the process of Court. The facts and circumstances of the present case do not at all suggest that further proceeding of the case under reference will

in any way amount to an abuse of the process of Court.

8. Accordingly, the present application, being C.H.R. No. 1024 of 2005, be dismissed. Interim order, if any, stands vacated. The Case Dairy be

returned.

9. Let a copy of this judgment along with LCR, if any, be sent to the learned Trial Court for information and necessary action.

10. Department is hereby directed to supply xerox certified copy of this judgment, if applied for, as expeditiously as possible.