

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

Petition u/s 561-A Cr. P.C. No.72/2009

Date of order 10.02.2010

Ashok Bamba Vs. State and Others

Coram :

Hon' ble Mr. Justice Gh. Hasnain Massodi, Judge.

i) Whether to be reported in
Press/Journal/Media:

Yes/No

ii) Whether to be reported
in Digest/Journal:

Yes/No

Appearing counsel:

For the petitioner(s) : Mr. R.K.Gupta, Advocate

For the respondent(s) : Mr. Rahul Pant, Advocate

The petitioner and respondents 3 to 5 are Directors of a Finance Company run under name and style of Panbakhtar Finance Ltd. at 147-C, A/D, Gandhi Nagar Jammu (Finance Company for short). The respondent No.2 is an account holder with the Finance Company and admittedly deposited some amount with the Finance Company expecting good returns on the investments so made. The respondent No.2 disappointed by failure of the Finance Company to make the payments and also inclusion of name of his son - the respondent No.3 herein, as one of the Directors of the Finance company, allegedly on forged and fabricated documents, rushed to Chief Judicial Magistrate Jammu with a complaint alleging commission of offence punishable under section

420,467, 468 read with 120-B RPC against the petitioner and respondent No.3 to 5. Learned CJM, in turn, forwarded the complaint to P/S Crime Branch, Jammu in terms of section 156 (3) Cr. P.C where upon case FIR 15/2007 dated 9.4.2007 was registered at the Police Station, Crime Branch, Jammu.

The differences and disagreement between respondent No.2 and the petitioner as also the other Directors of the Finance Company, did not stay for long. The parties who seemingly enjoyed fairly good business relations prior to registration of case FIR 15/2007, seem to have buried the hatchet and entered into a compromise. It appears that the petitioner and other Directors of the Finance company who initially due to financial crises were unable to make the payments to the respondent No.2, have now made a resolve to set right his grievances and return the deposits alongwith the interest/profit accrued thereon. The only hiccup in restoration of peace and cordial relations between the parties, is the criminal case viz FIR No.15/2007 that was initially expected by the respondent to be serve as a tool to get his grievances redressed.

The petitioner invoking inherent powers of the court under section 561-A Cr. P.C prays for quashment of FIR 15/2007 P/S Crime Branch, Jammu u/s 402, 467

and section 120-B RPC. The grounds urged in the petition are that dispute between the parties given colour of an offence, was in essence of civil nature and a personal dispute and that the parties having entered into a compromise, the criminal proceedings initiated were futile and to serve no purpose. Learned counsel for the petitioner reiterating the stand spelt out in the petition, states that the dispute between the parties is civil in nature and giving it colour of criminal case is an abuse of process of law. It is argued that the investigation, enquiry or trial, if any, embarked upon in consequence of Fir 15/2007, is bound to be a unnecessary and avoidable burden on the police machinery and state exchequer and that having regard to the surrounding circumstances and nature of the dispute, the FIR 15/2007 was deserved to be quashed in exercise of inherent powers vested in the court. Learned counsel for the petitioner to buttress his arguments places reliance on law laid down in (2003) 4 SCC 675, (2008) 4 SCC 582, (2008) 9 SCC 677.

In (2003) 4 SCC 675 where the parties intended to compromise a criminal case under section 498-A 323 and 406 RPC and were not in a position to give shape to their intention because of the offences being non compoundable, the Supreme Court observing that the inherent powers were without limits and were to be

exercised with the sole purpose to prevent abuse of process of court or otherwise to secure the ends of justice held

“if for the purpose of securing ends of justice, quashing of FIR becomes necessary, section 320 would not be a bar to exercise, power of quashing”

it was further held *“that in a criminal case, the veiled object beyond a limit prosecution, very nature of which the Director of Prosecution, can justify the High Court in quashing the proceedings in the interest of justice and the ends of justice is higher than ends of law.*

In (2008) 4 SCC 582 the Supreme Court observed as under:

“6. we need to emphasise that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilized in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law.”

In (2008) 9 SCC 677 where the dispute between a company and bank, was being set at rest on the basis of compromise arrived at by them where under the dues of the bank had been cleared by the

company, leaving no further claim against the company, the Supreme Court held the matter to be “*a fit case where technicality should not be allowed to stand in the way in quashing of the criminal proceedings,*” as in the words of Supreme Court “*the continuance of the same after a compromise arrived at between the parties would be a futile exercise*”

The Supreme Court after said observations quashed criminal proceedings under section 420, 467, 468 and 471 IPC.

Shri Rahul Pant counsel for respondent No.2 at whom instance the FIR 15/2007 dated 9.4.2007 under section 420, 467, 468 and section 120-B RPC has been registered, joins learned counsel for the petitioner in praying that FIR 15/2007 in the light of averments made in the petition, be quashed.

The case squarely falls within law laid down in the aforementioned reported cases. In the present case in view of the compromise between the parties and settlement of the dispute which is primarily and substantially civil in nature, no purpose would be served by allowing the criminal proceedings to continue. So viewed the petition is accepted and FIR 15/2007 dated 9.4.2007 P/S Crime Branch, Jammu and the criminal proceedings emanating from the FIR are

quashed.

The petition is disposed of accordingly.

(Gh. Hasnain Massodi)
Judge

Jammu
10.02.2010
G. Nabi