

RAMESH RAJAGOPAL

v.

DEVI POLYMERS PRIVATE LIMITED

(Criminal Appeal No.133 of 2016)

APRIL 19, 2016

[S.A. BOBDE AND AMITAVA ROY, JJ.]

Code of Criminal Procedure, 1973 – s. 482 – Quashing of criminal proceedings – Prosecution of appellant-accused u/s. 409, 468 and 471 IPC r/w. ss. 65 and 66 of Information Technology Act, 2000 r/w. s. 120-B IPC – Petition u/s. 482, for quashing the proceedings, dismissed by High Court – On appeal, held: In the facts of the case, none of the circumstances alleged, lead to an inference of commission of an offence alleged either under IPC or under Information Technology Act – The criminal proceedings seem to be due to a private and personal grudge and thus is abuse of the process of the Court – High Court wrongly dismissed the petition over-looking the circumstances of the case – In order to meet the ends of justice, it is necessary to quash the criminal proceedings against the appellant – Penal Code, 1860 – ss. 409, 468 and 471 – Information Technology Act, 2000 – ss. 65 and 66.

Allowing the appeal, the Court,

HELD: 1. It is not possible to attribute any intention of cheating which is a necessary ingredient for the offence under Section 468 IPC. The allegations that the appellant is guilty of an offence under the aforesaid section are inherently improbable and there is no sufficient ground of proceedings against the accused. None of the circumstances alleged can lead to an inference of commission of an offence under the IPC at any rate. The proceedings have been initiated against the appellant as a part of an ongoing dispute between the parties and seem to be due to a private and personal grudge. [Paras 9, 14 and 15] [531-A-B; 532-D-F]

2. As regards the commission of offences under the Information Technology Act, 2000, the allegations are that the appellant had, with fraudulent and dishonest intention, on the website of 'Devi Consultancy Services' mentioned that the former

A is a sister concern of ‘Devi Polymers’ which amounts to creating
 false electronic record. The appellant was a Director of ‘Devi
 Polymers’ and nothing is brought on record to show that he did
 not have any authority to access the computer system or the
 computer network of the company. That apart, there is nothing
 on record to show the commission of offence under Section 65 of
 the I.T. Act, since the allegation is not that any computer source
 code has been concealed, destroyed or altered. The acts of the
 appellant did not have any dishonest intention while considering
 the allegations in respect of the other offences. In the
 circumstances, no case is made out under Sections 65 and 66 of
 the I.T. Act. [Para 21] [535-D-G]

3. An accused must be relieved from the prosecution, if
 the allegations are taken at their face value and accepted in their
 entirety do not constitute any offence. The High Court seems to
 have over-looked the circumstances of the case and has merely
 dismissed the petition under Section 482 of the Criminal
 Procedure Code on the ground that it required evidence at a
 trial to come to any conclusion. The criminal proceedings initiated
 by the respondent, constitute an abuse of process of Court and it
 is necessary, to meet the ends of justice to quash the prosecution
 against the appellant. [Paras 20, 22] [535-C, G-H; 536-A]

State of Haryana and Ors. v. Bhajan Lal and Ors. 1990
 (3) Suppl. SCR 259 : 1992 Supp (1) SCC 335;
*Madhavrao Jiwajirao Scindia and Ors. v. Sambhajirao
 Chandrojirao Angre and Ors.* 1988 (2) SCR 930 :
 (1988) 1 SCC 692; *Janata Dal v. H.S. Chowdhary and
 Ors.*, 1992 (1) Suppl. SCR 226 : (1992) 4 SCC 305;
*Inder Mohan Goswami and Anr. v. State of Uttaranchal
 and Ors.* 2007 (10) SCR 847 : (2007) 12 SCC 1; *R.
 Kalyani v. Janak C. Mehta and Ors.* 2008 (14) SCR
 1249 : (2009) 1 SCC 516; *Umesh Kumar v. State of
 Andhra Pradesh and Anr.* 2013 (14) SCR 213 : (2013)
 10 SCC 591– relied on.

Case Law Reference

1990 (3) Suppl. SCR 259 relied on Para 16

H

1988 (2) SCR 930	relied on	Para 17	A
1992 (1) Suppl. SCR 226	relied on	Para 18	
2007 (10) SCR 847	relied on	Para 19	
2008 (14) SCR 1249	relied on	Para 19	
2013 (14) SCR 213	relied on	Para 20	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 133 of 2016.

From the Judgment and Order dated 26.11.2010 of the High Court of Madras in CrI. O. P. 4404 of 2010.

K. V. Vishwanathan, Sr. Adv., V. Karthik, R. Anand Padmanabhan, Romil Pathak, Anand Sharma, Shashi Bhushan Kumar, Advs. for the Appellant.

R. Balasubramanian, Sr. Adv., B. Karunakaran, (For A. Radhakrishnan), Advs. for the Respondent.

The Judgment of the Court was delivered by

S. A. BOBDE, J. 1. We have heard learned counsel for the parties.

2. Leave granted.

3. The appellant has preferred this appeal against the judgment passed by the Madras High Court in Criminal O.P. No. 4404 of 2010 refusing to quash the criminal proceedings initiated against him.

4. The appellant was prosecuted by the respondent under Sections 409, 468 and 471 of the Indian Penal Code (in short 'the IPC') read with Sections 65 and 66 of the Information Technology Act, 2000 read with Section 120(b) of the IPC. The appellant is a Director in Devi Polymers Private Limited, Chennai which is a leader in Polyester Moulding Compound (PMC), Sheet Moulding Compound (SMC) and Dough Moulding Compound (DMCO) in India.

It is also manufacturing SMC and DMC moulded components for the electrical, automotive and various other industries. The company is also supplying SMC and DMC compounds and components to almost all the leading electrical switch gear industries and automotive industries in India.

B

C

D

E

F

G

H

A 5. It has three Units – A, B and C. Unit ‘C’ is being headed by the appellant. It is not disputed that the Unit ‘C’ primarily renders consultancy services. However, all the three Units are units of one entity i.e. Devi Polymers Private Limited.

B 6. In the course of business, the appellant thought of improving the consultancy services and apparently contacted a consultant known as Michael T Jackson. He also contacted the regular consultants of the Company i.e. Devi Polymers Private Limited. The consultants apparently advised the creation of a separate entity known as Devi Consultancy Services and accordingly, in the web page that was created by the consultant, this name occurred. Since an invoice was raised by the
C consultant Michael T Jackson in the sum of 10,857.50 US Dollars, the said amount was paid from the funds of Devi Polymers Private Limited amounting to Rs.5,57,207/-. The amount of Rs.17,000/- has been paid by the Devi Polymers Private Limited to M/s Easy Link. These amounts were paid as advised by the appellant. It is significant that no amount
D has been paid or received by Unit C separately, independently of Devi Polymers Private Limited. All this, namely the engaging of consultants and payments to them was apparently done at the behest of the appellant.

E 7. The relationship being strained between the respondent and the appellant, who are relatives, several proceedings seem to have been initiated in the Company Law Board pertaining to oppression and mismanagement. As of now, it is said that the appellant’s petition for mismanagement has been dismissed but an appeal is pending. We are, however, not concerned with those proceedings.

F 8. However, in the course of disputes and the pending proceedings, the respondent initiated the instant criminal complaint against the appellant. The main circumstances which are relied upon by the respondent in the complaint is that in the website for Devi Consultancy Services that was created on the advice of the consultant is shown as a separate division independent of Devi Polymers Private Limited. According to the complainant, this has resulted in forgery, since there is no such thing as
G Devi Consultancy Services; though the existence of Unit C of Devi Polymers Private Limited, which deal with consultancy is not denied. The second circumstance seems to be the payment made by the Devi Polymers Private Limited to the consultants from their own account. The former is said to be forgery and the latter is said to be mis-

H

appropriation of funds and breach of trust. A

9. Having given our anxious consideration to the dispute, we find that none of the aforesaid circumstances can lead to an inference of commission of an offence under the IPC at any rate none of the offence alleged. As far as the website is concerned, though undoubtedly, Devi Consultancy Services (DCS) is mentioned, it is made clear in the website itself that DCS is a part of Devi Polymers Private Limited which is apparent from a link which shows Devi Polymers Private Limited, in the website itself, are shown as Devi Polymers Private Limited, the main Company and Devi Consultancy Services as a sister Company. Similarly, in the website of Devi Polymers Private Limited, which was moved by the consultant, there is a link which shows that Devi Consultancy Services is a sister concern and it is stated that viewers may visit that site. The address of Devi Consultancy Services is shown to be the same address as that of Devi Polymers Private Limited. We are satisfied that there is no attempt whatsoever to project the Devi Consultancy Services as a concern or a Company which is independent and separate from Devi Polymers Private Limited, to which both the parties belong. In any case it is not possible to view the act as an act of forgery. B C D

10. It might have been possible to attribute some criminal intent to the projection of the Unit C as Devi Consultancy Services in the website, if as a result of such projection, the appellant had received any amounts separate from the Devi Polymers Private Limited, but a perusal of the complaint shows that this is not so. Not a single rupee has been received by the appellant in his own name or even separately in the name of Unit C, which he is heading. All amounts have been received by Devi Polymers Private Limited. E

11. Section 463 of the Indian Penal Code defines forgery which reads as follows:- F

“463. Forgery.— Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.” G

H

A 12. It is not possible to view the contents of the website showing the Devi Consultancy Services as a concern which is separate from Devi Polymers Private Limited in view of the contents of the website described above. Moreover, it is not possible to impute any intent to cause damage or injury or to enter into any express or implied contract or any intent to commit fraud in the making of the said website. The
B appellant has not committed any act which fits the above description. Admittedly, he has not received a single rupee or nor has he entered into any contract in his own name on the basis of the above website.

13. Section 468 of the IPC reads as follows:-

C “468. *Forgery for purpose of cheating — Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either de-scription for a term which may extend to seven years, and shall also be liable to fine.*”
D

14. In the absence of any act in pursuance of the website by which he has deceived any person fraudulently or dishonestly, induced any one to deliver any property to any person, we find that it is not possible to attribute any intention of cheating which is a necessary ingredient for the offence under Section 468.
E

15. We find that the allegations that the appellant is guilty of an offence under the aforesaid section are inherently improbable and there is no sufficient ground of proceedings against the accused. The proceedings have been initiated against the appellant as a part of an ongoing dispute between the parties and seem to be due to a private and personal grudge.
F

16. In *State of Haryana and Ors. v. Bhajan Lal and Ors.* reported in 1992 Supp(1) SCC 335, this Court laid down the following guidelines where the power under Section 482 should be exercised. They are:-

G “102. *In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482*
H

of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a

A
B
C
D
E
F
G
H

A *specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

(7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

B We find that the High Court ought to have exercised its power under Clause (1), (3) and (5) of the above said judgment.

C 17. In *Madhavrao Jiwajirao Scindia and Ors. v. Sambhajirao Chandrojirao Angre and Ors.*, reported in (1988) 1 SCC 692, this Court observed as follows:-

D “7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

E 18. This Court in *Janata Dal v. H.S. Chowdhary and Ors.*, reported in (1992) 4 SCC 305, observed as follows:-

F “132. *The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Courts*

H

must be careful to see that its decision in exercise of this power is based on sound principles.” A

We reiterate the same caution having found that this is an appropriate case for the exercise of such powers.

19. The entire law on the subjects was reviewed by a three Judges Bench of this Court in *Inder Mohan Goswami and Anr. v. State of Uttaranchal and Ors.*, reported in (2007) 12 SCC 1 vide paragraphs 23 to 39. Thereafter, the law was reiterated in *R. Kalyani v. Janak C. Mehta and Ors.* reported in (2009) 1 SCC 516 vide paragraphs 15 and 16. B

20. In all the cases the principle that the accused must be relieved from the prosecution, even if the allegations are taken at their face value and accepted in their entirety do not constitute any offence has been upheld, and thereafter in *Umesh Kumar v. State of Andhra Pradesh and anr.*, reported in (2013) 10 SCC 591. C

21. As regards the commission of offences under the Information Technology Act, 2000 the allegations are that the appellant had, with fraudulent and dishonest intention on the website of Devi Consultancy Services i.e. www.devidcs.com that the former is a sister concern of Devi Polymers. Further, that this amounts to creating false electronic record. In view of the finding above we find that no offence is made out under Section 66 of the I.T. Act, read with Section 43. The appellant was a Director of Devi Polymers and nothing is brought on record to show that he did not have any authority to access the computer system or the computer network of the company. That apart there is nothing on record to show the commission of offence under Section 65 of the I.T. Act, since the allegation is not that any computer source code has been concealed, destroyed or altered. We have already observed that the acts of the appellant did not have any dishonest intention while considering the allegations in respect of the other offences. In the circumstances, no case is made out under Sections 65 and 66 of the I.T. Act, 2000. D
E
F

22. The High Court seems to have over looked these circumstances and has merely dismissed the petition under Section 482 of the Criminal Procedure Code on the ground that it requires evidence at a trial to come to any conclusion. We, however, find that the criminal proceedings initiated by the respondent constitute an abuse of process G

A of Court and it is necessary to meet the ends of justice to quash the prosecution against the appellant.

23. Accordingly, the appeal succeeds. The prosecution is quashed.

Kalpana K. Tripathy

Appeal allowed.