

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl.Misc. No.M-32409 of 2013
Date of Decision : 17.11.2015

M/s Aggcon Equipment International Pvt. Ltd.Petitioner

Vs.

M/s Escorts Constructions Equipment Ltd. and othersRespondents

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CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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Present : Mr. Vijay K. Jindal, Advocate for the petitioner.
Mr. Suvineet Sharma, Advocate for the respondents.

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

RAMESHWAR SINGH MALIK, J

Feeling aggrieved against the impugned judgement dated 14.2.2013 (Annexure P-4) passed by the learned Additional Sessions Judge, Faridabad, whereby summoning of respondents no.2 to 5 was set aside in the revision petition filed by only one accused namely; Girish Behari Mathur-respondent no.5, petitioner-complainant has approached this court by way of instant petition under Section 482 Cr.P.C., for quashing of the impugned order.

Notice of motion was issued and pursuant thereto, reply was filed on behalf of the respondents.

Learned counsel for the petitioner submits that the petitioner filed the complaint (Annexure P-1) wherein accused were summoned vide order dated 20.9.2012 (Annexure P-2). Respondent no.5 alone felt aggrieved and

filed the revision petition (Annexure P-3) against the above said summoning order. However, the learned Additional Sessions Judge misdirected himself, while setting aside the summoning order qua all the accused, while passing the impugned judgement dated 14.2.2013 (Annexure P-4) and the same is liable to be set aside. Placing reliance on the judgements of the Hon'ble Supreme Court in **Sudhir Kumar Miukherjee and Sham Lal Shaw Vs. State of W.B.** 1974 (3) SCC 357 (Annexure P-11), **Nupur Talwar Vs. Central Bureau of Investigation and another**, 2012 (3) RCR (Crl.) 595 (Annexure P-12) and **Rajmata Vijaya Raje Scindia (Dead) through LRs Vs. State of M.P. and others**, 2003 (12) SCC 429, he submits that the learned Additional Sessions Judge has exceeded his jurisdiction, while passing the impugned judgement, because he had no jurisdiction to set aside the summoning order qua those accused, who have not even challenged the same. He prays for setting aside the impugned judgement, by allowing the present petition.

On the other hand, learned counsel for the respondents would submit that since the summoning order (Annexure P-2) was palpably illegal, the same was rightly set aside qua accused no.2 to 7, including the present respondents no.2 to 5. He further submits that no prejudice of any kind, whatsoever, has been caused to the petitioner by passing the impugned judgement. He prays for dismissal of the present petition.

After hearing learned counsel for the parties, going through the record of the case and giving thoughtful consideration to the rival contentions raised, this court is of the considered opinion that in the given facts and circumstances of the case, instant petition deserves to be partly allowed, for the following more than one reasons.

A bare perusal of the impugned judgement passed by the learned

Additional Sessions Judge would show that each and every relevant aspect of the matter was considered and appreciated in the correct perspective, before arriving at a judicious conclusion. Cogent and convincing findings were recorded by the learned Additional Sessions Judge in support of the impugned judgement. No case for summoning was found to be made out against accused nos.2 to 7 and accordingly the summoning order was set aside. Having said that, this court feels no hesitation to conclude that the learned Additional Sessions Judge has not exceeded his jurisdiction, while passing the impugned judgement and the same deserves to be upheld.

Relevant observations made by the learned Additional Sessions Judge in paras 7 to 10 of the impugned judgement, which deserve to be noticed here, read as under :-

“ From the perusal of the records of the case, it is apparent that the revisionist and others have been summoned to face trial for allegedly having cheated the complainant by deliberately presenting cheques for encashment which were issued as security. These cheques were allegedly presented for encashment three years after they were issued. There is no material before this court to show to whom the cheques in question were allegedly presented. In the entire complaint as well as in the oral evidence the complainant and its witnesses have nowhere disclosed the posts, if any, held by accused no.2 to 7. No specific act has been attributed to any of them. For this reason alone the accused could not have been summoned as it is a mandatory requirement of law that whenever directors/partners of any company/firm are

summoned, a specific averment in this regard is required to be made clearly disclosing the title of each accused and the role attributed to him.

Even if the entire case as set up by the respondent/complainant is accepted at its face value, no offence of cheating/criminal breach of trust is made out. It is apparent that the cheques which have been dishonoured were of the year 2011 whereas according to the respondent, the cheques had been issued as far back as in the year 2008. The respondent has referred to a letter Ex.C3 allegedly issued by accused no.1 claiming that the cheques in question had been misplaced and were not traceable and requesting the respondent to stop their payment, it is not the case of the respondent that the cheques were post dated for the year 2011 or that they were undated. In these circumstances the said letter which had been denied during the course of arguments by the revisionist cannot be relied upon for the purpose of attributing any criminal intent to the revisionist or for that matter any of the co-accused.

It may further be pointed out that even otherwise, the facts of the case do not reflect that the revisionist (or any of the co-accused) had fraudulently or dishonestly induced the respondent to deliver the cheques nor is there any evidence on record to show that any of the accused had misappropriated the cheques or converted them to their own use after the cheques had been entrusted, to them for some

other purpose. There is no evidence whatsoever on record to show that the cheques in question were issued as security. The genuineness or otherwise of the letter Ex.C3 can be considered in the complaint for dishonour of the cheques where admittedly it has been brought on record.

The perusal of the impugned order shows that the ld. Trial court certainly did not furnish any reason for summoning the revisionist and co-accused. It also did not pass any orders regarding accused no.6 and 7. The impugned order is certainly illegal in view of the attending facts and circumstances which do not justify the summoning of any of the accused. The learned trial court has also erred in not furnishing any reason whatsoever for the impugned order. Therefore, the same is liable to be set aside.”

A bare glance of the above said observations made by the learned Additional Sessions Judge would show that the summoning order was rightly set aside and hardly any fault can be found with the above said reasoning recorded by the learned Additional Sessions Judge. However, during the course of hearing, when a pointed question was put to learned counsel for the respondents, as to why the impugned complaint would not survive against the respondent-accused no.1-company, he had no answer and rightly so, it being a matter of record. Under these circumstances, it can be safely concluded that the complaint and summoning order would stand only against respondent no.1-accused company and the petitioner will be at liberty to pursue its complaint against accused-respondent no.1.

So far as the judgements relied upon by learned counsel for the

petitioner are concerned, there is no dispute about the law laid down therein. However, on close perusal of the cited judgements, none of them have been found to be of any help to the petitioner, being distinguishable on facts. It is the settled proposition 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 *Padmausund Rao and another Vs. State of Tamil Nadu and others*, 2002 (3) SCC 533.

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 instant petition deserves to be partly accepted. Consequently, the impugned judgement is upheld qua accused-respondents nop.2 to 5. However, it is clarified that the complaint of the petitioner would survive against accused-respondent no.1-company and the petitioner would be at liberty to pursue the same, in accordance with law.

Resultantly, with the above said observations made and directions issued, the present petition stands disposed of, however, with no order as to costs.

17.11.2015
GS

(RAMESHWAR SINGH MALIK)
JUDGE