In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-10800 of 2013

.....

Date of decision:22.12.2015

Koomar Durbha and another

.....Petitioners

v.

State of Haryana and another

.....Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. J.S. Bedi, Senior Advocate with Mr. Lovekirat Singh, Advocate for the petitioners.

Mr. Anmol Malik, Assistant Advocate General, Haryana for the respondent-State.

Mr. Kunal Dawar, Advocate for respondent No.2.

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Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. praying for quashing of FIR No.126 dated 25.5.2012 (Annexure-P.1) registered for the offences under Sections 406, 420, 506 and 120-B IPC at Police Station Manesar, Gurgaon, District Gurgaon and all subsequent proceedings arising therefrom.

Notice of motion has been issued in this case.

Mr. Anmol Malik, learned Assistant Advocate General, Haryana has put in appearance on behalf of the respondent-State and Mr. Kunal Dawar, learned Advocate has appeared for respondent No.2 and contested this petition. Replies have also been filed on behalf of respondents.

I have heard learned senior counsel for the petitioners as well as learned Assistant Advocate General, Haryana appearing for the respondent-State and learned counsel for respondent No.2 and have gone through the record.

At the time of arguments, learned senior counsel for the petitioners argued that from the perusal of the FIR itself no offence is made out. Therefore, the FIR is liable to be quashed. He also argued that the dispute between the parties is of civil nature and on this ground also the FIR is liable to be quashed. He further argued that petitioner No.1 joined the Company as Managing Director in July 2009 though the contract was executed on 1.6.2006 which expired in March 2010 and petitioner No.2 joined as C.F.O. and Director in May 2010 after the contract had expired. He also argued that even M/s Senior India Limited (hereinafter referred to as `the Company') is not an accused in the present case.

On the other hand, learned State counsel as well as learned counsel for respondent No.2 argued that the offences are made out from the perusal of the FIR and it is not liable to be quashed.

From the record, I find that the FIR in the present case has been registered on the statement of Vijay Kumar Yadav-respondent No.2 mainly alleging that Koomar Durbha is Managing Director of M/s Senior India Limited (Company) and Naresh Kumar Aggarwal is Finance Director. It is stated that Vijay Kumar Yadav is the Contractor and used to supply manpower through A.P. Multifar Services and he is responsible for ensuring that all the taxes, ESI, Provident Fund are deposited. It is in the FIR that he is responsible to deposit tax to the Excise Department. On 30.6.2006, he supplied manpower to M/s Senior India Private Limited (Company). He charged Service Tax on the entire bill. However, the Company asked him to make a new bill and asked him to impose service tax only on the service charges. Thus, he started to give the bill to the Company imposing service tax on the service charge only. He used to deposit the service tax in Government Exchequer till February 2010 which he used to get from the Company. In July-August 2011, during an internal audit of their Company A.P. Multifar Services, the billing system was said to be wrong. As per the auditor, service tax is to be imposed on the entire bill and is mandatory to be deposited in the Government Exchequer and not as mentioned by M/s Senior India Private Limited. Due to this, the Company owes him tax of ₹17,29,129/- and an interest of ₹9 Lacs is made out. As per the contract, it is mentioned that the Company is responsible to give service tax as per Government Rules and Regulations. As mentioned in the above clause, the Company is liable to give the pending tax. It is also in the FIR that the Company gets 100% CENVET off via Central Excise once the money is deposited. It is in the FIR that the Company is not giving him the money. The Company had now stopped him or his Company to enter the premises etc.

After perusing the FIR, it is clear that the dispute between the parties is regarding the amount which as per the Audit has been paid less by the complainant. There is no dispute that the complainant has to deposit amount in the Government Treasury on behalf of the Company and to submit the bill to the Company and the Company is to pay total amount of the bill. It is also admitted that the company is to get 100% refund of that tax.

A perusal of the FIR, no where shows that any offence of criminal nature is made out. There is also nothing came out from the FIR, even if it is presumed, showing any *mens rea* of the present petitioners. Whatever the complainant is saying that some official of the Company said in the year 2006 to pay the service tax on service charges only, but as stated in the petition both these petitioners have joined much later on. Further more, the Company is not made an accused. No names of the officials have been given, who asked the complainant to prepare the bills by showing the service tax on service charges.

There is nothing in the FIR that there was any intention to cheat the complainant from the very beginning. There is no question of cheating as the Company is to get the refund of 100% from the Government.

Therefore, from the above facts, it is clear that it is a dispute only regarding payment of the amount which the audit now has claimed. It is also admitted at the time of arguments that civil suit is already pending for that amount. The dispute between the parties is, at the most, regarding breach of the agreement and is of civil nature. Hence, no offence is made out from the perusal of the FIR.

Therefore, finding merit in the present petition the same is allowed and FIR No.126 dated 25.5.2012 (Annexure-P.1) registered for the offences under Sections 406, 420, 506 and 120-B IPC at Police Station

Manesar, Gurgaon, District Gurgaon and all subsequent proceedings arising therefrom are hereby quashed.

December 22, 2015.

(Inderjit Singh)
Judge

hsp