

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

Date of decision : 16.02.2015

(1)

CRM-M-11642-2010

Arun Mitter

... Petitioner

Versus

S.R.Builder Ltd. and others

... Respondents

(2)

CRM-M-11929-2010(O&M)

MFG Developments Ltd. and another

... Petitioners

Versus

S.R.Builders Limited and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.Sanjay Kaushal, Senior Advocate
with Mr.Arjun Shukla, Advocate
for the petitioners (in both petitions)

Mr.Aseem Malhotra, Advocate
for Mr.Sandeep Gahlawat, Advocate
for respondent No.1 (in both petitions).

None for other respondents.

REKHA MITTAL, J.

This order will dispose of aforesaid petitions as identical questions of law and facts are involved for adjudication.

M/s S.R.Builders Limited through its Director Sh.Brij Bhushan

Singla filed the complaint under Sections 420, 463, 464, 468, 469, 471, 120-

B of the Indian Penal Code on the allegations that the complainant is owner in possession of land measuring 16 kanals within the revenue estate of village Sarhaul, Tehsil and District Gurgaon. An agreement to sell dated 19.05.2001 was executed between the parties regarding the said land. As per clause 9 of the agreement, the complainant was required to deliver vacant possession of land to the accused companies simultaneously with the issuance of letter of intent or NOC from the income tax under Section 37-I. The accused-companies had to obtain change of Land Use/ license as per clause 7(c) and they had to pay balance amount of Rs.62,50,000/- after receipt of licence failing which they had to pay interest @ 24% per annum on the said amount.

The Directors of accused Companies hatched criminal conspiracy and colluded with each other to defraud the complainant company with malafide intention. They forged and fabricated documents to grab valuable land, cheat and harm reputation of the complainant for their wrongful gain and wrongful loss to the complainant. They forged and fabricated cash receipt for Rs.20 lacs purported to be issued by the complainant whereas no such receipt was ever issued or signed by the complainant. The amount shown in the said receipt has not been given by the accused to the complainant till date. The complainant got examined the said receipt from the handwriting and finger prints expert vide report dated 13.01.2005 and as per the opinion, the signatures of the complainant on receipt is the crude forgery and it has been made by tracing letters one by one lifting them from different signatures. The accused also made addition in confirmation letter by inserting handwritten lines regarding alleged

confirmation of delivery of possession which is false, forged and fabricated. The expert has given opinion in regard to confirmation letter being result of forgery.

On the basis of preliminary inquiry conducted in consonance with the procedure envisaged in Section 202 Cr.P.C., the accused are summoned to face trial for commission of offence punishable under Sections 420, 463, 464, 468, 469, 471 and 120-B IPC.

The aforesaid petitions have been filed by invoking the provisions of Section 482 Cr.P.C. for quashing of the complaint, the summoning order Annexure P6 and proceedings emanating therefrom.

Counsel for the petitioners, Sh.Sanjay Kaushal, Senior Advocate has submitted that in regard to agreement to sell dated 09.05.2001, there was litigation between the parties which was decided by the High Court of Delhi in exercise of ordinary original civil jurisdiction in OMP No.231 of 2004 captioned "Columbia Holdings Pvt.Ltd. and another Vs. S.R.Builders Limited". In the said petition, an application on behalf of the respondent-IA No.4995 of 2004 under Section 195(i)(b) read with Section 340 Cr.P.C. (Annexure P15) was filed on the same allegations that the receipt in regard to payment of Rs.20 lacs with the purported signatures Sh.Brij Bhushan Singla is the result of forgery and the memo of confirmation dated 28.01.2002 has been interpolated as the petitioners had added the handwritten portion in regard to delivery of possession to make out a case for their benefit. The petition was decided by the Delhi High Court wherein it has been specifically held that no penal action is called for.

It is argued with vehemence that once plea of the complainant for initiating

criminal proceedings against the petitioners on the same set of allegations has been rejected by the High Court of Delhi, the criminal complaint filed by the respondent and proceedings emanating therefrom cannot be allowed to sustain.

Another argument advanced by counsel is that the Delhi High Court referred the matter to the arbitrator and Sh.R.C.Lahoti, a former Judge was appointed as an arbitrator. The arbitrator gave an award and proceedings in regard to arbitral award have been decided upto the High Court and the award given by the arbitrator has been upheld. It is argued that as dispute between the parties had been referred to the arbitrator and has been decided upto the High Court in appropriate proceedings, the criminal proceedings are nothing but an abuse of process of law, thus, liable to be quashed.

Counsel has further argued that all the Directors of the Companies have been arraigned as accused without any specific allegation against any or all of them, therefore, the criminal proceedings without specifying the role attributable to each one can not be allowed to proceed with. In support of his contention, he has referred to judgment of Hon'ble the Supreme Court of India ***PEPSICO Holdings Private Limited Vs. Food Inspector and another (2011)1 Supreme Court Cases 176.***

Counsel for the contesting respondent, on the contrary, has submitted that in the judgment passed by the Delhi High Court, no embargo has been created against initiating the criminal proceedings in regard to forgery of documents committed by the accused companies and their Directors. As the Directors of the Companies are beneficiaries of the

forgery and in view of allegations raised in the complaint that the Directors in pursuance of a criminal conspiracy and collusion forged the documents with a fraudulent intention, the petitioners cannot be allowed to raise disputed questions of fact which need to be adjudicated by the trial Court on the basis of evidence to be adduced by the parties. It is further argued that arbitrator appointed by the Delhi High Court rejected plea of the petitioners that receipt in regard to payment of Rs.20 lacs was executed by Sh.Brij Bhushan Singla or possession of the land in question was delivered in favour of the petitioners as per writing (handwritten) in memo of confirmation.

I have heard counsel for the parties and perused the records.

The accused companies filed OMP No.231 of 2004 before the Delhi High Court under Section 9 of the Arbitration and Conciliation Act 1996 seeking certain reliefs detailed in para 36 in clauses (a) to (h). In the said proceedings, an application was filed on behalf of the complainant for initiating action against the petitioners under Section 195(i)(b) read with Section 340 Cr.P.C. and to launch criminal proceedings for forgery of documents i.e. memo of confirmation dated 28.01.2002 and receipt in regard to payment of Rs.20 lakhs. The petition was decided by the High Court on December 15, 2005 (Annexure P19) whereby Hon'ble Mr.Justice R.C.Lahoti, (retired Chief Justice of India) was appointed as the Sole Arbitrator. In the concluding para, the observations, germane to the controversy, reads as follows:-

“The contempt petition and other IAs would be looked into by the learned Arbitrator for the purpose of determining the real controversy between the parties and

assessing the claims raised by the parties. However, for any penal action, they would be rendered in consequential.”

The Delhi High Court did not pass any order in regard to merits of the application filed under Section 195 read with Section 340 Cr.P.C. nor there is any such observation that the applicant is debarred from taking recourse to alternative remedy in accordance with law. As a matter of fact, it is not plea of the complainant that the documents were forged by the petitioners during its custody with the Court to attract provisions of Section 195 read with Section 340 Cr.P.C. as has been held by the Constitution Bench of the Apex Court in ***Iqbal Singh Marwah & Anr. Vs. Meenkshi Marwah & Anr., 2005(2) RCR (Criminal) 178.*** The complainant cannot be deprived of his right to pursue the criminal proceedings in view of its stand since inception of litigation between the parties that the receipt and memo of confirmation (handwritten portion) are the result of forgery. The application filed before the High Court or aforesaid observations in the order dated December 15, 2005 cannot stand in the way of continuation of criminal proceedings legitimately lodged by the complainant.

The pendency of dispute before the Arbitrator in terms of judgment passed by the Delhi High Court or the decision by the arbitrator in those proceedings, in my considered opinion, cannot enure to benefit of the petitioners to seek quashing of criminal proceedings. Neither the question of forgery of documents was referred to the arbitrator nor criminality of the petitioners in regard to forgery of documents can possibly be decided in the arbitration proceedings. However, it is the conceded position that the arbitrator decided the proceedings against the petitioners and the award

rendered by the arbitrator has been upheld by the High Court.

This brings the Court to the legal issue raised by counsel for the petitioners in regard to prosecution of the Directors of the Companies for the alleged offence. The person committing forgery would not prepare/interpolate a document in presence of the aggrieved party. Ordinarily, it is presumed that forgery is committed by the person who is beneficiary under the forged document. The Companies and its Directors relied upon the receipt in regard to payment of Rs.20 lacs to the complainant company, having been issued by its Director Sh.Brij Bhushan Singla in support of their claim in arbitration proceedings.

The complainant has raised specific averments that the Directors of the accused company entered into criminal conspiracy to cheat and defraud the complainant and forged the receipt and memo of confirmation. The disputed questions of fact which require parties to lead evidence for adjudication can not be decided under Section 482 Cr.P.C. It is too pre-mature to comment at this stage as to which Director of the Companies forged the receipt and memo of confirmation of which the benefit was brought to enure to all the Directors and the accused Companies. A similar issue came up for consideration before Hon'ble the Supreme Court in ***Tarun K. Shah Vs. C.R.Alimchandani and Ors. JT 2000 SC(10) 178.*** A relevant extract from paras 10 & 11 of the judgment reads thus:-

“10. After hearing learned counsel for the parties and without going into any great detail, we find that the High Court erred in quashing the proceedings which had been initiated against respondent nos.1 and 3.

The learned Judge came to the conclusion that it was incumbent upon the part of the complainant to plead the role of each accused in the making or manufacturing of the document in question. This document had been produced in the Court on behalf of the company of which accused no.1 was Chairman and Managing Director and accused no.3 was Joint Secretary and Manager (Finance). In the complaint it was specifically stated "I submit that the accused have together forged the subject certificate (letter) of viz. inspection extract in respect of Award No.1316(2-2A) BBB-12....."

11. Without expressing any opinion on the merits of the case so that no prejudice is caused to any party, we are of the opinion that the complaint which was filed specifically alleged that all the three accused had in a sense together forged the document which was presented in the Court. It is possible that this allegation may be incorrect, whole or in part. We are not considering this question at this stage."

When the facts and circumstances of the present case are examined in the light of aforestated extract, in my considered opinion, the contention of the petitioners is devoid of merit and worthy of rejection.

Counsel for the petitioner has relied upon judgment of Hon'ble the Supreme Court of India ***PEPSICO Holdings Private Limited's case (supra)*** wherein the Court dealt with the question of prosecution launched against the appellant company under Prevention of Food Adulteration Act 1954 which contains provision in regard to vicarious liability of certain persons in respect of an offence committed by a company. Similar provisions are there in other statutes like the Negotiable Instruments Act, Insecticides Act, 1968 and Drugs and Cosmetics Act 1940. In para 50 of the

judgment, the Court by referring to its earlier decision in ***SMS Pharmaceuticals Ltd. VS. Neeta Bhalla (2005)8 SCC 89*** has held that in a complaint against a company and its Directors, the complainant has to indicate in the complaint itself as to whether the Directors concerned were either in charge of or responsible to the Company for the conduct of its business. In ***SMS Pharmaceuticals Ltd's case (supra)***, the Hon'ble Apex Court had been dealing with the provisions of Section 141 of the Negotiable Instruments Act whereby, for an offence committed by the Company (juristic person), the persons either incharge of or responsible to the company for conduct of its business have been made vicariously liable for offence committed by the company punishable under Section 138 of the Negotiable Instruments Act 1881. In the case at hand, the Directors of the Company are not prosecuted by holding them vicariously liable for offence committed by the Company and thus the ratio laid down in ***SMS Pharmaceuticals Ltd's case (supra)*** and ***PEPSICO Holdings Private Limited's case (supra)*** has no bearing on the instant case.

For the reasons stated hereinbefore, finding no merit, the petitions fail and are accordingly dismissed. No order as to costs.

However, nothing stated in this order shall prejudice the trial Court for decision on merits.

(REKHA MITTAL)
JUDGE

February 16, 2015.

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