

CASE NO.:
Special Leave Petition (crl.) 3030 of 2006

PETITIONER:
THELAPALLI RAGHAVAIAH

RESPONDENT:
STATION HOUSE OFFICER & ORS

DATE OF JUDGMENT: 19/03/2007

BENCH:
Dr.AR. Lakshmanan & Altamas Kabir

JUDGMENT:
J U D G M E N T

ALTAMAS KABIR, J.

On 21st June, 2005, the petitioner herein lodged a First Information Report with the Kovur Police Station in Nellore District against the private respondent Nos. 2, 3, 4 and 5 herein alleging commission of offences under Sections 196, 199, 120(B), 403, 406 and 418 Indian Penal Code.

The complaint in short is that Raghava Infrastructure Private Ltd. was a Private Limited Company engaged in doing civil contract works. Soma Enterprise Limited is also doing civil contract works having its corporate office at 14, Avenue-4, Banjara Hills, Hyderabad and its site office near Saibaba Temple, Kovur, adjacent to National Highway-5. It was stated that the respondent No. 3 was one of its Directors. The Respondent Nos. 4 and 5 are the Project Manager and Materials Engineer of the Company.

It was alleged in the complaint that Soma Enterprise Limited who obtained a contract for executing work on the Nellore Bypass Road on National Highway-5, appointed the complainant as its sub-contractor for excavation and transportation of gravel for the formation of embankment of Nellore Bypass Road on National Highway-5 from Km 172.840 to 178.200 from 1st June, 2002 onwards. The agreed rate of remuneration was Rs.27/- per cubic meter for the first kilometer and Rs.4/- per cubic meter for each kilometer thereafter.

It was alleged that from the month of August, 2002 to December, 2002 Soma Enterprise Limited started mixing fly ash with the gravel purportedly in keeping with instructions received. On account of such mixing of fly ash with the gravel, Soma Enterprise Ltd. began deducting various amounts from the complainant's bills. According to the complainant, despite repeated protests, Soma Enterprise Limited did not pay any heed and continued to mix fly ash with the gravel supplied by the complainant and also continued to deduct amounts from the complainant's bill, in order to cause unlawful loss to the complainant and unlawful gain for itself.

It is alleged that the Director of Soma Enterprise Ltd. assured the complainant that he would disburse the amount pertaining to the quantity of gravel by adopting the best suitable method for arriving at the volumetric bifurcation of gravel and fly ash from the mix. According to the complainant, he continued to execute the work entrusted to him as per the aforesaid assurance.

It was alleged in the complaint that a sum of Rs.5.72 lakhs had been deducted from the bill for the month of February, 2003 alone. It was also the complainant's case that he had requested the Director and Project Manager to count the number of tippers of gravel being supplied and dumped by the complainant in the stock yard for payment purposes, but the Director did not agree to such a method.

The further complaint is that although the complainant continued to supply the gravel in terms of the sub-contract, the Director changed his stand and asked the complainant to prove that the formula by which they were deducting the amount for fly ash was wrong. On that basis the complainant approached the Geo Marine Consultants Private Limited, Indira Nagar, Chennai, and had the gravel and fly ash tested. A report was prepared by the Managing Director, but the same was not accepted by Soma Enterprise Ltd. Consequently, the complainant approached the IIT Madras and got the mixed tested at the Department of Ocean Engineering, IIT, Madras, through Professor Dr. S. Narasimha Rao, who was of the view that although 33.3% of fly ash is mixed with gravel there will not be any increase in the volume of gravel soil. According to the complainant, as a counter-blast and with an intention to cheat the complainant, Soma Enterprise Ltd had hatched a criminal conspiracy with IIT, Chennai Professors S.R. Gandhi and Dr. G.R. Dodagoundar and created a fake report to cheat the complainant and cause wrongful loss to him. On the basis of the aforesaid complaint, the complainant requested the police authorities to investigate into the facts and to try the case accordingly for having hatched the criminal conspiracy and cheated the complainant and also misappropriated the amount of the complainant by making illegal deductions in aggregate of 28% in all bills and committed breach of trust too by willfully making the complainant to suffer irreparable loss. On the basis of the said complaint a case Cr. No. 83 of 2005 was registered in Kovur Police Station on 21st June, 2005, under Sections 196, 199, 120(B), 403, 406 and 418 Indian Penal Code and the original First Information Report alongwith the original complaint was submitted to the Judicial Magistrate, 1st Class, Kovur.

The Investigating Officer took up the investigation and found a prima facie case against the accused but as nothing further was done the petitioner filed Writ Petition No. 21594 of 2005, inter alia for a writ in the nature of Mandamus on the Sub-Inspector of Police, Kovur Police Station, District Nellore, to file the Final Report in connection with FIR No. 83 of 2005 before the Additional Judicial Magistrate, 1st Class, Kovur. The Writ petition was disposed of on 7th October, 2005, at the admission stage directing the Sub-Inspector of Police, Kovur Police Station, to file the Final Report before the Magistrate concerned, if the investigation had been completed, within four weeks from the date of receipt of a copy of the order. Soon after the aforesaid order of the High Court, the respondents Nos. 2 and 5 filed CrI. P. No. 4799 of 2005 before the Andhra Pradesh High Court under Section 482 of the Code of Criminal Procedure for quashing the aforesaid F.I.R. No. 83 of 2005 of Kovur Police Station, District-Nellore.

The said petition came up for hearing and disposal on 28th April, 2006. On a consideration of the complaint the High Court observed that the complaint did not disclose any offence except a civil dispute between the parties. Holding the impugned proceedings to be unsustainable, the High Court quashed the same. In passing the order quashing the impugned proceeding, the High Court took note of the earlier order of the High Court in W.P. No. 21594 of 2005, directing the police authorities to file a Final Report in connection with

F.I.R. No. 83 of 2005 of Kovur Police Station.

Mr. R.K. Anand, learned Senior Advocate, appearing for the complainant/petitioner submitted that having noticed the earlier order passed in W.P. No. 21594 of 2005, the High Court should have stayed its hands in the quashing proceedings till the Final Report was filed in respect of the very same F.I.R. under challenge in the quashing proceedings. He also urged that a clear case of cheating and criminal breach of trust emerges from the complaint, as was found by the Investigating Officer, and the High Court erred in quashing the proceedings thus preventing the investigating agency from carrying out its investigation into the complaint and filing its report. In support of his submission Mr. Anand referred to and relied on a decision of this Court in Indian Oil Corporation vs. NEPC India Ltd., reported in 2006 (6) SCC Page 736, wherein it was held that where civil remedy is availed of in disputes arising from a breach of contract, remedy under the criminal law also is not barred, if the allegations also disclose a criminal offence.

Certain other decisions on the same lines were also cited which only reiterates the same proposition.

Appearing for the respondents, Mr. Abhishek Singhvi, learned Senior Advocate, urged that he had no quarrel with the decisions cited by Mr. Anand, but that the same had no application to the facts of this case. He emphasised the fact that the contract between the parties commenced in 2002 and till 2004 no objections regarding criminal intent on the part of the respondents was ever raised. He also emphasised that the nature of the work entrusted to the petitioner was to excavate gravel from the respondent's land and to deliver the same to the work site. There was no entrustment involved, and the allegations in the complaint made out a purely civil dispute relating to measurement of the gravel delivered to the work site.

Even on the question of alleged fabrication of documents, Mr. Singhvi submitted that the same related to opinion of experts in the field who were professors working in I.I.T. Chennai, and were experts in Civil Engineering. Wild allegations of criminal conspiracy had been leveled against them by the petitioner.

Mr. Singhvi referred to and relied on a decision of this Court in Madhavrao Jiwajirao Scindia & Ors. vs. Sambhajirao Chandrojirao Angre & Ors., reported in 1988 (1) SCC page 692, where this Court had occasion to observe that though a case of breach of trust may be both a civil wrong and a criminal offence but there would be certain situations where it would pre-dominantly be a civil wrong and may or may not amount to a criminal offence. It was also observed 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 established the offence.

We have carefully gone through the complaint made by the petitioner, and are convinced that the same primarily makes out a civil dispute relating to measurement, though an attempt has been made to give the same a criminal flavour. The High Court rightly held that the entire reading of the complaint does not disclose any offence except a civil dispute between the parties.

We, therefore, see no reason to interfere with the order of the High Court impugned in this Special Leave Petition, though the High Court after noticing its earlier order dated 7th October, 2005, in Writ Petition No. 21594 of 2005, could have stayed its hands till the Final Report was filed in connection with F.I.R. 83 of 2005 of Kovur Police Station.

The Special Leave Petition is accordingly dismissed.

JUDIS