

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2139 OF 2014

(Arising out of Special Leave Petition (Criminal) No.9348 of 2013)

M/s. Sesami Chemicals Pvt. Ltd. ... Appellant

Versus

State of Meghalaya & Others ... Respondents

WITH

CRIMINAL APPEAL NO. 2140 OF 2014

(Arising out of Special Leave Petition (Criminal) No.5317 of 2014)

M/s. Sesami Chemicals Pvt. Ltd. & Another ... Appellants

Versus

Sanjay Kabra & Another ... Respondents

J U D G M E N T

Chelameswar, J.

1. Leave granted in both the SLPs.

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Deepak Mahapatra
Date: 2014.09.27
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Reason: [S]

Criminal Appeal arising out of SLP (Criminal) No.9348 of 2013

2. Aggrieved by the judgment and order of the High Court of

Meghalaya dated 21.5.2013 in Criminal Petition (SH) No.68 of 2011, the fourth respondent therein has preferred the instant appeal.

3. The abovementioned criminal petition was filed by respondents No.2 and 3 herein (for short “contesting respondents/accused”) praying in substance to quash the First Information Report (FIR) dated 12.10.2011 in Umiam Police Station Case No.43(10) of 2011 (G.R. No.185 of 2011) under Sections 120-B/418/520 IPC.

4. At the outset, we may mention that all the facts are disputed barring the following.

5. That, the appellant company is engaged in the business of manufacturing ferrosilicon. It appears that pursuant to an agreement between the appellant company and the contesting respondents/accused, the appellant sold a huge quantity of ferrosilicon (the details of which are not available on record) to the contesting respondents/accused and dispatched four consignments of ferrosilicon valued at Rs.46,79,890/- out of which the contesting respondents/accused paid amount of Rs.10,00,000/- and the balance amount of Rs.36,79,890/- was outstanding.

6. On 12.10.2011, FIR No.43(10) of 2011 under Sections 120-B/418/520 IPC, which is the subject matter of present case,

came to be registered at Umiam police station at the instance of the appellant herein.

7. On 31.10.2011, the learned Additional District Magistrate, Nongpoh Court issued non-bailable warrants (NBWs) against the contesting respondents/accused.

8. The rest of the facts are in dispute. According to the appellant, after coming to know of the registration of the abovementioned case, the contesting respondents/accused entered into a compromise with the appellant and agreed to make payment of an amount of Rs.71,34,489/- towards the balance of the price of the material purchased by them along with the interest accrued on such delayed payment.

9. It is the case of the appellant that on 3.11.2011, the contesting respondents/accused made payment of Rs.40,00,000/- and for the balance amount of Rs.31,34,489/-, an account payee cheque was issued. The said cheque was entrusted by the appellant to its banker for collection and on presentation to the payee banker the same was returned with an endorsement "Payment Stopped by the Drawer".

10. In the meanwhile, the contesting respondents/accused filed the abovementioned criminal petition No.68 of 2011. During the

pendency of the said matter, in view of the dishonoured cheque mentioned above, the appellant initiated another criminal proceeding in crime case No.87(S)/2012 before Judicial Magistrate, First Class, Shillong.

11. By impugned judgment, the abovementioned criminal petition No.68 of 2011 came to be allowed quashing the first of the abovementioned two FIRs i.e. Case No.43(10) of 2011 dated 12.10.2011.

12. The case of the contesting respondents/accused is as follows.

13. The contesting respondents/accused admit the fact that on 02.3.2008 they purchased ferrosilicon worth Rs.46,79,890/- from the appellant company and paid Rs.10,00,000/-. On receipt of the goods, they found that the goods were substandard and informed the same to the appellant and demanded their money back.

14. According to the contesting respondents/accused, the appellant initially agreed to return their money and to take back its goods but later the appellant instructed the accused to sell off the goods in the open market and appropriate the same. But subsequently the signatures of the contesting respondents/accused were taken on certain blank papers at gun point at the instance of the appellant.

The cheque which is the subject matter of crime case No.87(S)/2012 is one such document obtained at gun point.

15. It is in the background of the abovementioned disputed question of fact, the learned Judge of the High Court thought it fit to quash the FIRs i.e. Case No.43(10) of 2011 dated 12.10.2011 with a cryptic order. The only relevant portion for the present purpose reads as follows:

“After hearing the submissions advanced by the learned counsel at Bar, considering the fact and circumstances of the case, I am of the considered view that, the matter of disputes is purely covered by civil law and not by criminal law, therefore, I do not see any reason that FIR dated 12.10.11 has any stand in the eye of law, so it needs to be quashed.”

16. We are of the opinion that the petition filed by the contesting respondents under Section 482 of the Code of Criminal Procedure, 1973 is an abuse of the process of the Court. As already noticed, the facts are seriously in dispute. The truth or otherwise of such facts can only be established by evidence at the trial. We are, therefore, of the opinion that the High Court erred in quashing the FIR No.43(10) of 2011 dated 12.10.2011. We, therefore, set aside the order of the High Court. The first respondent is directed to proceed with the FIR No.43(10) of 2011 dated 12.10.2011 in accordance with law.

17. The appeal stands allowed accordingly.

Criminal Appeal arising out of SLP (Criminal) No.5317 of 2014

18. Aggrieved by the judgment and order of the Gauhati High Court, Shillong Bench dated 14.9.2012 in Criminal Petition (SH) No.40 of 2012 by which the High Court quashed the proceedings in case No.87(S)/2012 under Section 138 of the Negotiable Instruments Act, 1881, respondents no.1 and 2 therein have preferred the instant appeal.

19. The parties are the same as in the earlier appeal. The facts are interconnected and highly contested. Therefore, we are of the opinion that the High Court erred in quashing the case. We, therefore, set aside the impugned order and direct the case No.87(S)/2012 to be proceeded with in accordance with law.

20. Both the appeals are allowed accordingly.

.....J.
(J. Chelameswar)

.....J.
(A.K. Sikri)

New Delhi;
September 26, 2014.

ITEM NO.1A

COURT NO.8

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Crl. Appeal No. 2139 of 2014
(Arising out of Petition(s) for Special Leave to Appeal (Crl.)
No(s) . 9348/2013)

M/S SESAMI CHEMICALS P.LTD.REP.BY DIRCTR Appellant(s)

VERSUS

THE STATE OF MEGHALAYA & ORS. Respondent(s)

WITH

Crl. Appeal No. 2140 of 2014 @ SLP(Crl) No. 5317/2014

Date : 26/09/2014 These appeals were called on for pronouncement
of judgment today.

For Petitioner(s) Ms. Debjani Das P., Adv.
Ms. Anu Gupta, Adv.

For Respondent(s)
Ms. Madhurima Tatia, Adv.

Hon'ble Mr. Justice J. Chelameswar pronounced
the judgment of the Bench comprising of His Lordship and
Hon'ble Mr. Justice A.K. Sikri.

Leave granted in both the SLPs.

The appeals are allowed in terms of the signed
non reportable judgment.

(DEEPAK MANSUKHANI)
COURT MASTER

(INDU BALA KAPUR)
COURT MASTER

(Signed non-reportable judgment is placed on the file)

