IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRM-M-17824-2013
Date of decision : 18.02.2015

Arun Rathi and another

... Petitioners

Versus

Suresh Sharma

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.Hari Om Attri, Advocate
for Mr.Hemant Bassi, Advocate
for the petitioner.

Mr.Narinder Singh, Advocate
for the respondent.

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REKHA MITTAL, J.

The present petition under Section 482 of the Code of Criminal Procedure (in short 'the Code') has been preferred for quashing of complaint No.512-1 dated 24.11.2008 for offence punishable under Sections 420, 506 and 120-B of the Indian Penal Code (in short 'IPC') (Annexure P2), summoning order dated 08.03.2011 passed by the Additional Chief Judicial Magistrate, Hisar (Annexure P3) and proceedings emanating therefrom.

The respondent filed the complaint on the allegations that he is running the business of oils under the name and style of M/s Pratigya Enterprises Pvt. Ltd. and supplies oils to various industries at different places. The accused have established a factory under the name and style of M/s Rathi Ispat Pvt. Ltd. of which accused No.1 Arun Rathi is the owner and director and Shrivats Rathi accused No.2 is the owner and son of accused no.1 and they manage the entire business of M/s Rathi Ispat Pvt.Ltd. Ghaziabad and are responsible persons for the day to day transaction of said company.

Accused No.2 contacted the complainant at his factory and placed order for supply of oils at different points of time by telephone as well as through his representative. The goods detailed in para 4 of the complaint total amounting to Rs.8,45,016/- were supplied. It has been averred that on demand of payment by the complainant, accused kept on giving bogus assurance on the pretext that they are facing paucity of funds as their money has been caught up due to slump in the market. The complainant contacted the accused telephonically for payment and initially they assured to make the payment but later threatened to kill him in case he demanded the money. The accused with a malafide intention grabbed money of the complainant and misappropriated an amount of Rs.8,45,016/- in furtherance of conspiracy.

After conducting preliminary inquiry, the trial Court (Judicial Magistrate, Hisar) passed the impugned order dated 08.03.2011 issuing process against the accused for offence punishable under Sections 420, 506 and 120-B IPC.

Counsel for the petitioners has pressed for quashing of criminal proceedings primarily on two counts. Firstly, the allegations set up in the complaint even if taken as correct on its face value, the same do not constitute an offence of cheating defined in Section 415 IPC punishable under Section 420 thereof. It is submitted that as per the documents (Annexure P5 colly), there were business dealings between Pratigya Enterprises Pvt. Ltd. and M/s Rathi Ispat Pvt. Ltd. earlier also, payments made to Pratigya Enterprises in respect of supplies received from the said company are duly reflected in the ledger account for the period 01.04.2006 to 31.03.2007 and from 01.04.2007 to 31.03.2008. It is further argued that as the oils supplied by the aforesaid company to the petitioners were of inferior quality pertaining to certain bills issued in December 2006 to March 2007 reflected in debit note 143, there arose a dispute between the parties and for that reason, certain payments were not made by M/s Rathi Ispat Limited to the complainant company. It is further argued that dispute between the parties, at best, gives rise to a civil matter but the same has been given colour of criminality with an intent to put pressure upon the petitioners to succumb to the illegal demand of the respondent.

The second submission made by counsel is that as per allegations of the complaint, the accused placed order for supply of materials to M/s Rathi Ispat Limited, a private company and without impleading said company as one of the accused, the criminal proceedings are not maintainable. In support of his contention, he has relied upon the judgments of Hon'ble the Supreme Court of India ***S.K.Alagh Vs. State of U.P.& Others, 2008(2) RCR (Criminal) 79*** and ***Asoke Basak Vs. State of Maharashtra & others, 2010(4) RCR (Criminal) 789.***

Counsel for the respondent, on the contrary, has submitted that disputed questions of fact are not amenable to adjudication in proceedings under Section 482 Cr.P.C., therefore, the matter needs to be left to be decided by the trial Court on the basis of evidence to be adduced by the parties. It is argued that as the petitioners made a deceitful representation to the respondent-complainant inducing him to supply oils to M/s Rathi Ispat Pvt.Ltd. Ghaziabad, detailed in para 4 of the complaint, with a fraudulent intention since inception of transactions, the petitioners have committed offence of cheating punishable under Section 420 IPC.

With regard to non impleading of M/s Rathi Ispat Pvt. Ltd., Ghaziabad, and the judgments relied upon by counsel for the petitioners, it is argued that the petitioners have not been prosecuted in regard to their vicarious liability for the offence committed by the company, therefore, the petitioners cannot seek any aid to their contention from the judgments cited by their counsel. It is further argued that in the judgments relied upon by the petitioners, the offence was under Section 406 and 409 IPC and keeping in view the provisions of Section 405 IPC defining criminal breach of trust, Hon'ble the Supreme Court has held that without impleading the company as an accused, its Directors or officers cannot be prosecuted for the offences.

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

Before dealing with the controversy raised in the present petition, it is appropriate to recall the observations made by Hon'ble the Supreme Court of India in ***M/s Indian Oil Corporation Vs. M/s NEPC India Limited and others, 2006 (3) RCR (Criminal) 740, G Sagar Suri Vs. State of UP, 2000(1) RCR (Criminal) 707*** and ***V.Y.Jose and another Vs. State of Gujarat and another, 2009(1) RCR (Criminal) 869.*** In ***M/s Indian Oil Corporation's case (supra)*** in para 10, it has been held, quoted hereinbelow:-

> *"10. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and*

claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged.

In G. Sagar Suri vs. State of UP [2000 (2) SCC 636], this Court observed :

"*It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code.Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.*"

While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

In ***V.Y. Jose and another's case (supra),*** in para 15 the Court has held that there exists a distinction between pure contractual dispute of civil nature and an offence of cheating. Although breach of contract per se would not come in the way of initiation of a criminal proceeding, there cannot be any doubt whatsoever that in absence of the averments made in the complaint petition wherefrom the ingredients of an offence can be found out, the Court should not hesitate to exercise its jurisdiction under Section 482 of the Code. It is further held that one of the ingredients of cheating as defined in Section 415 of the Indian Penal Code is existence of an intention of making initial promise or existence thereof from the very beginning of formation of contract.

The question now arises, if in view of averments set out in the complaint, it makes out a prima facie case under Section 420 IPC. The petitioners have averred that prior to the transactions in question for the period February 2007 to September 2007, there were business dealings between the parties for supply of oils, duly reflected in the ledger account of Pratigya Enterprises.

The respondent-complainant filed reply to the petition and in para 2 of the reply on merits, he has denied that answering respondent supplied any sub-standard material to the petitioners and rather supplied good quality oil as per order placed by the petitioners but they evaded payment of the same upto September 2007. A relevant extract from reply in para 2 reads as follows:-

> *"Had the goods been not of standard quality, the goods ought not to have been accepted by the petitioners upto 01.09.2007 and the payment with regard to few consignments made to the petitioners as per their ledger account (Annexure P5) ought not to have been made. Thus the petitioners are estopped from taking such a stand that supply of inferior and sub-standard quality*

goods was done by the respondent."

The aforesaid extract makes it evident that the respondent has not disputed correctness of ledger account (Annexure P5) relied upon by the petitioners which makes it evident that there were business dealings between the parties prior to the transactions in question. The ledger account contains various entries of payments made by the petitioners in respect of supplies received from time to time. In view of the fact that there were business dealings between the parties prior to the transactions in question and payments in regard thereto were made by the petitioners, it is difficult to accept plea of the respondent that the petitioners had a dishonest intention since inception to constitute offence of cheating punishable under Section 420 IPC. It further appears to the Court that as there arose some dispute between the parties in regard to quality of supplies made by the respondent and refusal of the petitioners to make payment of certain bills, the respondent has launched criminal proceedings regarding the matter which essentially involves dispute of a civil nature, may be, with an intent to put pressure upon the petitioners to make payment of pending bills. In ***G Sagar Suri's case (supra)***, Hon'ble the Apex Court has held that if a matter, which is essentially of civil nature has been given a cloak of criminal offence, jurisdiction under Section 482 can be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice. That being so, I find merit in contentions of the petitioners that the criminal proceedings initiated by the respondent do not make out a case for commission of offence punishable under Section 420 IPC and the same are nothing short of abuse and misuse of process of Court, thus, liable to be quashed.

Counsel for the petitioners has raised another issue with regard to non-maintainability of the proceedings for want of M/s Rathi Ispat Pvt. Ltd. to be impleaded as an accused. The judgments relied upon by counsel for the petitioners, in my considered opinion, have no bearing on the facts of the case in hand. As the allegations are that the petitioners made dishonest representation inducing the respondent-complainant to make supplies of oils to M/s Rathi Ispat Pvt. Ltd., in view of the definition of cheating under Section 415 IPC, had the contention of the petitioners in regard to dispute being of civil nature been not accepted by the Court, the non-impleadment of M/s Rathi Ispat Pvt.Ltd. in the circumstances of the present case might not have enured to benefit of the petitioners. However, as first contention of the petitioners is found to be meritorious and worthy of acceptance, it is not necessary to delve deep into the second issue which may be considered by this Court in details in some other appropriate proceedings.

In view of what has been discussed hereinabove, the petition is allowed, the criminal complaint No.512-1 dated 24.11.2008, summoning order dated 08.03.2011 and proceedings emanating therefrom are quashed leaving the parties to bear their own costs.

(REKHA MITTAL)
JUDGE

February 18, 2015.
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