

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision : 19th September, 2011

+ CRL.M.C.2751/2008

RAVI BHARTIA Petitioner

Through: Mr.Amit Bansal and Mr.Diwaker
Maheshwari, Advocates

versus

STATE & ANR. Respondents

Through: Mr.Pawan Sharma, Standing
Counsel (Crl.) for State/R-1
Mr.Madhukar Pandey, Advocate for
R-2

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

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

PRADEEP NANDRAJOG, J.

For orders, see Crl.M.C.No.3749/2008.


(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 19, 2011

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BHAGWANDAS AUTO FINANCE LTD.

& ORS.

..... Petitioners

Through: Mr.Yadunandan Bansal and Mr.Rauf
Rahim, Advocates

versus

STATE & ORS.

..... Respondents

Through: Mr.Pawan Sharma, Standing
Counsel (Crl.) for State/R-1
Mr.Madhukar Pandey, Advocate for
R-2

CRL.M.C.2751/2008

RAVI BHARTIA

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CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

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PRADEEP NANDRAJOG, J.

16

1. Respondent No.2 in the above-captioned petitions i.e. Vikas International (Hong Kong) Ltd. has filed Criminal Complaint No.16736/2006 before the learned Metropolitan Magistrate praying that the four accused listed therein be punished for having committed offences punishable under Section 420/120-B IPC.

2. Accused No.1 is Bhagwan Dass Auto Finance Ltd. accused No.3 and 4 are Shri Ravinder Aggarwal and Shri Vishal Aggarwal, the Managing Director and Director respectively of accused No.1. Accused No.2 Shri Ravi Bhartia, is stated to be the authorized signatory of accused No.1. The complaint reads as under:-

"CRIMINAL COMPLAINT AGAINST THE ABOVE ACCUSED PERSONS FOR THE OFFENCE PUNISHABLE U/S 420/120-B OF THE INDIAN PENAL CODE.

Sir,

It is respectfully submitted as under:-

1. That Vikas International (Hong Kong) Ltd. is a subsidiary of Vikas Projects Pvt. Ltd., a Company incorporated under The Companies Act, 1956 and deals in the business of Export/Import and acting as a commission Agent in the business of iron ores and other allied products and enjoys high reputation in the market and are known for their credibility.
2. That accused no.1 is the company, which deals in the business of iron ore. Accused no.2 Sh.Ravi Bhartia is the authorized signatory of accused no.1. Accused no.3 Sh.Ravindan Aggarwal is the Managing director of

accused no.1 and accused no.4 Sh.Vishal Aggarwal is the executive director of accused no.1. 17

3. That all the accused persons entered into a criminal conspiracy, object of which was to cheat the complainant. In pursuance of above criminal conspiracy, accused No.1 through accused no.2 to 4, with the intention to cheat the complainant, approached the complainant to find out a buyer in the foreign country for the sale of iron ore fines. They offered lucrative commission to the complainant. Believing the above representation, assurance and undertaking to be true, the complainant and their group made various efforts and spent huge amount and man power to find out a buyer namely Fremery Resources Ltd., which was interested in buying iron ore fines from India. Various negotiations had taken place between the accused persons and the buyer and ultimately a deal was struck and a contract was executed between accused no.1 through accused no.2 and the buyer. It was agreed that the complainant is entitled to have a commission @ US\$1 per MT of the shipped quantity from the seller i.e. accused no.1 for the services rendered by them in identifying the buyer and for the execution of the contract.
4. That the accused no.1 successfully exported and sold the goods to the buyer and received a substantial payment for the same. At the instance of accused no.2, the complainant raised an invoice of US\$ 17695/- against the accused no.1 for the agreed commission.
5. That in order to avoid the agreed payment of the commission to the complainant, all the accused persons started raising flimsy disputes and malafidely started denying the role of the complainant. All the accused persons were very much aware that the complainant is entitled for the commission of US\$ 17695 for the services rendered by them.

- 7
6. That all the accused persons, in pursuance of their conspiracy, induced the complainant to invest money and man power to identify the buyer and also to get a deal for which both accused have no intention to pay and therefore they have committed an offence punishable U/s 420/120-B of I.P.C.

PRAYER

In the above circumstances, it is therefore prayed that all the above accused persons may please be summoned, tried and punished for the offence committed U/s 420/120-B of I.P.C."

3. From a perusal of the complaint which consists of 6 paragraphs, it is to be found that in para 1 the complainant has stated its juristic entity and the business it is engaged in i.e. acting as a Commission Agent pertaining to, amongst other products, iron ore. In para No.2 of the complaint the juristic entity of the accused has been disclosed and in para 3 the contract between the parties, on basis whereof the complaint, has been filed have been stated.

4. In the first sentence of para 3 it is stated that the accused entered into a criminal conspiracy to cheat the complainant. In the second sentence it is stated that pursuant to the conspiracy accused No.1 approached complainant through accused No.2 to 4 to find a foreign buyer and in the third sentence it is stated that accused No.2 to 4 offered lucrative commission.

5. What was the lucrative commission and what were the terms on which commission would be paid have not been stated. Was the commission to be paid when a deal was struck

with a foreign buyer or was it to be paid after the contract was completed with the foreign buyer? Nothing has been stated.

19

6. In the fourth sentence of para 3 it is pleaded that believing the assurances to be true the complainant made efforts and spent huge amount and manpower to find a buyer, namely, Fremery Resources Ltd.

7. What amount was spent and in what manner to find the foreign buyer? No particulars have been stated.

8. In the fifth sentence of the paragraph it is pleaded that various negotiations have taken place between the accused and the buyer and a deal was struck and the contract was executed between the buyer and accused No.1.

9. What was the contract struck? No pleadings qua the same. In what manner the complainant was instrumental in settling the contract, other than finding a foreign buyer? No pleading qua the same.

10. In the sixth sentence of the paragraph it is pleaded that it was agreed that the complainant would be entitled to commission @ US\$1 per MT of the shipped goods to the buyer identified.

11. There are no averments as to what quantity of iron ore was shipped. The averment in the first sentence of paragraph 4 that accused No.1 successfully exported the good and received substantial payment are bereft of even a simple statement pertaining to the quantify shipped and the price received.

12. In paragraph 5 it is pleaded that the accused started raising flimsy disputes and malafidely denied the role of the complainant. What are the particulars of the flimsy disputes? None have been stated.

13. It is apparent that the complaint is as vague as vagueness can be and ex-facie is a crude attempt to ensnare the accused in the clutches of criminal law to extract money.

14. Since it is settled law that documents annexed with the complaint can be considered, I would simply highlight that the documents would evidence that accused No.1 is in serious litigation with the foreign buyer Fremery Resources Ltd. and has not received the payment due to accused No.1 for the goods which were exported.

15. Now, in the absence of any pleadings in the complaint that the commission was payable when the contract was executed with the foreign buyer identified by the complainant, can it be said that the accused has breached the contract, or that it induced the complainant to find a foreign buyer with the intention to cheat the complainant? The answer would be 'No'.

16. It is apparent that the dispute between the parties is of a civil nature.

17. The plea of learned counsel for the complainant that the malice of the accused is apparent from the fact that they have directed the complainant to raise a bill directly on Fremery Resources Ltd. and thus the complaint must be allowed to proceed ignores the fact that the foreign buyer identified by the complainant with whom the accused entered into a contract is not paying the money to the accused No.1 for

the good received and since the complainant was the one who found the foreign buyer, within the confines of business ethics, I find, prima-facie of course, nothing wrong in the accused telling the complainant to received whatever commission he desires from the party he identified as a prospective buyer for the accused. 21

18. In the decision reported as (2007) 12 SCC 1 Inder Mohan Goswami & Anr. Vs. State of Uttarakhand & Ors., the Supreme Court held that a High Court having inherent power under Section 482 Cr.PC, though obliged to exercise the same sparingly, carefully and with great caution, would be fully justified in exercising the power to (i) give effect to an order under the Code, (ii) prevent abuse of the process of Court; and (iii) to otherwise secure the ends of justice – to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist and it is the duty of the court to ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurize the accused.

19. The captioned petitions filed by the accused are allowed. The complaint filed by respondent No.2 is quashed. The order summoning the accused is also quashed.

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 19, 2011
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