

CASE NO.:
Appeal (crl.) 1028 of 2001

PETITIONER:
M. KRISHNAN

RESPONDENT:
VIJAY SINGH AND ANR.

DATE OF JUDGMENT: 11/10/2001

BENCH:
M.B. SHAH & R.P. SETHI

JUDGMENT:
JUDGMENT

2001 Supp(4) SCR 45

The Judgment of the Court was delivered by

SETHI, J. Leave granted.

The appellant filed a complaint against the respondent alleging commission of offences punishable under Sections 193, 196, 197, 406, 465, 468 and 471 of the Indian Penal Code. The Magistrate took the cognizance and issued process against the two out of the three accused, named in the complaint. Instead of appearing before the Trial magistrate, the respondents approached the High Court by way of a petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as "the Code") praying for quashing the proceedings initiated against them. The High Court accepted the prayer of the accused and quashed the proceedings initiated against the respondents mainly on the ground that in view of the pendency of civil disputes between the parties where the genuineness of the documents, relied upon by the complainant, was in dispute, no criminal action could be initiated against the accused persons. Feeling aggrieved by the order of the High Court, the complainant has preferred this appeal contending that the High Court has committed a mistake of law by quashing the proceedings under Section 482 of the Code at the initial stage without affording the complainant an opportunity to prove his case against the accused as detailed in his complaint.

In his complaint, the appellant had made serious allegations against the respondents and prima facie satisfied the Magistrate about the commission of the offences under various sections of the Indian Penal Code. It was alleged that to prevent legal action against them, the accused persons filed a suit on false and flimsy claim by creating and forging documents/bonds/papers, etc. Those documents were alleged to have been got filled up by the first accused which he had obtained from the complainant on blank papers for production before the Bank as guarantor. The accused were alleged to have betrayed the good faith and confidence reposed in them by the complainant and thus withdrew huge amounts on the basis of the forged documents. Along with the complaint the appellant filed a number of documents and got the statements recorded. After perusal of the complaint, the sworn statements of the complainant, his witness and inspecting the documents produced along with the complaint, the Trial Magistrate, vide his detailed order dated 3.8.1998 (Annexure P-7) directed the registration of the case against the accused No. 1 and 2 for offences punishable under Sections 193, 209, 406, 468 and 471 IPC read with Section 120B IPC and issued process against them.

Despite referring to various judgments of this Court relating to the interpretation and scope of Section 482 of the Code and the indictment that the High Court should be slow in interfering with the proceedings at the initial stage, the learned Single Judge of the High Court passed the

impugned order. The High Court appears to have been impressed by the fact that as the nature of the dispute was primarily of a civil nature, the appellant was not justified in resorting to the criminal proceedings.

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 the 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 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. The High Court was not, in any way, justified to observe :

"In my view, unless and until the civil court decides the question whether the document are genuine or forged, no criminal action can be initiated against the petitioners and in view of the same, the present criminal proceedings and taking cognizance and issue of process are clearly erroneous."

Where factual foundations for the offence have been laid down in the complaint, the High Court should not hasten to quash criminal proceedings merely on the premise that one or two ingredients have not been stated with the details or that the facts narrated reveal the existence of commercial or money transaction between the parties.

This Court in *Rajesh Bajaj v. State NCT of Delhi & Ors.*, JT (1999) 2 SC 112 observed :

"It may be that the facts stated narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions. One of the illustrations set out under Section 415 of the Indian Penal Code (illustrations "f") is worthy of notice now :

"(0 A intentionally deceives z into a belief that A means to repay any money that z may lend to him and thereby dishonestly induces z to lend him money, A not intending to repay it. A cheats."

The crux of the postulated is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not. The complainant has stated in the body of the complaint that he was induced to believe that respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not clear. He also mentioned that respondent after receiving the goods have sold them to other and still he did not pay the money. Such averments would prima facie make out a case for investigation by the authorities."

To the same effect is the judgment in Shantilal v. Vimalchand & Ors., JT (2000) 8 SC 109.

Right from the case of R.P. Kapur v. State of Punjab, AIR (1960) SC 866, this Court has held that revisional or inherent powers for quashing the proceedings at the initial stage can be exercised only where the allegations made in the complaint or the first information report, even if taken at their face value and accepted in their entirety, do not prima facie disclose the commission of an offence or where the uncontroverted allegations made in the FIR or complaint and the evidence relied in support of the same do not disclose the commission of any offence against the accused, or the allegations are so absurd and inherently improper that on the basis of which no prudent person could have reached a just conclusion that there were sufficient grounds in proceeding against the accused or where there is an express legal bar engrafted in any provisions of the Code or any other statute to the institution and continuance of the criminal proceedings or where a criminal proceeding is manifestly actuated with malafide and has been initiated maliciously with the ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge.

Applying the aforesaid test, it cannot be said that the complaint filed by the appellant did not disclose the commission of an offence or there existed any other circumstance which can be made the basis for quashing the proceedings. In fact allegations made in the complaint required adjudication and the complaint could not have been aborted in the manner it has been done by the High Court vide the impugned order."

The impugned judgment being contrary to the settled position of law is thus not sustainable. The appeal is allowed and the impugned judgment of the High Court is set aside by upholding the order of the Trial Magistrate dated 3.8.1998. The Trial Magistrate shall now proceed in the matter in accordance with law.