

(2003) 08 CAL CK 0045

Calcutta High Court

Case No: C.R.R. No. 1274 of 2003

Bimal Kanti Ghosh Dastidar

APPELLANT

Vs

Sri Sukhen Roy and Another

RESPONDENT

Date of Decision: Aug. 13, 2003

Acts Referred:

- Penal Code, 1860 (IPC) - Section 465, 471

Citation: (2004) 3 CivCC 122

Hon'ble Judges: Debiprasad Sengupta, J

Bench: Single Bench

Advocate: J.N. Ram, Mr. Satyajit Talukdar, for the Appellant; Joymalya Bagchi, Kallol Mandal, for the Respondent

Final Decision: Dismissed

Judgement

Debiprasad Sengupta, J.

In the present application the petitioner has prayed for quashing of a proceeding being complaint Case No.64 of 2001 under Sections 465/468/ 471/34 of the Indian Penal Code pending in the Court of learned Judicial Magistrate, 5th Court, Sealdah.

2. The main ground on which such prayer for quashing is made is that a civil litigation over the same property is going on between the same parties. But the complainant filed a petition of complaint on 15.2.2001 before the learned Sub-Divisional Judicial Magistrate, Sealdah alleging that the present petitioner in connivance with the accused Nos.2 and 3 in the petition of complaint prepared false and forged document being title deed dated 28.6.99 in order to transfer the right, title and interest of a portion of the property in question. It is the contention of the learned Advocate of the petitioner that the allegations made in the petition of complaint do not disclose any offence under the aforesaid sections. Since civil litigations are pending in appropriate Court of law, the present criminal proceeding should not be allowed to continue and the same is liable to be quashed.

3. In support of his contention the learned Advocate of the petitioner relies upon a judgment of the Hon'ble Apex Court reported in Alpic Finance Ltd. v. P. Sadasivan and another, 2001(1) All India Cri LR (S.C.) 639. From a reading of the said judgment it appears that in the said case the main offence alleged by the appellant was that the respondents committed the offence u/s 4201.P.C. and the case of the appellant was that the respondents have cheated the complainant and thereby dishonestly induced him to deliver the property. There was no allegation that the respondent made any willful misrepresentation. In the complaint there was no allegation that there was fraud or dishonest inducement on the part of the respondents and the respondents parted with any property. In such circumstances the Hon'ble Supreme Court was of the view that the High Court was justified in quashing the proceeding u/s 420 of the Indian Penal Code.

4. I have gone through the said judgment but in my considered view, the said judgment has got no manner of application in the present case. The facts and circumstances of the said case is quite different from the present one. In the present case a specific allegation has been made in the petition of complaint that in furtherance of common intention the accused persons prepared a false and forged document being a title deed showing the transfer of right, title and ownership of the premises in question.

5. The next judgment relied upon by the learned Advocate of the petitioner is reported in Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others . In the said judgment it was held by the Hon'ble Apex Court that at the stage of issuing process the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he only to be *prima facie* satisfied whether there are sufficient grounds for proceeding against the accused. It is not the province of the Magistrate to enter into a detailed discussion of the merits and demerits of the case nor can the High Court go into this matter in its revisional jurisdiction which is a very limited one. In the said judgment the Hon'ble Supreme Court also has laid down the circumstances in which an order of the Magistrate issuing process, against the accused can be quashed or set aside. I have gone through the said judgment, but in my considered view, the present case does not come within the purview of the said circumstances in which an initial order of taking cognizance can be quashed.

6. Mr. Bagchi, learned Advocate appearing for opposite party submits that a specific case has been made out in the petition of complaint which is sufficient for the purpose of proceeding further in the present case. It is the further contention of Mr. Bagchi, learned Advocate that pendency of a Civil Suit cannot stand in the way of initiation of a criminal proceeding and this cannot be a ground for quashing of such proceeding. In support of his contention Mr. Bagchi relies upon a judgment of the Hon'ble Supreme Court reported in (M. Krishnan v. Vijoy Singh & Anr., 2002 SCC (Cri.) 19. In the said judgment it was held by the Hon'ble Apex Court as follows:-

"Accepting such a general proposition would be against the provisions of law inasmuch as in all cases of cheating and fraud, in the whole transaction, there is generally some element of civil nature. However, in this case, the allegations were regarding the forging of the documents and acquiring gains on the basis of such forged documents. The proceedings could not be quashed only because the respondents had filed a civil suit with respect to aforesaid documents. In a criminal Court the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a civil Court. Had the complainant failed to prove the allegations made by him in the complaint, the respondents were entitled to discharge or acquittal but not otherwise. If mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings. Such a course cannot be the mandate of law. Civil proceedings, as distinguished from the criminal action, have to be adjudicated and concluded by adopting separate yardsticks. The onus of proving the allegations beyond reasonable doubt, in a criminal case, is not applicable in the civil proceedings which can be decided merely on the basis of the probabilities with respect to the acts complained of."

7. The next judgment relied upon by Mr. Bagchi learned Advocate of the opposite party is reported in ([Kamaladevi Agarwal Vs. State of West Bengal and Others,](#)). In the said judgment it was held by the Hon'ble Apex Court as follows:-

"In view of the preponderance of authorities to the contrary, we are satisfied that the High Court was not justified in quashing the proceedings initiated by the appellant against the respondents. We are also not impressed by the argument that as the civil suit was pending in the High Court, the Magistrate was not justified to proceed with the criminal case either in law or on the basis of propriety. Criminal cases have to be proceeded with in accordance with the procedure as prescribed under the Code of Criminal Procedure and the pendency of a civil action in a different Court even though higher in status and authority, cannot be made basis for quashing of the proceedings."

8. I have heard the learned Advocates of the respective parties. I have also perused the judgments referred to above. In my considered view, pendency of a Civil Suit between the self-same parties cannot be a ground for quashing of criminal proceeding. Merely because a Civil claim is maintainable or a Civil Suit is pending between the parties, it cannot be said that the criminal complaint should not be maintained. Merely on the ground that it is a Civil dispute the criminal proceeding cannot be quashed. There is no doubt that two Civil Suits are pending- one is filed by the accused and the other is filed by the complainant, but pendency of such suits can not stand in the way of criminal prosecution.

9. In view of the discussion made above, I am of the view that this is not a fit case for quashing of proceeding. The present application accordingly fails and the same is dismissed. The learned Magistrate is directed to expedite the proceeding and to conclude the same with utmost expedition.

Let an urgent xerox certified copy of the order be given to the learned Advocates of the parties at an early, if applied for.