

Criminal Revision

Present:

The Hon'ble Justice Ashim Kumar Roy

C.R.R. No. 3210 of 2007

Mita Karmakar

versus

The State & Anr.

Judgment On : 27-01-2010.

Point:

QUASHING: Civil remedy available- Criminal proceeding whether bar- Code of Criminal Procedure, 1973, S. 482.

Fact: Invoking Section 482 of the Code of Criminal Procedure, the petitioner moved this Court for quashing of a proceeding relating to an offence punishable under Section 138 of the Negotiable Instruments Act on the following grounds:

- (a) The cheque in question was issued as the earnest money for purchase of a landed property;
- (b) The cheque in question was not issued in discharge of any legally enforceable debt or liability;
- (c) Before presentation of the cheque in question the payee was intimated in writing not to present the cheque and the bank was asked to stop payment. Thus, the provision of Section 138 of the N.I. Act is not attracted when such cheque was dishonoured;
- (d) A civil suit praying for a permanent injunction against the presentation of the cheque for encashment is pending.

Held:

The grounds that the cheque in question was given as earnest money and not in discharge of any legally enforceable debt or liability and actually there is no debt or liability being pure question of facts the correctness or otherwise of the same cannot be gone into. No case can be quashed by adjudicating which version of the case is true whether that of the prosecution or of the defence. The third ground that before presentation of the cheque for encashment the payee in writing was asked not to present the cheque for encashment and the bank was asked not to make payment against such cheque and thus the penal consequences under Section 138 of the Negotiable Instruments Act is not

attracted is not tenable in law. Now, the only point left for consideration whether because of the pendency of the civil suit where the petitioner, the drawer of the cheque, sought for permanent injunction restraining the complainant from presenting the cheque for encashment and for returning of such cheque to the drawer would operate as a bar in continuation of the criminal case in question. It is well settled that availability of a civil remedy or even availing of civil remedy is no bar for continuation of a criminal proceeding when on the allegations made in the complaint clearly a case of criminal offence has been made out. It is also well settled there can be no bar to the simultaneous continuation of a criminal proceeding and a civil proceeding if the two arise from separate cause of action.

Paragraph – 4 & 5

Cases:

- A. 1998 Calcutta Criminal Law Reporter (SC) 207 (Modi Cement Ltd. Vs. Kuchil Kumar Nandy)
- B. (2009) 1 SCC (Cri) 241 (Shree Krishna Agency Vs. State of Andhra Pradesh & Anr.)

For Petitioner : Mr. Jiban Ratan Chatterjee
Mr. Debabrata Mondal

For O.P. No. 2 : Mr. Asoke Biswas

The Court:

Invoking Section 482 of the Code of Criminal Procedure, the petitioner moved this Court for quashing of a proceeding relating to an offence punishable under Section 138 of the Negotiable Instruments Act on the following grounds;

(a) The cheque in question was issued as the earnest money for purchase of a landed property.

(b) The cheque in question was not issued in discharge of any legally enforceable debt or liability.

(c) Before presentation of the cheque in question the payee was intimated in writing not to present the cheque and the bank was asked to stop payment. Thus, the provisions of Section 138 of the N.I. Act is not attracted when such cheque was dishonoured.

(d) A civil suit praying for a permanent injunction against the presentation of the cheque for encashment is pending.

2. Heard Mr. Jiban Ratan Chatterjee, the Learned Senior Advocate appeared on behalf of the petitioner. Perused the impugned complaint as well as other materials on record.

3. This is well settled invoking its inherent jurisdiction, when an accused approached the High Court for quashing of a criminal proceeding, the Court is to see whether on the face of the allegations offence alleged has been made out or not and at this stage the truth or falsehood and correctness of the allegations made in the complaint cannot be gone into. The accused may have many thing to say in his defence disputing the allegations made against him and that may also ultimately lead to his acquittal after trial but that certainly cannot be the ground for quashing of a criminal proceeding.

4. So far as the first two grounds on which the case of the petitioner rests, viz., the cheque in question was given as earnest money and not in discharge of any legally enforceable debt or liability and actually there is no debt or liability being pure question of facts the correctness or otherwise of the same cannot be gone into. No case can be quashed by adjudicating which version of the case is true whether that of the prosecution or of the defence. The third ground that before presentation of the cheque for encashment the payee in writing was asked not to present the cheque for encashment and the bank was asked not to make payment against such cheque and thus the

penal consequences under Section 138 of the Negotiable Instruments Act is not attracted is not tenable in law. In the case of *Modi Cement Ltd. Vs. Kuchil Kumar Nandy*, reported in 1998 *Calcutta Criminal Law Reporter (SC) 207*, a similar point was an issue before a three Judges Bench of the Hon'ble Supreme Court, and the Apex Court observed even when the drawer of the cheque in advance in writing asked the payee not to present the cheque for encashment and simultaneously asked the banker on which such cheque was drawn to stop payment against such cheque and accordingly, the cheque was dishonoured, in such circumstances it cannot be said that no prima facie case of an offence punishable under Section 138 of the Negotiable Instruments Act is made out.

5. Now, the only point left for consideration whether because of the pendency of the civil suit where the petitioner, the drawer of the cheque, sought for permanent injunction restraining the complainant from presenting the cheque for encashment and for returning of such cheque to the drawer would operate as a bar in continuation of the criminal case in question. It is well settled that availability of a civil remedy or even availing of civil remedy is no bar for continuation of a criminal proceeding when on the allegations made in the complaint clearly a case of criminal offence has been made out. It is also well settled there can be no bar to the simultaneous continuation of a criminal proceeding and a civil proceeding if the two arise from separate cause of action. In the case of ***Shree Krishna Agency Vs. State of Andhra Pradesh & Anr.***, reported in **(2009) 1 SCC (Cri) 241**, the Apex Court rejected the prayer of the accused for quashing of a criminal proceeding under Section 138 of the Negotiable Instruments Act on the ground over the self-same dispute a civil case is also pending.

In view of above, I do not find any merit in the instant criminal revision and accordingly same stands dismissed.

It appears that the aforesaid proceedings under Section 138 of the Negotiable Instruments Act was instituted in the year 2005, but till date trial has not been concluded. It is true this criminal revision where the legality and validity of the said proceeding was under challenged remain pending since 2007, although without any stay. Be that as it may, considering the mandate of Section 143 of the Negotiable Instruments Act, the Learned Trial Court is directed to conclude the trial of this case within three months from the date of communication of this order. The Learned Trial Court is directed to proceed with the case strictly in terms of the provisions contained in Section 143 of the Negotiable Instruments Act. The petitioner as well as the opposite party no. 2 are directed to appear before the Trial Court within two weeks from this date.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)