IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-10796 of 2010 (O&M)
Date of decision : 04.03.2015

Puneet Talwar ......**Petitioner**

versus

Neeraj Aggarwal ....**Respondent**

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Gaurav Chopra, Advocate,
for the petitioner.

Mr. Avnish Mittal, Advocate,
for the respondent.

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RITU BAHRI , J.

This petition under Section 482 Cr.P.C., is for quashing of criminal complaint No. 427/03.12.2009, titled as "Neeraj Aggarwal Vs. Puneet Talwar", under Sections 420/406/506 IPC (Annexure P-12) and summoning order dated 18.01.2010 (Annexure P-13) passed by the Judicial Magistrate Ist Class, Ferozepur Jhirka, District Mewat.

The petitioner is erstwhile owner of M/s INDIGO NOW INC, 11407 Rockfield Court, Cincinnati, Ohio 45241, USA, which had placed an order in the year 1998 for supply of natural slate tiles on M/s Paradise Slate House, of which, Neeraj Aggarwal-respondent is a partner. The material was supplied to INDIGO for a period of one year vide invoices dated 11.04.1998, 22.06.1998, 22.07.1998 and 30.03.1999 as per following bill numbers:-

Sr.	Invoice No.	Quantity In pcs.	Dated	Amount in US $
1.	PSH-28	8440	11.04.1998	6888
2.	PSH-39	7040	22.06.1998	3801.60
3.	PSH-41	8400	22.07.1998	7056

4.	PSH-68	8400	30.03.1999	6888

The INDIGO company was unable to make timely payments against the material dispatched by M/s Paradise Slate House on account of paucity of funds and financial constraints. The petitioner while representing the INDIGO had informed the respondent vide letters (Annexures P-1 and P-2) that the payment would be made shortly. However, the respondent instituted a law suit in the Court of Common Pleas, Hamilton County, Ohio bearing Case No. A9907946 (Annexure P-3). The petitioner appeared in the said suit/complaint and filed his written statement dated 02.02.2000 (Annexure P-4) while taking a plea that he was not a proper party in the law suit. Thereafter, an amendment was sought in the said complaint and INDIGO was incorporated as defendant vide application (Annexure P-5), which was allowed vide order dated 30.03.2000 (Annexure P-6) passed by the Court of Common Pleas, Hamilton County, Ohio. Finally, vide order dated 30.03.2000 (Annexure P-8), the respondent was held entitled to recover from INDIGO an amount of US $ 27844.09 along with interest @ 10% w.e.f. 01.04.2000. Before passing of the said judgment, the petitioner had offered the respondent a portion of INDIGO's inventory as a mean of settling the dispute. The petitioner eventually, sold INDIGO to International Marble and Granite of Colorado INC in May, 2000. The respondent did not get execution of the judgment and decree dated 30.03.2000 against INDIGO or any of its successors-in-interest. Thereafter, the respondent sent defamatory e-mails to the personal and professional contacts of the petitioner. Consequently, the petitioner filed a suit for compensation on account of defamatory activities, wherein notice was issued to the respondent. The said suit is pending in the District Court, City

County, Denver, State of Colorado, United States of America (Annexure P-9).

At present, the petitioner is a Director of M/s Advent Matrix (Profit) Pvt. Ltd. and its branch office is situated at H.No. 10, Arjun Marg, DLF Phase-I, Gurgaon. The petitioner filed a suit (Annexure P-10) for permanent injunction restraining the respondent, its employees, agents etc., from illegally dispossessing the petitioner-company and its employees from its Head Office at 20, Municipal Road, Dehradun, Uttranchal and branch office situated at House No.10, Arjun Marg, DLF City, Phase-1, Gurgaon. Vide order dated 14.10.2009 (Annexure P-11), the Civil Judge (Junior Division), Gurgaon, had restrained the defendant-respondent from illegally dispossessing M/s Advent Matrix Pvt. Ltd., except in due course of law. Thereafter, as counter blast to the above said suit, the respondent filed a complaint (Annexure P-12) in the Court of Judicial Magistrate Ist Class, Ferozepur Jhirka, wherein vide order dated 18.01.2010 (Annexure P-13), the petitioner has been summoned to face trial for commission of offences under Sections 420/406/506 IPC, even though the said complaint was instituted after a delay of almost 10 years.

Upon notice, reply on behalf of the respondent has been filed, wherein preliminary objection has been taken to the effect that the summoning order (Annexure P-13) is revisable before the Court of Sessions Judge, Mewat at Nuh. Furthermore, a petition under Section 482 Cr.P.C. is not maintainable through power of attorney, whereas this petition has been filed by the petitioner through his power of attorney. The petitioner was summoned vide order dated 18.01.2010 and till date, he has not appeared before the trial Court. There are specific allegations against the petitioner, which make out offences under Sections 420/406/506 IPC. These disputed question of facts cannot be gone into in a petition under Section 482 Cr.P.C. The petitioner being owner of INDIGO company had placed various purchase orders dated 15.10.1997, 20.12.1997 and 22.12.1997 for supply of natural slate tiles in US Dollars with promise to make payment within 75 days. Therefore, the respondent supplied the slate tiles vide different invoice numbers, detailed in para No.2 of the reply. However, the petitioner did not make payment within the period of 75 days. The intention of the petitioner was to cheat the respondent, as is evident from letters (Annexures P-1 and P-2), whereby, he has induced the respondent to further supply goods with the promise to make payment towards the earlier goods supplied by the respondent. INDIGO company became void on 01.03.1999, whereas the last consignment was obtained by the petitioner on 06.05.1999 being owner of the said company. The letters issued by the bank where the petitioner refused to make payment and E-mail mentioning INDIGO company went void are annexed as Annexures R-4 and R-5. The suit filed by the respondent was decreed against the INDIGO and the petitioner was the owner of the said company, who had received goods from the respondent in a fraudulent manner and did not make payment thereof. Hence, the petitioner is liable to be prosecuted for the offences under Sections 406 and 420 IPC. In a dispute, which is civil as well as commercial, if the ingredients of cheating and fraud are made out, he can be prosecuted. The respondent was induced to deliver the goods even though INDIGO company had become void on 01.03.1999. Moreover, the petitioner had accepted the consignment in May, 1999. As per information/communications dated 25.08.1999 and 04.01.2002 (Annexures R-6 and R-7) received from the

Consulate General of India, New York, after committing fraud the petitioner used to change his address and indulge in floating the new companies. It is alleged that the suit filed by the petitioner is counter blast to the complaint (Annexure R-8) made by the respondent. Since the petitioner was changing his address, it was very difficult for the respondent to initiate criminal proceedings against him at the initial stage.

Learned counsel for the petitioner has referred to the judgment delivered by the Hon'ble Supreme Courtin ***M/s Thermax Ltd. and others Vs. K.M. Johny and others,*** 2011 (4) RCR (Criminal) 409, whereby a criminal complaint filed under Sections 420 and 406 IPC after an inordinate delay of 9 years, without explanation of delay, was quashed as the dispute contained flavour of civil nature. In this case, closure report had been given by the police in earlier three complaints. On a complaint made to the Magistrate, thereafter, under Section 156 (3) Cr.P.C., direction was given to the police. The Magistrate sent the complaint to the Crime Branch for investigation. The Hon'ble Supreme Court held that merely breach of contract would not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention was shown right from the beginning of the transaction. The complainant was trying to circumvent the jurisdiction of the civil court as he had made the complaint in the year 2002, whereas dispute pertaining to the period from 1993 to 1995. In support of his argument, learned counsel for the petitioner further referred to the judgment of the Hon'ble Supreme Court in ***Joseph Salvaraj A. Vs. State of Gujarat and others,*** (2011) 7 Supreme Court Cases 59.

Learned counsel for the respondent, on the other hand, has argued that after the summoning order was passed in the year 2010, the petitioner has not put in appearance before the Court and now, he is seeking quashing of the FIR by way of present petition through his General Power of Attorney. In this regard, he has referred to the judgment passed by this Court in ***Amit Ahuja Vs. Gian Parkash Bhambri,*** 2010 (3) RCR (Criminal) 586, wherein it was held that a petition under Section 482 of Criminal Procedure Code filed by the accused for quashing the criminal proceedings through his Power of Attorney holder, was not maintainable. He has further referred to the judgment of the Hon'ble Supreme Court in ***M/s Indian Oil Corporation Vs. M/s NEPC India Ltd. & Ors.,*** 2006 (3) RCR (Criminal) 740. In this case, the accused had possession of the goods which were hypothecated by him to the creditors. Later on, he disposed of the said goods. Since the goods were in his possession, requirement of Section 405 IPC that the person accused of criminal breach of trust must have been entrusted with the property or entrusted with any dominion over property, was lacking. No offence of criminal breach of trust was made out. But, at the same time, he induced the Indian Oil Corporation to resume supply on cash basis and undertook to clear the outstanding amount within a stipulated period. He did not make payment of Rs.18 crores. The accused had not made payment to the Indian Oil Corporation, but induced them to resume the supply and despite the supply being renewed, he did not make the payment, then the offence of cheating was clearly made out.

Heard, counsel for the parties.

The facts not in dispute are that the petitioner being the owner of M/s INDIGO company on account of non payment of dues to the respondent, suffered a decree on 30.03.2000 (Annexure P-8) and the respondent was held entitled to recover from INDIGO company an amount of US $ 27844.09 along with interest @ 10% w.e.f. 01.04.2000. After passing of the aforesaid decree, the petitioner sold INDIGO to International Marble and Granite of Colorado INC in May, 2000. Thereafter, the petitioner filed a suit for compensation on account of defamatory activities, which is pending in the District Court, City County, Denver, State of Colorado, United States of America (Annexure P-9). After filing of the aforesaid suit, a civil suit (Annexure P-10) was filed by the petitioner seeking permanent injunction restraining the respondent, its employees, agents etc., from illegally dispossessing the petitioner-company and its employees from its Head Office at 20, Municipal Road, Dehradun, Uttranchal and branch office situated at House No.10, Arjun Marg, DLF City, Phase-1, Gurgaon. Vide order dated 14.10.2009 (Annexure P-11), the Civil Judge (Junior Division), Gurgaon, had restrained the defendant-respondent from illegally dispossessing M/s Advent Matrix Pvt. Ltd., except in due course of law. The plea taken by the petitioner is that the complaint (Annexure P-12) is a counter blast to the above said two suites and there is a delay of 10 years in filing the said complaint, as the payment became due to the respondent in the year 1999.

The respondent, in his written statement, has placed on record an information dated 08.12.2009 (Annexure R-5), whereby he has been informed that the company of the petitioner went void on 01.03.1999. Despite the company being rendered void on 01.03.1999, it had accepted the consignment sent by the respondent in the month of May, 1999. As per the information dated 25.08.1999 (Annexure R-6) sent by the Consulate General of India, New York, the petitioner had promised to make the payment. However, vide communication dated 04.01.2002 (Annexure P-7), it was informed that Mr. Puneet Talwar, proprietor of M/s Indigo Now Inc, was no longer working with the said company and his services had been terminated three months ago. It was also informed that he was a very secretive kind of a person. As per the information given by his father, Puneet used to reside in New Delhi. But, his father refused to give his contact information at any cost and refused to cooperate. Finally, the Consulate General of India sent the name of law firms to take legal action.

A perusal of the documents (Annexures R-4 to R-7) shows that despite the fact that the company went void on 01.03.1999, the petitioner had accepted the goods sent by the respondent in May, 1999. Hence, the first ingredient of cheating was there.

After having accepted the goods, he refused to make payment despite the fact that there were regular communications and he had promised to clear the outstanding amount, as is evident from communication dated 25.08.1999 (Annexure R-6). Finally, as per the information dated 04.01.2002 (Annexure R-7), he had come back to India and was avoiding to make the payment. The decree, which was passed in favour of the respondent on 01.04.2000, could not be executed in USA, as Puneet Talwar, proprietor of M/s INDIGO company was no longer there. Eventually, he sold M/s INDIGO to International Marble and Granite of Colorado INC in May, 2000. Apart from cheating, the whereabouts of the petitioner were not known to the respondent after he had sold the firm in the year 2000. Consequently, complaints (Annexures R-8 and R-9) were made to the Deputy Commissioner of Police and Joint Commissioner of Police,Gurgaon to take appropriate action on the criminal side. Finally, the complaint (Annexure P-12) was made by the respondent, wherein the petitioner has been summoned to face trial for commission of offences under Sections 420/406/506 IPC vide order dated 18.01.2010 (Annexure P-13).

Moreover, in the civil suit (Annexure P-10) filed by the petitioner, it is stated that the civil suit filed by the defendant was dismissed by the Court of Common Pleas Hamilton County Ohio on 30.03.2000. A perusal of the judgment passed by the Common Pleas Hamilton County Ohio (Annexure P-8) shows that the suit was actually decreed for an amount of $ 27844.09 along with interest at the rate of 10% w.e.f. 01.04.2000. This fact has also been wrongly mentioned in the civil suit (Annexure P-10). The respondent had initiated the business transactions from India and a decree was passed in his favour. However, the petitioner sold his company in May, 2000 and his whereabouts were not known to the respondent. He was a secretive person and used to change his addresses. However, as per the communication dated 25.08.1999 (Annexure R-6), he had promised to pay back the amount. The petitioner has filed a civil suit (Annexure P-10) for permanent injunction at Gurgaon, but has chosen not to appear before the trial Court upon being summoned vide order dated 18.01.2010 (Annexure P-13).

In view of the above circumstances, the petition filed by the petitioner through his General Power of Attorney for quashing of the criminal proceedings, cannot be entertained, as the petitioner is avoiding the process of Court. Hence, no ground is made out to quash the criminal proceedings initiated against the petitioner.

Resultantly, the present petition is dismissed.

(RITU BAHRI)
JUDGE

04.03.2015

ajp