

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: August 11, 2010

Date of Order: 6th September , 2010

+ CrI.MC No.3462/2009

%

Jet Lite India Ltd.

06.09.2010

...Petitioner

Versus

Indus Airways Pvt. Ltd.

...Respondent

Counsels:

Mr. Arvind K. Nigam, Sr. Adv. with Mr. U.A. Rana and Mr. Sanjay Pal, for petitioner.
Mr. M.L. Mahajan and Mr. Ravi Sikri for respondent.

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

1. This petition under Section 482 Cr.P.C has been preferred by the petitioner for quashing the complaint filed by the respondent for offences under Section 120A, 406, 420 and 34 IPC and for quashing order dated 30th April 2009 passed in the complaint issuing summons to the petitioner for the offence under Section 406 IPC.

2. Brief facts relevant for purpose of deciding this petition are that the petitioner had a contract with Indus Airways Pvt. Ltd. and under this contract, the petitioner had taken from the respondent on loaning basis two Cargo Fire Bottle, Part No.34600037-I and 3650018-3 and the petitioner was liable to pay the rent /user charges @ 1% per day of actual cost of component upto one month and thereafter @ 1.5% per day. According to respondent, petitioner stopped paying the loaning amount and in January 2007 an

amount of ₹ 59,15,138.39 became outstanding against the petitioner and the respondent requested the petitioner to return the two cargo fire bottles. The petitioner, however, made a payment of ₹ 14,51,425/-. The respondent in its complaint stated that at the time of filing the complaint, the amount due towards the petitioner was ₹ 96,45,681.73.

3. It is submitted by the counsel for respondent that since the items were given to the petitioner on loaning basis, the complainant/ respondent asked the petitioner to return the items. The petitioner failed to return the items and also failed to make the payment of the loaning amount. Since the items/ parts were given with clear understanding that the loaning amount will be paid and since the petitioner failed to make payment of the loaning amount and also failed to return the items, it was a case of criminal breach of trust.

4. It is undisputed fact that the complainant had filed an Arbitration Petition No.297 of 2008 before the Court of Chief Justice for referring the matter between the petitioner and respondent to arbitration and vide order dated 24th July, 2009, the Chief Justice of this Court allowed the petition of the respondent under Arbitration & Conciliation Act, 1996 and referred the matter to sole arbitrator for adjudication of disputes between the parties. It is also an undisputed fact that there was correspondence between the petitioner and the respondent and discussions were going on for outright purchase of two Cargo Fire Bottle, Part No.34600037-I and 3650018-3 by the petitioner and vide letter dated 20th August 2007, the petitioner had written to the respondent to raise invoice for outright sale for each of the cargo bottle. On 20th August 2007, the respondent had raised an invoice regarding loaning amount. It seems that there were discussions going on between the parties for outright sale of two Cargo Fire Bottle, Part No.34600037-I and 3650018-3 and on 16th November 2007, the petitioner had again written letter to respondent that a fresh invoice be raised for two Cargo Fire Bottle, Part No.34600037-I

and 3650018-3 towards outright purchase indicating that it would be full and final settlement. However, the respondent did not show any inclination and insisted for payment of loaning amount. The petitioner had been insisting that since it was prepared to purchase two Cargo Fire Bottle, Part No.34600037-I and 3650018-3, the invoice should be raised for purchase. When this correspondence were going on, an amount of ₹ 14,51,425/- was paid by the petitioner to the respondent on 29th August 2007. The respondent served a notice on the petitioner seeking payment of the balance loaning amount whereas the petitioner continued to insist that it was ready and willing to purchase the two Cargo Fire Bottle, Part No.34600037-I and 3650018-3 and stopped giving the loaning amount. The reply to the notice of respondent was given on 16th April, 2008.

5. After exchange of notices, the disputes between the parties were referred to arbitration and the arbitration proceedings are continuing. It is submitted by counsel for respondent that in view of the judgment of *Indian Oil Corporation v NEPC India Ltd. and Others* (2006) 6 SCC 736, the respondent had rightly filed a criminal complaint and petitioner was rightly summoned under Section 406. Per contra, the counsel for the petitioner has submitted that the matter between the parties was purely of civil nature and even in the aforesaid judgment, the Supreme Court had observed that if the Court finds that the complaint had been filed knowing well that the remedy lie only with the civil law, the complainant should be made accountable in accordance with law and the Court should exercise powers under Section 250 Cr.P.C frequently.

6. In order to summon the accused under Section 406 IPC, it was necessary to see that there was entrustment of the property as envisaged under Section 405 IPC and there should be dishonest misappropriation and dishonest use of the entrusted property. In the present case, the property was given under an agreement to the predecessor of

the petitioner and the petitioner's predecessor was liable to pay the rent/user charges to the respondent. Thereafter, the petitioner expressed its desire to purchase two Cargo Fire Bottle, Part No.34600037-I and 3650018-3 whereas the respondent insisted upon keeping the property on loan and charging loan charges. The dispute arose between the parties about the amount recoverable and the matter is pending before the arbitrator. Under these circumstances, I consider that none of the ingredients of breach of trust stood satisfied. It was a case of purely civil nature. The summoning of the petitioner by the learned MM holding that prima facie, it was a case of criminal breach of trust was illegal.

7. I, therefore, allow this petition. The complaint filed by the respondent for offences under Section 120A, 406, 420 and 34 IPC and the order dated 30th April 2009 summoning the petitioner for the offence punishable under Section 406 IPC dated 30th April 2009 passed in complaint case no.40/1/09 by learned ACMM-I, Delhi are hereby quashed.

8. The petition stands allowed.

September 06, 2010
rd

SHIV NARAYAN DHINGRA, J