[2019] 5 S.C.R. 876

A MD. ALLAUDDIN KHAN

v.

THE STATE OF BIHAR & ORS.

(Criminal Appeal No.675 of 2019)

APRIL 15, 2019

B **[ABHAY MANOHAR SAPRE AND DINESH MAHESHWARI, JJ.]**

Code of Criminal Procedure, 1973:

s. 482 – Complaint u/ss. 327 And 379 r/w s. 34 IPC – Taken cognizance of, by the Judicial Magistrate – In petition u/s. 482, C *High Court quashed the complaint holding that prima facie case was not made out in view of pending civil dispute between the parties and that the statements of witnesses were contradictory – On appeal, held: In order to see whether prima facie case is made out against the accused for taking cognizance, the Court is only required to* D *see the allegations in the complaint – Such ascertainment cannot be done taking into account mere pendency of civil dispute – High Court also had no jurisdiction to appreciate the evidence in exercise of jurisdiction u/s. 482 – Therefore, High Court was not right in quashing the complaint.*

E **Allowing the appeal, the Court**

HELD : 1.1 The High Court did not examine the case with a view to find out as to whether the allegations made in the complaint prima facie make out the offences falling under Sections 323, 379 read with Section 34 IPC or not. Instead the High Court gave importance to the fact that since there was a dispute pending F **between the parties in the Civil Court in relation to a shop as being landlord and tenant, it is essentially a civil dispute between the parties. It is on this ground, the High Court proceeded to quash the complaint. This approach of the High Court is faulty. [Paras 10, 11, 12][879-D-F]**

G State of Haryana & Ors. v. Ch. Bhajan Lal & Ors. **AIR 1992 SC 604 : [1990] 3 Suppl. SCR 259 – relied on.**

1.2 The High Court failed to see that mere pendency of a civil suit is not an answer to the question as to whether a case under Sections 323, 379 read with Section 34 IPC is made out H **against respondent Nos. 2 and 3 or not. [Para 14][879-G-H]**

1.3 In order to see whether any *prima facie* case against the accused for taking its cognizance is made out or not, the Court is only required to see the allegations made in the complaint. In the absence of any finding recorded by the High Court on this material question, the impugned order is legally unsustainable. [Para 15][880-B]

2. The High Court was also wrong in holding that there were contradictions in the statements of the witnesses on the point of occurrence. The High Court had no jurisdiction to appreciate the evidence of the proceedings under Section 482 of Cr.P.C because whether there are contradictions or/and inconsistencies in the statements of the witnesses is essentially an issue relating to appreciation of evidence and the same can be gone into by the Judicial Magistrate during trial when the entire evidence is adduced by the parties. That stage is yet to come in the present case. [Para 17][880-C-D]

3. Therefore, the reasoning and the conclusion arrived at by the High Court for quashing the complaint filed by the appellant against respondent Nos. 2 and 3 is not legally sustainable and hence it deservers to be set aside. [Para 18][880-E]

Case Law Reference

[1990] 3 Suppl. SCR 259 relied on Para 13

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 675 of 2019.

From the Judgment and Order dated 11.09.2017 of the High Court of Judicature at Patna in Criminal Miscellaneous No. 27078 of 2013.

Binay Kumar Das, H. Hasibuddin, Ms. Priyanka Das, Advs. for the Appellant.

Prabhat Ranjan Raj, Jeewesh Prakash, Ms. Ritu Dubey, Shantanu Sagar, Devashish Bharuka, Ms. Ravi Bharuka, Ms. Sarvshree, Justine George, Aditya Singala, Advs. for the Respondents.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. Leave granted.

2. This appeal is directed against the final judgment and order dated 11.09.2017 passed by the High Court of Judicature at Patna in

A Criminal Miscellaneous Application No.27078 of 2013 whereby the High Court allowed the Criminal Miscellaneous Application filed by respondent Nos.2 & 3 herein and quashed the complaint filed by the appellant herein.

3. A few facts need mention hereinbelow for the disposal of this appeal, which involves a short point.

B 4. By impugned order, the High Court quashed the order dated 13.02.2013 passed by the Judicial Magistrate 1st Class, Saran at Chapra in Complaint Case No.21/2012 whereby the Judicial Magistrate took cognizance of the complaint filed by the appellant herein against respondent Nos. 2 and 3 for commission of the offences punishable C under Sections 323, 379 read with Section 34 of the Indian Penal Code, 1860 (for short "IPC") by holding that a *prima facie* case was made out against respondent Nos.2 and 3 on the basis of allegations made in the complaint.

5. So, the short question which arises for consideration in this D appeal filed by the complainant is whether the Judicial Magistrate was right in holding that a *prima facie* case is made out against respondent Nos.2 and 3 for commission of the offences punishable under Sections 323, 379 read with Section 34 IPC so as to call upon them to face the trial on merits or whether the High Court was right in holding that no *prima facie* case has been made out against respondent Nos.2 and 3.

E 6. Heard Mr. Binay Kumar Das, learned counsel for the appellant, Mr. Prabhat Ranjan Raj, learned counsel for respondent Nos.2 & 3 and Mr. Devashish Bharuka, learned counsel for respondent No.1-State.

7. Having heard the learned counsel for the parties and on perusal F of the record of the case, we are constrained to allow the appeal, set aside the impugned order and restore the order of the Judicial Magistrate dated 13.02.2013.

8. The High Court examined the case in para 6, which reads as under:

G **"6. On perusal of complaint petition, I find that the complainant has asserted that firstly, he had contracted for purchasing the shop premises from the land owner, but the petitioners offered more money and got the document registered in their favour. There is no chit of paper on record to support the agreement of sale or payment of any** H **amount to the land owner. The petitioners claim to be bona**

fide purchaser of the shop premises, which was in tenancy of the complainant. The petitioners have filed an Eviction Suit No.10 of 2012, in which the complainant has filed his written statement admitting tenancy in the said shop premises. The complainant has further asserted that he has been remitting rent of the said shop regularly and when he learnt about the transfer of shop premises in favour of the petitioners, the complainant has filed a Title Suit No.2 of 2012. The dispute between the parties appears to be a civil dispute. The relationship of landlord and tenant stands admitted by the complainant in the eviction suit. I further find that there are contradictions in the statement of witnesses on the point of occurrence. The criminal prosecution of these petitioners in the above background appears to be an abuse of process of Court."

9. On perusal of the impugned order, we find that it suffers from two errors.

10. First error is that the High Court did not examine the case with a view to find out as to whether the allegations made in the complaint *prima facie* make out the offences falling under Sections 323, 379 read with Section 34 IPC or not.

11. Instead the High Court in Para 6 gave importance to the fact that since there was a dispute pending between the parties in the Civil Court in relation to a shop as being landlord and tenant, it is essentially a civil dispute between the parties.

12. It is on this ground, the High Court proceeded to quash the complaint. This approach of the High Court, in our view, is faulty.

13. Though the High Court referred to the law laid down by this Court in the case of **State of Haryana & Ors.** vs. **Ch. Bhajan Lal & Ors.** (AIR 1992 SC 604) but failed to apply the principle laid down therein to the facts of this case.

14. The High Court failed to see that mere pendency of a civil suit is not an answer to the question as to whether a case under Sections 323, 379 read with Section 34 IPC is made out against respondent Nos. 2 and 3 or not.

15. The High Court should have seen that when a specific grievance of the appellant in his complaint was that respondent Nos. 2

A and 3 have committed the offences punishable under Sections 323, 379 read with Section 34 IPC, then the question to be examined is as to whether there are allegations of commission of these two offences in the complaint or not. In other words, in order to see whether any *prima facie* case against the accused for taking its cognizance is made out or not, the Court is only required to see the allegations made in the complaint. In the absence of any finding recorded by the High Court on this material question, the impugned order is legally unsustainable.

16. The second error is that the High Court in para 6 held that there are contradictions in the statements of the witnesses on the point of occurrence.

17. In our view, the High Court had no jurisdiction to appreciate the evidence of the proceedings under Section 482 of the Code Of Criminal Procedure, 1973 (for short "Cr.P.C.") because whether there are contradictions or/and inconsistencies in the statements of the witnesses is essentially an issue relating to appreciation of evidence and the same can be gone into by the Judicial Magistrate during trial when the entire evidence is adduced by the parties. That stage is yet to come in this case.

18. It is due to these two errors, we are of the considered opinion that the reasoning and the conclusion arrived at by the High Court for quashing the complaint filed by the appellant against respondent Nos. 2 and 3 is not legally sustainable and hence it deservers to be set aside.

19. In view of the foregoing discussion, the appeal succeeds and is accordingly allowed. The impugned order is set aside and the order of the Judicial Magistrate dated 13.02.2013 is restored because it records a finding that a *prima facie* case for taking cognizance of the complaint is made out.

20. The Judicial Magistrate is accordingly directed to proceed to conclude the trial on merits on the basis of evidence adduced by the parties in the trial strictly in accordance with law uninfluenced by any observations made by the High Court in the impugned order and in this order made by this Court.

Kalpana K. Tripathy Appeal allowed.