

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-2834 of 2011(O&M)
Date of Decision: 19.9.2015**

M/s Quark City India Pvt. Ltd (formerly known as F1 Associates Pvt.
through its authorized signatory Mr. Ajesh Gupta

.....Petitioner

Vs.

S. Rakshit Prop. Reycor India Services

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Anand Chhibar, Sr. Advocate with
Mr. Gaurav Mankotia, Advocate
for the petitioner.

Mr. A.K.Mishra, Advocate and
Mr. Ajay Tiwari, Advocate
for the respondent.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAMESHWAR SINGH MALIK J.

Feeling aggrieved against the impugned orders dated 2.11.2010 passed by the learned Additional Sessions Judge, SAS Nagar, Mohali (Annexure P-11), whereby revision petition of the petitioner against the order dated 1.5.2009 (Annexure P-10), dismissing the complaint of the petitioner without summoning the accused, was dismissed, upholding order passed by the learned trial court, petitioner has approached this Court by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for

short), for setting aside the impugned orders.

Shorn of detailed background, it would suffice to note basic facts which are necessary for disposal of the present case. Petitioner-company issued a legal notice dated 10.8.2007 (Annexure P-5) to the respondent, claiming an amount of ₹15,39,979/-, on account of alleged excess payment made by the petitioner to the respondent, towards sale consideration of electrical panels supplied by the respondent to the petitioner. Respondent-firm submitted its reply to the legal notice, vide Annexure P-6, refuting the claim of the petitioner and put a counter claim for the balance payment of ₹2,52,064/-. Thereafter, petitioner filed complaint No. 431/15/11/2007 (Annexure P-7). Petitioner-complainant led its preliminary evidence.

However, after hearing learned counsel for the complainant and going through the preliminary evidence brought on record, learned trial court came to the conclusion that complainant had no case. On the basis of evidence led by the petitioner-company, no prima facie case was found to be made out against the accused-respondent, even for the purpose of summoning. Accordingly, the learned trial court dismissed the complaint of the petitioner-company, vide impugned order dated 1.5.2009 (Annexure P-10). Dissatisfied, petitioner-company filed its revision petition, which also came to be dismissed by the learned Additional Sessions Judge, SAS Nagar, Mohali, vide impugned order dated 2.11.2010 (Annexure P-11). Hence the present petition under Section 482 Cr.P.C., invoking the inherent jurisdiction of this Court, at the hands of the complainant.

Notice of motion was issued and pursuant thereto,

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respondent filed its reply. Thereafter, petitioner filed its replication to the written statement filed on behalf of the respondent. Later on, respondent placed on record as many as 34 documents, at page 89 to 146 of the paper book, for perusal of this Court.

Learned senior counsel for the petitioner submits that learned trial court proceeded on a factually incorrect and legally misconceived approach, while arriving at its conclusion in para 7 of the impugned order. He further submits that the complainant-company was a registered company and the complaint was filed through a duly authorised and competent person. He would next contend that petitioner was very much entitled for the money claimed from the respondent. Since the respondent proceeded on a malafide approach right from day one, the complainant was very much maintainable. However, since learned trial court failed to appreciate the settled principle that requirement of law for the purpose of summoning was only a prima facie case, the impugned order dated 1.5.2009 (Annexure P-10) is patently illegal.

Similarly, learned senior counsel for the petitioner challenged the impugned revisional order passed by the learned Additional Sessions Judge, contending that the learned revisional court also fell in a serious error of law, while passing the impugned revisional order. Referring to the numerous documents available on record, learned senior counsel for the petitioner contended that a serious prejudice has been caused to the petitioner by passing the impugned revisional order by the learned revisional court.

In support of his contentions, learned senior counsel for

the petitioner places reliance on the following judgments of the Hon'ble Supreme Court as well as this Court:-

- 1.Vadilal Panchal Vs. Dattatraya Dulaji Ghadigaonkar and another, AIR 1960 SC 1113
- 2.Chandra Deo Singh Vs. Prokash Chandra Bose alias Chabi Bose and another, AIR 1963 SC 1430
- 3.Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi, AIR 1976 SC 1947
- 4.Ramgopal Ganpatrai Ruia and another Vs. State of Bombay, 1958 SCR 618
- 5.Vijay Kumar Vs. Bachnu and another 1987 (2) RCR (criminal) 398 (P&H High Court)

He prays for setting aside the impugned orders, by allowing the present petition.

On the other hand, learned counsel for respondent vehemently contended that present petition is a result of dishonest litigation on the part of the petitioner and the same is liable to be dismissed with exemplary costs. He refers to the reply (Annexure P-6) to the legal notice to contend that petitioner was not entitled to recover even a single penny from the respondent. In fact, it was the respondent, who was entitled to recover an amount of ₹2, 52,064/- from the petitioner, as pointed out in the reply filed to legal notice. He further submits that the learned courts below have proceeded on a factually correct and legally justified approach, while passing their respective impugned orders and the same deserve to be upheld. He further refers to the communication dated 19.7.2007, at page 91 of the paper book, and also communication dated 17.7.2007, at page 92 of the paper book, to contend that petitioner has admitted its

liability to pay an amount of ₹2,52,064/- to the respondent. He also refers to the purchase order at page 137 of the paper book, to contend that supply of two sets were made by the respondent to the petitioner @ ₹13 lacs per set, total being ₹26 lacs. He prays for dismissal of the present petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, instant one has not been found to be a fit case warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record that, if at all, it was a money dispute between both the parties. Parties to this unwarranted litigation has been putting their claims and counter claims for recovering some amount of money, on account of their business transactions. In this view of the matter, the dispute, if any, was purely of civil nature. It has been rightly so held by both the learned courts below, while passing their respective impugned orders. Claim of the petitioner, which prima facie seems to be baseless, was considered and was found without any substance. Having said that, this Court feels no hesitation to conclude that learned courts below committed no error of law, while passing their respective impugned orders and the same deserve to be upheld.

It is the own pleaded and argued case on behalf of the petitioner that it was the petitioner itself, who allegedly made some excess payment to the respondent. Petitioner failed to convince either of the learned courts below, while not making out even a prima facie case against the respondent, for the purpose of summoning. Each and every relevant aspect of the matter was examined, considered and appreciated by the learned courts below, while passing their respective impugned orders and the same deserve to be upheld, for this reason also.

After re-appreciation of the evidence brought on record on behalf of the petitioner, learned Additional Sessions Judge, recorded cogent findings before arriving at his judicious conclusion. Relevant observations made by the learned Additional Sessions Judge in para 7 of the impugned order, which deserves to be noticed here, read as under:-

"After hearing the learned counsel for the revisionist and after going through the record, I am of the view that there is no merit in the revision and, as such, the same deserves dismissal. It has been rightly observed by the learned Trial Court that the matter between the parties is of civil nature and the complainant can file a recovery suit of the enhanced amount, which he allegedly paid to the respondent. As per the allegations in the complaint, the material worth Rs. 10,60,000/- was purchased by the complainant from the accused, but the

accused received the amount to the tune of Rs. 26 lacs on 22.2.2005. The learned counsel for the revisionist has failed to show, how these facts would attract the provisions of the criminal law. It is the officers of the complainant, who paid the amount to the accused. They should have gone through the purchase order and the material received from the respondent before making the payment. In any case, if the complainant feels that it has paid an amount of Rs. 16 lacs more than the actual amount, then it can file a suit for recovery of that amount. If any item, out of the purchase order, has not been supplied by the respondent, even then, it has got the liberty to claim damages from the respondent for the same. As observed by the learned Trial Court, the present complaint appears to have been filed just to avoid the court fee, which would have been paid for filing the recovery suit."

In fact, mens rea, which is the very first ingredient of commission of any offence, has been found conspicuously missing in the present case. During the course of hearing, when a pointed question was put to the learned senior counsel for the petitioner to point out any relevant factor indicating *mens rea*, he had no answer and rightly so, it being a matter of record. In this view of the matter, it can be safely concluded that both the learned courts below proceeded on a factually correct and legally justified approach, while

passing the impugned orders and the same deserve to be upheld, for this reason as well.

Coming to the judgments relied upon by learned senior counsel for the petitioner, there is no dispute about the law laid down therein. However, on a close perusal of the cited judgments, none of them has been found to be of any help to the petitioner, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

No doubt, the inherent powers of this Court under Section 482 Cr.P.C. are wide enough, yet it is equally true that the said powers are to be exercised sparingly and with circumspection, as held by the Hon'ble Supreme Court in State of Punjab Vs. Davinder Pal Singh Bhullar and otehrs, 2011 (14) SCC 770 and Mohit alias Sonu and another Vs. State of U.P.And another, 2013 (7) SCC 789.

During the course of arguments, learned senior counsel for the petitioner could not point out any jurisdictional error of patent illegality in either of the impugned orders, so as to convince this Court to take a different view than the one taken by learned courts below. In such a situation, it is unhesitatingly held that the petitioner is not entitled to invoke the inherent jurisdiction of this Court under Section 482 Cr.P.C. Further, petitioner has been pursuing a totally

misconceived litigation, therefore, instant complaint has rightly been found without any substance by both the learned courts below.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, present petition stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

19.9.2015
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