
from one Prem Kumar of Delhi, has been relied upon by the detaining authority in passing the impugned detention order.

(16) In view of the law discussed above, the detaining authority was bound to supply the copies of all the documents since the same were expressly requested by the petitioner in his representation (Annexure P.10). The question as to whether these documents were relied upon or not by the detaining authority or whether these documents were relevant or not from the point of view of the detaining authority is irrelevant. It was for the petitioner to make up his mind as to what help he could derive out of the said documents while making an effective or purposeful representation. The court or the detaining authority are not supposed to go into the question as to whether in fact such documents could possibly furnish any material to the detenu for making an effective or purposeful representation. Therefore, non-supply of the copies of the documents demanded in the representation (Annexure P.10), in itself is enough to strike at the root of the impugned detention order. In view of this finding, I need not consider other two grounds taken up by the petitioner.

(17) As a result of the above discussion, this petition is allowed. The detention order dated 7th February, 1995 (Annexure P.9) is hereby quashed. The petitioner shall be set at liberty forthwith, if not wanted in any other case.

J.S.T.

Before Hon'ble Swatanter Kumar, J.

R. C. GOENKA,—Petitioner.

versus

SOM NATH JAIN,—Respondent.

Crl. M. No. 7961/M of 1995.

9th February, 1996.

Code of Criminal Procedure, 1973—S. 482—Stay of proceedings—Whether criminal proceedings arising out of same facts on the basis of which claim is already pending in Civil Court is liable to be stayed—Held that Courts must prevent abuse of law, embarrassment to a party and the possible consideration as to whether criminal case is made out—The proceedings under the criminal law if initiated primarily with the motive of harassment must be stayed.

Held, that there can be no rigid or strait jacket formula fixing the standard for staying the proceedings in the criminal case, while civil proceedings are pending before the Court of competent jurisdiction. Basically the Court would be concerned to prevent abuse of process of law, multiplicity of litigation and the possibility of frustration of either of the proceedings.

(Para 4)

Further held, that in a case titled as V. M. Shah v. The State of Maharashtra and another, J.T. 1995 (6) S.C. 433, the Supreme Court expressed the need for giving preference to the criminal proceedings but observed that it would depend upon the facts of each case. The Supreme Court considered the likelihood of embarrassment as relevant consideration in addition to other factors.

(Para 5)

Further held, that the proceedings under the criminal law if initiated primarily with the motive of harassment to the other party and for causing embarrassment would tantamount to abuse to process of law. Unnecessary multiplicity of litigation has to be prevented.

(Para 5)

Further held, that the basic conclusion based upon these judgments is that the Court must prevent abuse of law, unnecessary embarrassment to a party and the possible consideration as to whether criminal offence at all has been committed.

(Para 6)

R. C. Bhalla, Advocate and J. C. Nagpal, Advocate, for the Petitioner.

A. S. Cheema, Sr. Advocate with D. P. Singh, Advocate, for the Respondent.

JUDGMENT

Swatanter Kumar, J.

(1) The only question that arises for consideration is whether the criminal proceedings arising out the same facts on the basis of which the claim is already pending adjudication in the Civil Court, is liable to be stayed until the decision by the Civil Court.

(2) The petitioner is a member of the stock Exchange, Bombay carrying on business in Bombay and is governed by Rules, Bye-laws

and Regulation 1957 framed under the Securities (Regulation) Act, 1956. Somewhere in June, 1991 the respondent approached the petitioner and expressed his desire to invest his funds in the stock exchange Bombay for the purpose of and sale of shares. As such, the respondent wanted to purchase shares in his name and also in the names of his family members. In the first week of August 1991 the petitioner received two drafts for Rs. 7 lacs payable at Bombay from the respondent for this purpose. The respondent instructed the petitioner to purchase or sell the shares in the stock exchange, Bombay in his name or in the names of his family members. As per instructions, shares were purchased and sold over a period of five months from July, 1991 to November, 1991. On execution of the order as per instructions, contract notes were regularly despatched to him and even statement of account and bills raised by the petitioner were also sent to the respondent. According to the petitioner, this investment in the purchase and sale of shares was purely for speculative purpose and to earn quick money. The petitioner alleges that on some occasions the respondent gained but when they realised that they were loosing and were required to make payments to the petitioner, they raised disputes. As a result of disputes and huge claim being raised by the respondent against the petitioner, the petitioner filed an application on 15th December, 1992 before the stock Exchange Board, Bombay requesting that the disputes and differences be referred to the arbitrator. This application is stated to have been filed in furtherance to clause 248(a) of the Bombay Stock Exchange Rules which reads as under :—

“All claims, whether admitted or not differences and disputes between a member and a non-member or non-member (the terms “non-member” and “non-members” shall include a remisier, authorised clerk or employee or any other person with whom the member shares brokerage arising out of or in relation to dealings, transactions and contracts made subject to the Rules, Bye-laws and Regulations of the Exchange or with reference to anything incidental thereto or in pursuance thereof or relating to construction, fulfilment or validity or relation to the rights, obligations and liabilities of remisiers, authorised clerks, employee or any other person with whom the member shares brokerage in relation to such dealings, transactions and contracts shall be referred to and decided by arbitration as provided in the Rules, Bye-laws and Regulations of the Exchange.

Contract constitute Arbitration Agreements :

- (b) An acceptance whether express or implied or a contract subject to arbitration as provided in sub-clause (a) and with this provision for arbitration incorporated therein shall constitute and shall be deemed to constitute an agreement between the member and the non-member or non-members concerned that all claims (whether admitted or not), differences and disputes of the nature referred to in sub-clause (a) in respect of all dealings, transactions and contracts of a date prior or subsequent to the date of the contract shall be submitted to and decided by arbitration as provided in the Rules, Bye-laws and Regulations of the Exchange and that in respect thereof any question whether such dealings, transactions and contracts have been entered into or not shall also be submitted to and decided by arbitration as provided in the Rules, Bye-laws and Regulations of the Exchange."

Bye-law 274 reads as under :—

"Operation of contracts. All dealings, transactions and contracts which are subject to the Rules, Bye-laws and Regulations of the Exchange apply shall be deemed in all respects to be subject to the Rules, Bye-laws and Regulations of the Exchange and shall be deemed to be and shall take effect as wholly made and entered into and to be performed in the city of Bombay and the parties to such dealings, transactions, contracts or agreements shall be deemed to have submitted to the jurisdiction of courts in Bombay for the purpose of giving effect to the Rules, Bye-laws and Regulations of the Exchange."

(3) The respondent in this petition filed a petition under Section 33 of the Arbitration Act, 1940 before the Court of Shri R. K. Bishnoi, Sub Judge, Chandigarh who passed an *ex parte* order dated 25th February, 1993 granting injunction against Kamal Nagra, respondent No. 3 in that petition from appointing the arbitrator in furtherance to the above rules and regulations.

(4) The respondent also approached the State Consumer Disputes Redressal Commission, Chandigarh where their claim was not accepted. He preferred an appeal before the National Consumer Disputes Redressal Commission, New Delhi with regard to alleged

unfair trade practice, deficiency in service and charging more than the actual price in the purchase of shares by the opposite party, a share and stock broker, on behalf of the complainant. This petition was dismissed by the National Consumer Disputes Redressal Commission,—*vide* its order dated 21st October, 1993. The order dated 21st October, 1993 was assailed by the respondent in the Supreme Court of India and the Civil Appeals were dismissed by the Supreme Court.—*vide* its order dated 3rd February, 1994. The respondent then instituted the suit on 27th July, 1994 for the recovery of Rs. 11,40,000 i.e. Rs. 8,91,050 on account of principal amount and Rs. 2,48,950 on account of interest in the court of Senior Sub Judge, Chandigarh. The respondent in the suit had claimed that there was breach of understanding between the parties with regard to sale of shares and the other party was not disclosing complete accounts. Deals of shares were not genuine and they were being defrauded. It is admitted in the plaint that the money was given for investment purpose. When the petitioner was served with the summons in the suit, he filed an application under Section 24 of the Arbitration Act, 1940 for stay of the suit in view of the Arbitration Agreement between the parties. Thereafter the respondent filed a complaint under Sections 120-B/409/420 of the Indian Penal Code in the Court of Chief Judicial Magistrate, Chandigarh. *Vide* order dated 29th November, 1994, the learned Magistrate summoned the petitioner for an offence under section 420 read with Section 120-B of the Indian Penal Code. It will be appropriate to reproduce para No. 6 of the order of summoning dated 29th November, 1994 :—

“I have heard the learned counsel for the complainant besides going through the facts of the case and documentary evidence available on file. A sum of Rs. 7 lacs was sent,—*vide* draft Ex. P-1 of Rs. 2 lacs and 5 lacs. The remaining documents established a *prima facie* case that the complainant had entrusted the same with the accused for fetching the best result thereby accruing profits to the complainant but the profit was manipulated so as to defraud and cheat the complainant. At this stage, there is a *prima facie* case for summoning of the accused for the offence under Section 420 read with Section 120-B IPC and accordingly the accused is ordered to be summoned for the said offence.”

The copy of the complaint as well as the copy of the plaint filed by the respondent against the petitioner in the Courts of competent

jurisdiction have been placed on record of this case. It appears that the allegations, if not identical in these proceedings, are quite similar. At least the basic cause in both these proceedings is similar i.e. sending of Rs. 7 lacs for the purpose of investment in the purchase and sale of shares. As per instructions and agreement, it is alleged, here is violation and resultant consequence of loss etc. The various civil proceedings which have been referred to above are pending in the Courts of competent jurisdiction. The respondent herein did not initiate the proceedings for the commission of criminal offence to start with. It appears that when the respondent was not successful in the civil proceedings before the National Consumer Disputes Redressal Commission and was also served with the notice of proceedings at Bombay and even of the filing his own suit, he thought of instituting these criminal proceedings. The petitioner has contested various proceedings on the ground of jurisdiction as well as according to him, no cause of action has accrued in favour of the respondent and against the petitioner at Chandigarh. Thus, there are serious controversies between the parties with regard to jurisdiction of the Courts concerned as well as on merits of the case. The controversies in these proceedings are certainly intermingled with civil proceedings to great extent, because any finding given by the Civil Court is binding upon the other Court exercising criminal jurisdiction. It is settled principle of law that there can be no rigid or strait jacket formula fixing the standard for staying the proceedings in the criminal case, while civil proceedings are pending before the Court of competent jurisdiction. Basically the Court would be concerned to prevent abuse of process of law, multiplicity of litigation and the possibility of frustration of either of the proceedings.

(5) In the case of *Ram Sumer Puri Mahant v. State of U.P. and others* (1), the Supreme Court held as under :—

“There is no scope to doubt or dispute the position that the decree of the civil court is binding on the criminal court in a matter like the one before us. Counsel for respondents 2—5 was not in a position to challenge the proposition that parallel proceedings should not be permitted to continue and in the event of a decree of the Civil Court, the criminal Court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil court and parties are in a position to approach

(1) (1985) 1 S.C. Cases 429.

the civil court for interim orders such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation.”

In a recent case titled as *V. M. Shah v. The State of Maharashtra and another* (2), the Supreme Court expressed the need for giving preference to the criminal proceedings but observed that it would depend upon the facts of each case. The Supreme Court considered the likelihood of embarrassment as relevant consideration in addition to other factors. In the present case, different civil proceedings were initiated by both the parties and they are pending except that the proceedings before the National Consumer Disputes Redressal Commission preferred by the respondent were dismissed. The proceedings under the Criminal Law if initiated primarily with the motive of harassment to the other party and for causing embarrassment would tantamount to abuse of process of law. Un-necessary multiplicity of litigation has to be prevented. Learned counsel for the petitioner relies upon the judgment of this Court in the case of *Sapinder Singh and another v. State of Punjab and others* (3), to argue that non-returning of amount and resultant loss is primarily a civil liability and does not constitute an offence under Section 406 or 420 of the Indian Penal Code. Learned counsel also relies upon the judgment of this Court in the case of *Babu Singh v. State of Punjab and others* (4).

(6) Learned counsel for the respondent has relied upon the case of *Pratibha Rani v. Suraj Kumar and another* (5), to argue that the complainant had to be given a chance to prove his case. In the present case, the present petition is not one for quashing the complaint but is only for staying the proceedings before the Criminal Court till pendency of the civil proceedings. Thus the case of *Pratibha Rani* (supra) has no application to the facts of the present case. It would be appropriate to make reference to some judgments

(2) J.T. 1995 (6) S.C. 433.

(3) 1992 (2) S.C. Cases 67.

(4) 1991 (2) C.C. Cases 421.

(5) 1985 S.C. 628.

on the subject i.e. *Kusheshwar Dubey v. M/s Bharat Coking Ltd. and others* (6), *Ravinder Kaur Vedi v. J. S. Bedi* (7), *Taxmaco Ltd. v. Arun Kumar* (8). The basic conclusion, based upon these judgements is that the Court must prevent abuse of law, unnecessary embarrassment to a party and, the possible consideration as to whether criminal offence at all has been committed. Further the Court would also be concerned with prejudice to the defence, frustration of any proceeding and most important being whether the findings of the civil court would have direct or effective bearing on the controversy before the criminal Court.

(7) In the present case, the allegations of fraud and loss are common. The money is alleged to have been entrusted to the respondent while according to the respondent, the money was given to him at Bombay for investment purpose. The mere fact that the respondent has not rendered the account as alleged or has caused some loss to the petitioner, by itself may not be sufficient to permit the continuance of the criminal proceedings against the petitioner in the facts and circumstances of this case. If the Civil Court decides that the money was given for the purpose of investment and with speculative mind for making profits, it is to be seriously considered whether it could amount to breach of trust as alleged or cheating. It appears that the proceedings before the criminal and civil Courts are inter-dependent in the facts and the circumstances of this case. The respondent herein himself invited findings from the Civil Court on the material issues which are bound to have an effect on the criminal proceedings. Criminal proceedings in the cases of present kind cannot be permitted initially as an outburst of unsuccessful civil litigation or some adverse orders being passed by the Court exercising civil jurisdiction. Their continuance in such circumstances would be termed as an abuse of process of law. If the Civil Court accepts the finding of fraud as pleaded by the respondents, then the petitioners would be liable to be proceeded against for these offences and it will be fair to stay these proceedings till then. The complaint itself was instituted in August, 1994 relating to the transaction of the year 1991. This inordinate delay which obviously remains unexplained, is another factor which is weighing with the Court. Moreover, it appears to be an attempt to harass the petitioners rather than proceedings initiated *bona fide*.

(6) A.I.R. 1985 S.C. 2118.

(7) 1988 (2) D.L. 348.

(8) 1990 (3) D.L. 63.

(8) In view of above discussion, the petition is allowed to the extent that the proceedings pending in criminal complaint No. 214 of 16th August, 1994 titled S. N. Jain v. R. C. Goenka and another pending in the Court of Shri Shekhar Dhawan, Chief Judicial Magistrate, Chandigarh shall remain stayed during the pendency of the proceedings in the suit filed by the respondent against the petitioner in the Civil Court at Chandigarh. There shall be no order as to costs.

J.S.T.

Before Hon'ble R. S. Mongia & K. K. Srivastava, JJ.

KULDIP SINGH & OTHERS,—Petitioners.

versus

STATE OF HARYANA & ANOTHER,—Respondents.

C.W.P. No. 10787 of 1995

28th August, 1995

Constitution of India, 1950—Arts. 14, 16 & 320—Haryana Service of Engineers, Class II, P.W.D. (Irrigation Branch) Rules, 1970—Rls. 8 & 22—Haryana Government Memo No. 3/1/90/CS. III dated 5th September, 1990—Selection to the posts of temporary Assistant Engineers (Civil) in Haryana Irrigation Department—Government relaxing upper age limit of 5 years for in-service candidates for recruitment to the said posts by circular dated 5th September, 1990—Such relaxation granted retrospectively from the last date of receipt of application forms for the recruitment to the said posts in the Irrigation Department, however, such relaxation not given to the candidates serving in any other department though having requisite qualifications—Haryana Public Service Commission not agreeing to the age relaxation for in-service candidates—Refusal of the Commission to issue corrigendum in view of the age relaxation granted by the Government is unjustified—Question of retrospective application of the decision of the Government to relax rules does not arise because the proposed corrigendum would have fixed fresh date for receiving applications—Words and Phrases “Suitability and Eligibility” defined and distinguished—Government restricting relaxation to Irrigation Department alone is not warranted—In-service candidates from all Government Departments, if eligible, stand on the same footing—Directions issued to the Commission to issue a corrigendum and reinstate selection process—Commission is held not justified in refusing to abide by the decision of the State Government regarding terms and conditions of eligibility and qualification for recruitment to the posts.