

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: January 15, 2008

CRL.M.C. 5480/2005 & CrI. M.A.8033/2007

JUGAL KISHORE SHARMA Petitioner
Through Mr. Akhtar Hussain with Mr. H.S.
Dhillon, Advocate

versus

STATE & ORS. Respondents
Through Mr. Pawan Behl, APP.
Mr. Ajay Burman with Mr. R.K. Singh, Mr. P.K. Singh
and Mr. R. Samanotra, Advocate for R-2.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

ORDER

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| 1. Whether Reporters of local papers may be
allowed to see the judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in
Digest? | Yes |

Dr. S. Muralidhar, J (open court)

1. This is a petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.PC') seeking the quashing of a criminal complaint, the consequent FIR No. 204 of 2002 under Sections 420/468/471/34 IPC registered at P.S. Hazrat Nizamuddin, New Delhi and all consequent proceedings.
2. The ground on which the quashing sought is that the accused as well as the complainant have arrived at a settlement and in the circumstances the continuation

of the criminal proceedings is not warranted.

3. On 25th July 2007 this Court passed the following order:

“It is stated that parties have compromised. Mr. P.C. Sood, the complainant is present in Court. He stated that the other complainant, Shri R.C. Sood, his brother has also consented to the terms of the compromise and that they do not wish to proceed further in the matter.

The request for quashing was opposed by the learned APP who adverted to the circumstances whereby one Chand Kumar Verma, the complainant's tenant faced a decree by this Court and was required to vacate the premises on 31.12.2000. According to the allegations, the present petitioner/accused, contrived a situation and allegedly forged documents which led to harassment of the complainants; they had to face further civil proceedings in which the petitioner claimed specific performance of an alleged agreement. The suit was dismissed on 23.12.2000. According to the learned APP, investigations revealed that the documents presented were forged.

Let the IO verify as to the medical condition of the petitioners. Counsel for the petitioners shall also produce relevant documents about their medical condition before the next date of hearing. “

4. The reference to the medical condition of the petitioner in the above order was in the context of the plea that the petitioner was in poor health and the continuation of the criminal proceedings despite the settlement would, in those circumstances, not be just and fair. The medical report of Dr. S.Raghavan, Chief Medical Officer (NFSG) Neurologist, Department of Neurology, Safdarjang Hospital, New Delhi has been placed on record. It does not indicate any abnormality having been detected in the petitioner Shri Jugal Kishore Sharma. In other words, the health of the petitioner cannot certainly constitute a ground for quashing of the criminal complaint and consequent proceedings.

5. The reference to the forged documents in the above order is to three

documents shown by the petitioner to have been executed by the complainant and his brother in favour of the petitioner, when in fact they did not execute any such document. These were: (a) an agreement to sell the property in question (b) a receipt for Rs.5000 and (c) a pay-in slip on which the signature of the complainant was forged. Since forgery would, if proved, constitute a grave offence, this Court by its order dated 17th December 2007 directed that the report of the Central Forensic Science Laboratory (CFSL) be produced. Mr. Pawan Behl, learned APP appearing for the State, today informed the Court that the CFSL report has since been received and filed in the trial court. After examining the record, he informed that that the CFSL report confirms that there has been a forgery of the documents in question and therefore supports the prosecution of the petitioner for the commission of the offences under Sections 468 and 471 IPC. Mr.Behl objected to the quashing of the criminal proceedings notwithstanding the fact that the parties have settled their disputes.

6. Learned counsel for the complainant has relied upon two orders passed by this Court in which, according to him, this Court has exercised its jurisdiction under Section 482 CrPC and quashed criminal proceedings involving offences under Sections 468 and 471 IPC. The first is an order dated 6th December, 2005 passed by this Court in Crl M.C. 5725-29 of 2005 (*M/s. Continental Spinners Limited v. State*) and the second is an order dated 9th October, 2006 passed in Crl M C. 5029-31/2006 (*Savitri Devi v. State*).

7. This Court finds that in neither of the above two orders is there any reference to a report of the CFSL supporting the commission of the offences under Sections 468 and 471 IPC. More importantly, the orders do not refer to any

opposition by the counsel for the State to the quashing of the criminal proceedings.

8. Both the offences under Sections 468 and 471 IPC are non-compoundable under Section 320 CrPC. The law in regard to exercise of the powers of this Court under Section 482 CrPC to quash criminal cases involving non-compoundable offences is well-settled. In ***B.S. Joshi v. State of Haryana JT 2003 (3) SC 277*** the Supreme Court held that where the criminal cases have been registered under Sections 406 and 498-A IPC as a result of matrimonial discord and there is a settlement arrived at between the parties it would be “against the interests of the woman” and the object for which Section 498-A was enacted if the High Court did not, in such circumstances, quash the proceedings. It said (JT p.284): “There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier.”

9. Following this decision, a five-judge Bench of this Court held in ***Ramesh Kumar v. State 2003 IV AD (Del) 377*** that criminal cases involving matrimonial offences could be quashed under Section 482 CrPC. But the position in regard to other kinds of criminal cases is not so categorical. In a short order in ***Inspector of Police, CBI v. B. Raja Gopal 2003 SCC (Cri) 1238***, the Supreme Court held that merely because monies had been repaid to the complainant Bank it could not be held that the criminal prosecution cannot proceed.

10. This Court's attention has been drawn to the judgments of this Court in ***Ajay Kumar v. State 2006 (2) JCC 1073***; ***Sanjay Goel v. State 2006 (2) JCC 1127*** and ***G. Udayan Dravid v. State 2007 (1) JCC 127***. It is contended that in these cases although the offences were under Sections 468 and 471, this Court exercised its

inherent powers under Section 482 and quashed the criminal proceedings. It must be straightway noticed that in *Ajay Kumar* and *Sanjay Goel* although the facts narrated do indicate that the offences involved included Sections 468 and 471, there is no reference to any objection raised by the State to the quashing of the proceedings or to any evidence gathered, like the report of the CFSL, which supported the case of the prosecution. In *G. Udayan Dravid* the offences were under Sections 406 and 120-B IPC and not Sections 468 and 471.

11. In *Central Bureau of Investigation, SPE, SIU (X) New Delhi v. Duncans Agro Industries Ltd., Calcutta* JT 1996 (6) SC 227, the Supreme Court upheld a judgment of the Calcutta High Court by which the FIR registered against the respondent company for offences under Sections 120 B read with Sections 409, 420, 467, 468 and 471 IPC was quashed in exercise of the powers under Section 482 CrPC. However, on a perusal of the judgment in that case, it appears that the decision of the Supreme Court did not turn so much on any report of the CFSL. The manner of dealing with the issue concerning the offences under Sections 468 and 471 IPC is evident from paras 22 and 26 in the said decision in *Duncans Agro Industries* which read as under:

“22. Coming to the question of offences under Sections 467, 468 and 471 I.P.C. Mr. Shanti Bhushan has also submitted that no offence under the aforesaid Sections even prima facie, has been committed even on the face value of the allegations in the FIR. Mr. Shanti Bhushan has submitted that it is the case of the CBI that since it is stated in the FIR that Shri D.K. Sengupta had signed the memorandum as Chief Manager which post was not occupied by him, an offence of forgery has been committed. It was alleged in the FIR that Mr. D.K. Sengupta had issued a memorandum of complete satisfaction of the charge even though there had been no repayment

whatsoever. Mr. Shanti Bhushan has submitted that such statement is erroneous and cannot be sustained. It has been submitted by Mr. Shanti Bhushan that in view of the order of the High Court under Section 394(2) of the Companies Act, the liabilities of the Tobacco Division of DAIL got transferred to the new company, i.e. New Tobacco Company. There was, thus a statutory discharge of the liabilities of M/s. DAIL and the memorandum of complete satisfaction was properly issued even though there had not been any repayment of the loan by M/s. DAIL. Mr. Shanti Bhushan has submitted that notice may be taken by the Court to the usual practice of the Bank that when formal document is issued in the name of the Chief Manager, the Officer dealing with the matter, i.e. Asstt. Manager, puts his signature on the document, on behalf of the higher officer. Such signature on a document, on behalf of the high officer by lower officer who specifically deals with it is in the usual course of business of the Bank and no element of forgery can be assigned on account of such signature by a junior officer of the Bank.....”

“26. After giving our careful consideration to the facts and circumstances of the case and the submissions made by the respective counsel for the parties, it appears to us that for the purpose of quashing the complaint, it is necessary to consider whether the allegations in the complaint prima facie make out an offence or not. It is not necessary to scrutinise the allegations for the purpose of deciding whether such allegations are likely to be upheld in the trial. **Any action by way of quashing the complaint is an action to be taken at the threshold before evidences are led in support of the complaint. For quashing the complaint by way of action at the threshold, it is, therefore, necessary to consider whether on the face of the allegations, a criminal offence is constituted or not.** In recent decisions of this Court, in the case of *Bhajan Lal* (supra), *P.P.Sharma* (supra) and *Janta Dal* (supra), since relied on by Mr. Tulsi, the guiding principles in quashing a criminal case have been indicated.”

12. The Supreme Court ultimately concluded in *Duncans Agro Industries* as under:

“29. In the facts of the case, it appears to us that there is enough justification for the High Court to hold that **the case was basically a matter of civil dispute**. The Banks had already filed suits for recovery of the dues of the Banks on account of credit facility and the said suits have been compromised on receiving the payments from the concerned companies. **Even if an offence of cheating is prima facie constituted, such offence is a compoundable offence and compromise decrees passed in the suits instituted by the Banks, for all intents and purposes, amount to compounding of the offence of cheating**. It is also to be noted that long time has elapsed since the complaint was filed in 1987. It may also be indicated that although such FIRs were filed in 1987 and 1989, the Banks have not chosen to institute any case against the alleged erring officials despite allegations made against them in the FIRs. **Considering that the investigations had not been completed till 1991 even though there was no impediment to complete the investigations and further investigations are still pending and also considering the fact that the claims of the Banks have been satisfied and the suits instituted by the Banks have been compromised on receiving payments, we do not think that the said complaints should be pursued any further**. In our view, proceeding further with the complaints will not be expedient. **In the special facts of the case**, it appears to us that the decision of the High Court in quashing the complaints does not warrant any interference under Article 136 of the Constitution. We, therefore, dismiss these appeals.” (emphasis supplied)

13. It is difficult for this Court to accept the contention that the decision of the Supreme Court in *Duncan Agro* is an authority for the proposition that in all cases where the complainant and the accused have settled their disputes, the High Court should exercise its powers under Section 482 CrPC to quash the criminal case

notwithstanding the nature and type of offence and the stage at which the case is. The highlighted portions of the paragraphs extracted indicate that the Supreme Court proceeded on the footing that the offence of cheating was compoundable, that there was an enormous delay in completing the investigation, that the case was basically a civil dispute and that the decision was in the “special facts” of the case. The facts in the case on hand are, however, different. There was no occasion for the Supreme Court in that case to consider a situation, like the one obtaining in the present case, where there is evidence in the form of a CFSL Report strongly supporting the case of the prosecution for the commission of the offence of forgery. Secondly, the nature of the allegations in the FIR indicate that this was not a purely civil dispute as was the case in *Duncans Agro*.

14. In *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrajirao Angre* JT 1988 (1) SC 279, it was explained by the Supreme Court that it was for the High Court while exercising its power under Section 482 CrPC to consider whether it was expedient and in the interests of justice to permit the prosecution to continue. One of the factors mentioned by the Supreme Court is whether, in the opinion of the court, “chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue.” Applying this decision to the facts on hand it requires to be acknowledged that for proving forgery, the prosecution does not have to rely only upon the evidence of the complainant; it can be proved even by the report of the CFSL. This is not therefore a case where the chances of ultimate conviction are rendered “bleak” on account of the complainant having settled the matter with the accused.

15. This court cannot be unmindful of the fact that in criminal cases there are

only two parties, viz., the accused and the State. When one of the parties i.e. State is not agreeable to the quashing of the proceedings, and the evidence that has been gathered supports the continuation of the trial for the offences of forgery and use of forged documents under Sections 468 and 471 IPC respectively, it would not be appropriate for this Court to exercise its jurisdiction under Section 482 CrPC to quash the criminal proceedings only on the ground that the accused and the complainant have settled their disputes. While each case has been to be examined for its peculiar facts, the larger interests of justice and the rule of law will also have to be borne in mind. The offence of forgery is not merely against the party who is misled as a result of the use of such forged document but against the State as such.

16. For the aforementioned reasons, this Court finds merit in the objection raised by learned APP for the State to the quashing of the criminal proceedings in this case. Accordingly, the petition stands dismissed and the pending application stands disposed of.

S. MURALIDHAR, J

JANUARY 15, 2008
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