

CASE NO.:
Special Leave Petition (crl.) 701 of 2000

PETITIONER:
LALMUNI DEVI

Vs.

RESPONDENT:
STATE OF BIHAR & ORS.

DATE OF JUDGMENT: 15/12/2000

BENCH:
M B Shah & S.N. Variava

JUDGMENT:

S. N. VARIAVA, J.

Leave granted.

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This Appeal is against an Order dated 10th November, 1999 by which, in an Application under Section 482 of the Code of Criminal Procedure, a criminal complaint has been quashed on the ground that the complaint spelled out civil wrong and continuance of the criminal prosecution would be an abuse of process of the court.

The complaint was that Respondents 2 to 10 had fraudulently got the father of the Complainant to execute a gift deed. On the basis of this complaint the Magistrate held an enquiry under Section 202 of the Code of Criminal Procedure and dismissed the complaint under Section 203 of the Code of Criminal Procedure. As against the Order of dismissal the Appellant went in Revision. The learned Sessions Judge set aside the Order of dismissal and remanded the case back to the Magistrate.

On such remand the Magistrate issued process against Respondents 2 to 10 to face trial under Sections 419, 420, 467 and 120 B of the Indian Penal Code.

Respondents 2 to 10 then filed a Petition under Section 482 of the Code of Criminal Procedure for quashing the complaint. By the impugned Order the complaint has been quashed on the ground, as set out above, that the complaint spelled out a civil wrong and, therefore continuance of the criminal prosecution would be an abuse of process of the court.

Mr. Sinha submitted that the impugned Order was unsustainable. He submitted that facts make out a civil wrong as well as a criminal liability. He submitted that merely because civil action can be taken does not mean that a criminal complaint is not maintainable. In support of his submission he relied upon the case of Trisuns Chemical Industry v. Rajesh Agarwal and Ors. reported in JT 1999

(6) SC 618. In this case, the agreement between the parties contained an Arbitration clause. This Court held that merely because the dispute could be referred to arbitration it was not an effective substitute for a criminal prosecution when the act also made out an offence.

On the other hand, Mr. Singh submitted that the alleged acts have made out no case for taking cognizance. He submitted that at the highest the remedy would lie in a Civil Court only. He relied upon the cases of State of Haryana v. Bhajan Lal reported in 1992 Supp (1) SCC 335 and Mr. K. Ramakrishna & Ors. v. State of Bihar & Anr. reported in JT 2000 (Supp. 1) SC 53, In these cases it is held that inherent powers can be exercised to quash proceedings to prevent abuse of the process of law and to secure ends of justice. It has been held that where the allegations in the FIR do not constitute the alleged offence or where the offence is not disclosed in the complaint or the FIR the frivolous criminal litigation could be quashed.

There could be no dispute to the proposition that if the complaint does not make out an offence it can be quashed. However, it is also settled law that facts may give rise to a civil claim and also amount to an offence. Merely because a civil claim is maintainable does not mean that the criminal complaint cannot be maintained. In this case, on the facts, it cannot be stated, at this prima facie stage, that this is a frivolous complaint. The High Court does not state that on facts no offence is made out. If that be so, then merely on the ground that it was a civil wrong the criminal prosecution could not have been quashed.

In our view, the Order of the High Court cannot be maintained and is accordingly set aside. The trial Court to proceed with the Complaint in accordance with law. The Appeal is allowed. There will, however, be no Order as to costs.