IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-34833-2015
Date of decision: 13.10.2015

M/s Rexor India Ltd. and anr.

... Petitioners

Vs.

M/s Sakata Inx. (India) Ltd.

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Avnish Mittal, Advocate
for the petitioners.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

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RAMESHWAR SINGH MALIK, J.

Petitioners, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seek quashing of impugned order dated 26.08.2015 passed by learned Additional Sessions Judge, Faridabad (Annexure P-7), whereby revision petition of the petitioners was dismissed and the order dated 30.08.2014 (Annexure P-5) passed by learned trial Court, dismissing the application of the petitioner under Section 91 Cr.P.C., was upheld.

Briefly put, facts necessary for disposal of the present petition, are that the respondent-complainant filed a complaint under Section 138 of the Negotiable Instruments Act ('N.I.' for short) against the present petitioners and

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also the father of petitioner No.2. Said criminal complaint (Annexure P-1) is dated 13.04.2010. Evidence of the complainant was closed on 18.05.2013 and the case was adjourned to 25.05.2013 for recording the statement of accused under Section 313 Cr.P.C. The accused did not lead their evidence despite having been granted about 15 opportunities over a period of more than one year. Accused M.C. Somani came to be declared as proclaimed offender vide order dated 31.05.2014 passed by the learned trial Court. He is still a proclaimed offender.

When the petitioners were not found interested in leading their evidence despite numerous effective opportunities having been granted, the learned trial Court was left with no other option except to close their evidence vide order dated 01.08.2014. However, on the same day, petitioners moved an application under Section 91 Cr.P.C. for direction to the Manager, State Bank of Patiala, Branch Sector-11, Faridabad, to produce some documents. This application was opposed by the complainant and it was dismissed by the learned trial Court vide order dated 30.08.2014. Feeling aggrieved, petitioner No.1 filed the revision petition which also came to be dismissed by the learned Additional Sessions Judge vide impugned order dated 26.08.2015. Hence the present petition, at the hands of the accused.

Learned counsel for the petitioners submits that the learned Courts below have proceeded on a misconceived approach, while passing the impugned orders, thereby causing serious prejudice to the petitioners. He further submits that since the evidence of the petitioners was still going on, the Courts below ought to have allowed the application of the petitioners under Section 91 Cr.P.C. because production of the documents would have

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facilitated the trial Court to arrive at a judicious conclusion. However, since the learned Courts below have failed to apply their judicious mind to the true factual as well as legal aspect of the matter, the impugned orders have resulted in miscarriage of justice and the same are liable to be set aside. In support of his contentions, learned counsel for the petitioners places reliance on a judgment of Madras High Court in **S. Bhaskar Vs. Uma Bhandari, 2014 (143) AIC 506.** He prays for setting aside the impugned orders, by allowing the present petition.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that keeping in view the totality of 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., for the following more than one reasons.

Before proceeding further, numerous zimini orders passed by the learned trial Court deserve to be reproduced for ready reference and the same read as under: -

"Present: Complainant with Shri T.S. Ahuja, Adv.
Accused on bail with counsel Sh. Shekhar Anand.

Statement of accused under Section 313 Cr.P.C. recorded. Now, case is adjourned to 20.07.2013 for Dws. List of witnesses be also filed within a week.

(Ashish Sharma)
JMIC/Fbd. 25.05.2013

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Present: Complainant with counsel.
Sh. Shekhar Anand Gupta, Adv for accused.

No DW is present.

An application for exemption from personal appearance moved on behalf of both accused. Heard. In view of the fact mentioned therein, presence of both the accused is exempted for today only.

Now the case is adjourned to 10.12.2013 for presence of accused person as well as for defence evidence at his own responsibility of the accused. It shall be the last opportunity for defence evidence.

Ashish Sharma
JMIC/Faridabad. 20.11.2013

Present: Complainant in person with Mr. T.S. Ahuja, Adv.
Accused not present.
Sh. Shekhar Anand Gupta, Adv for accused M.C. Somai & Sunil Somai.

An application for exemption of accused M.C. Somai from personal appearance is filed. However, the reason mentioned in the application does not appear to be genuine or bonafide. Moreover, the application is neither supported by any affidavit nor by medical certificate. For this reason the present exemption application stands dismissed. Bail of accused M.C. Somai is cancelled and his bail bond and surety bond are forfeited to the State.

Another application for exemption of accused Sunil Somai also moved stating that he is in judicial custody since 06.11.2013 in some other case. Heard. In view of the facts as mentioned in the application, personal appearance of accused Sunil Somai is exempted for today only. Let accused M.C. Somai be summoned through non-bailable warrant for 13.01.2014

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along with notice to his surety and identifier.

Ashish Sharma
JMIC, Faridabad. 10.12.2013

Present: Complainant in person with Sh. T.S. Ahuja, Adv.
Accused Sunil Somai on bail with Sh. Shekhar Anand Gupta, Adv
Accused M.C. Somai absent.

Non-bailable warrant issued against the accused M.C. Somai received back unexecuted. Let fresh non-bailable warrant against the accused M.C. Somai and notice to his surety and identifier be issued for 17.02.2014.

Ashish Sharma
JMIC, Faridabad. 13.1.2014

Present: Complainant in person with Sh. T.S. Ahuja, Adv.
Sh. Shekhar Anand Gupta, Adv for accused Sunil Somai.
Accused M.C. Somai absent.

Ld. counsel for accused Sunil Somai has made a statement that accused Sunil Somai has been lodged in District Jail Faridabad at Neemka in some other cases. His statement to this effect recorded separately. Now, production warrant of accused Sunil Somai be issued to District Jail Faridabad at Neemka for 19.02.2014. Non-bailable warrant issued against the accused M.C. Somai not received back either executed or unexecuted. However, surety R.S. Sharma is present. Notice u/s 446 Cr.P.C. serveed upon him, to which he pleaded guilty. Now, recovery warrant to the extent of Rs.25,000/- against the surety R.S. Sharma be issued to Collector, Faridabad to recover the surety amount which is returnable on or before 19.02.2014. Fresh non-bailable warrant of accused M.C. Somai be also issued for the date

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fixed.

Ashish Sharma
JMIC, Faridabad. 17.02.2014

Present: Complainant in person with Sh. T.S. Ahuja, Adv.
Accused M.C. Somai absent.
Sh. Shekhar Anand Gupta, Adv for accused Sunil Somai.

Surety R.S. Sharma is present and made a statement that he is unable to produce the accused M.C. Somai in the Court and therefore as per the orders of the Court, he is depositing Rs.25,000/- in the Court today. His statement to this effect recorded separately. Surety R.S. Sharma has deposited Rs.25,000/- as amount of surety bond in the Court today. ***Surety R.S. Sharma is discharged.*** *Now, production warrant of accused Sunil Somai be issued to the concerned Jail Superintendent for 1.3.2014. Fresh non-bailable warrant against the accused M.C. Somai be also issued for the date fixed.*

Ashish Sharma
JMIC, Faridabad. 19.02.2014

Present: Complainant in person with Sh. T.S. Ahuja, Adv.
Accused Sunil Somai on bail in this case, but in custody in some other case represented by Sh. Shekhar Anand Gupta, Adv.
Accused M.C. Somani absent.
Sh. Shekhar Anand Gupta, Adv. for accused Sunil Somai.
Surety R.S. Sharma discharged v.o.d. 19.2.2014.

Accused Sunil Somai produced. Non-bailable warrant issued against the accused M.C. Somai not received back either executed or unexecuted. Let fresh non-bailable warrant against the accused M.C. Somai be issued returnable on or before 5.4.2014. Accused Sunil Somai be also produced before the Court on the date fixed if he remains in custody on that

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date.

Ashish Kr. Sharma
JMIC, Faridabad. 1.3.2014

Present: *Complainant in person with Sh. T.S. Ahuja, Adv.*
Accused Sunil Somai on bail in this case, but in custody in some other case.
Accused M.C. Somani absent.
Sh. Shekhar Anand Gupta, Adv. for accused Sunil Somai.
Surety R.S. Sharma discharged v.o.d. 19.2.2014.

Accused Sunil Somani produced before me from custody. Non-bailable warrant issued against the accused M.C. Somai not received back either served or unserved. Now, fresh NBW be issued against the accused M.C. Somani for 22.4.2014. Notice to his surety and identifier be also issued for the date fixed. He be sent back to judicial custody and be again produced on the date fixed.

Ashish Sharma
JMIC, Faridabad. 5.4.2014

Present: *Complainant in person with Sh. T.S. Ahuja, Adv.*
Accused Sunil Somai on bail in this case, but in custody in some other case.
Accused M.C. Somani not produced
Surety R.S. Sharma discharged v.o.d. 19.2.2014.

Accused Sunil Somai produced before me from custody. He be sent back to judicial custody and be again produced on 31.5.2014.

NBW issued against the accused not received back either served or unserved. This Court is satisfied that presence of accused cannot be secured through non-bailable warrants. Let, proclamation u/s 82 Cr.P.C. be

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issued against the accused for the date fixed.

Notice issued to surety received back duly served. But, he did not appear. Now, he be served through bailable warrants in the sum of Rs.10,000/- with one surety in the like amount for the date fixed.

Ashish Sharma
JMIC, Faridabad. 22.4.2014

Present: Complainant in person with Sh. T.S. Ahuja, Adv.
Accused Sunil Somai on bail in this case, but in custody in some other case.
Accused M.C. Somani absent
Surety R.S. Sharma discharged v.o.d. 19.2.2014.

Accused Sunil Somai produced before me from custody. He be sent back to judicial custody and be again produced on 4.6.2014.

Proclamation issued against the accused M.C. Somani received back duly effected. Proclamation was duly published against the accused on 30.4.2014. Statement of tamili to that effect has been separately recorded. Inspite of lapse of more than 30 days from the date of publication of the abovesaid proclamation, accused has failed to appear before this Court. Accordingly, accused M.C. Somani is hereby declared as ***absconder.*** *Intimation in this regard be sent to SHO concerned and P.O. staff.*

B/W issued against the surety not received back either served or unserved. Now fresh b/w be issued against the surety for the date fixed. Now to come up on 4.6.2014 for Dws. DWs be produced at their own responsibility.

Ashish Sharma
JMIC, Faridabad. 31.5.2014

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Present: Complainant in person with Sh. T.S. Ahuja, Adv.
Accused Sunil Somai on bail in this case, but in custody in some other case.
Accused M.C. Somani absent

No defence evidence is present. On the request of the learned counsel for defence, case is adjourned to 16.07.2014 for defence evidence, if any, otherwise for arguments. DWs be produced at own responsibility as no list of witness is filed. It shall be last opportunity for the same.

(Ashish Kr. Sharma)
JMIC, Fbd. 04.06.2014

Present: Complainant in person with Sh. T.S. Ahuja, Adv.
Accused Sunil Somai absent, but represented through
Sh. Shekhar Anand Gupta, Adv.
Accused M.C. Somani declared absconder v.o.d. 31.05.2014

An application for exemption from personal appearance of the accused namely Sunil Somani moved. Heard. In view of the facts mentioned in the application, same is allowed for today only.

No DW is present in spite of last opportunity. Adjournment is requested. Heard. Allowed. Now to come up on 01.08.2014 for DWs. DWs shall be produced at their own responsibility. It is hereby made clear that in case DWs are not concluded on the next date of hearing, then same shall be deemed to be closed by the court order.

(Ashish Kr. Sharma)
JMIC, Faridabad. 16.07.2014"

A bare perusal of the abovesaid zimini orders would show that the petitioners had been taking the Court for a ride, showing no respect to the justice delivery system. Such an attitude of a litigant is liable to be deprecated.

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Accused M.C. Somani who is none else but Managing Director of petitioner No.1-Company and father of petitioner No.2 has already been declared a proclaimed offender. On the one hand, Managing Director of the petitioner-company is not ready to appear before the Court and not allowing the trial to proceed and on the other hand, his son-petitioner No.2 has not been producing the defence evidence for a long period, as it is clear from the bare perusal of abovesaid numerous zimini orders. Having said that, this Court feels no hesitation to conclude that petitioners have been glaringly abusing the process of Court because of which they have not been found entitled for invoking the inherent jurisdiction of this Court.

During the course of hearing, when a pointed question was put to learned counsel for the petitioners, as to whether the accused M.C. Somani, Managing Director of petitioner No.1-Company, who is proclaimed offender, is ready to surrender before the Court or not, he sought and was granted a pass over to get instructions. When the case was taken up for hearing again, learned counsel for the petitioners apprised this Court that petitioners are unable to persuade the proclaimed offender to surrender before the Court. This conduct on behalf of the petitioners has also rendered them disentitled for the discretionary relief at the hands of this Court. Once the petitioners have not approached this Court with clean hands and are not ready to show their bonafide even today, they do not deserve any kind of sympathy from the Court as well.

The star argument raised by learned counsel for the petitioners that since the defence evidence was going on at the time of filing of application under Section 91 Cr.P.C. by the petitioners, the learned trial Court

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ought to have allowed the same, has been found to be contrary to the judicial record and the same is to be noted to be rejected. It is so said because the application under Section 91 Cr.P.C. was moved by the petitioners only after their evidence had been closed by the learned trial Court. It has been so recorded by the learned trial Court in the impugned order itself and the relevant part thereof reads as under: -

> *"The application is challenged by the complainant (hereinafter referred to as respondent) vide its reply dated 19.08.2014 on the ground that the same is moved merely to delay the proceedings. It has been further revealed that the documents are in the custody of C.B.I. in a case registered against the accused. Moreover, the documents sought to be produced have no relevance in the case because the defence of the accused is that the cheques were given by way of security. The applicant has further failed to explain as to how the alleged rejection notes are relevant for the purpose of present case. With these submissions, a prayer for dismissal of application is made.*
>
> *I have heard learned counsel for the parties and perused the record carefully.*
>
> *Perusal of the file would reveal that the case is pending for defence evidence since 20.07.2013 and thereafter one of the co-accused Mr. M.C. Somani has been declared proclaimed offender vide order 31.05.2014. During the entire period, no efforts were made to produce any defence witness and on 01.08.2014 the evidence of the defence was ordered to be closed.*

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> *It is on the very same date that the present application was moved by the defence side. It must be pointed out, hence (here) that the fact of sealing of the premises by the bank was well within the knowledge of the accused much before filing of the present application. No efforts were made then to summon the documents mentioned in the application. It was only when the water has rose above the head that the defence side woke up and moved this application. It is apparently clear that the application is moved to delay the proceedings of the case. Same does not hold any merit and is hereby dismissed."*

So far as the judgment relied upon by learned counsel for the petitioner is concerned, there is no dispute about the law laid down therein. However, on close perusal thereof, the cited judgment has not been found of any help to the petitioner, being distinguishable on facts. Further, 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 additional fact or circumstance can make a world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

Petitioners cannot be treated to be innocent persons, as they have tried to pose themselves before this Court. Petitioners were educated and well-informed persons. They were fully aware about their liability. The documents which were sought to be produced by the petitioners through the Manager of the Bank, were in the custody of CBI in other case, registered against the

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petitioners. Further, the documents sought to be produced were found by the learned trial Court to be of no relevance in the present case.

Petitioners failed to explain before the learned trial Court, revisional Court as well as before this Court as to how the alleged rejection notes were of any relevance, in the present case, for the purpose of trial against them. Petitioners never made any efforts to summon the said documents mentioned in their application under Section 91 Cr.P.C., in support of their case despite the fact that sealing of their premises by the Bank was very much in the knowledge of the petitioners. In fact, the petitioners in collusion with their co-accused and in furtherance of their common illegal motive, had been making every possible and dishonest efforts to prolong the criminal trial on one pretext or the other, proceeding on their common malafide intention.

It is also a matter of record that accused M.C. Somai, Managing Director of petitioner No.1-Company and father of petitioner No.2 was declared a proclaimed offender as far back as on 31.05.2014. Neither he has surrendered himself so far nor he is intending to surrender. In fact, he has refused to surrender before the Court, thereby showing thumb to the rule of law, as if he is not governed by the law. In such a situation, it can be safely concluded that since the petitioners have not been found to be bonafide litigants, who have been trying to play with the system during all this long period of prolonged trial of more than five years, they are not entitled to invoke the inherent jurisdiction of this Court under Section 482 Cr.P.C.

During the course of hearing, learned counsel for the petitioners could not point out any jurisdictional error or patent illegality in either of the

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impugned orders passed by the learned Courts below, so as to convince this Court to take a different view. He also failed to explain the serious misconduct of the petitioners and their co-accused namely M.C. Somani who is running from the law and that too, for no good reasons, thus, the impugned orders deserve to be upheld, for this reason also.

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 wholly misconceived, bereft of merits 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

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