IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 29.01.2015

CRM M 752 of 2011 (O&M)

Abdul Rashid alias Khandu .... *Petitioner*

Versus

State of Punjab and others ....*Respondents*

CRR 2261 of 2010

Abdul Rashid alias Khandu ....*Petitioner*

Versus

State of Punjab and others ....*Respondents*

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. Mohd. Yousaf, Advocate
for the petitioner

Mr. Sandeep Kumar Bansal, AAG, Punjab
for the State

Mr. G N Malik, Advocate
for respondent no. 2

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

CRM 2914 of 2015 in CRM M 752 of 2011

Allowed as prayed for. Annexure R2/1 (colly) is taken on record.

Main case

This order will dispose of CRM M 752 of 2011 and CRR 2261 of 2010 as identical questions of law and facts are involved for adjudication. However, for the sake of convenience, facts are taken from CRM M 752 of 2011.

Counsel for the petitioner contends that the petitioner and respondent No. 2 started joint business of digging/filling earth with JCB machines for the last many years. Taking advantage of illiteracy of the petitioner, respondent No. 2 created a firm namely Jai Shanker Agro Service but the petitioner was not made a partner therein. The petitioner came to know about this fact later though he had already invested equal amount for purchase of JCB machines in question. The dispute between the petitioner and respondent No. 2 was settled with intervention of respectables of the city. In pursuance thereof, one JCB machine Model 2009, amounting to Rs.17,00,000.00 was given to the petitioner and other JCB machine Model 2008, amounting to Rs.15,00,000.00 was sold by both of them. It was also agreed between the parties that the petitioner would pay installments of JCB machine and after payment of all installments, the same will be registered in name of the petitioner. With regard to other JCB machine, it was sold for Rs.15,00,000.00, Rs.5,00,000.00 was to be deposited in the bank against loan and remaining amount of Rs.10,00,000.00 was to be shared between the parties. The petitioner started paying installments of loan due against JCB machine given to him. The first installment was deposited by him on 12.01.2010 and he is continuously paying the same till date.

Counsel for the petitioner further contends that even if the allegations set up in the FIR are taken on its face value, no offence punishable under Sections 406 and 420 of the Indian Penal Code (in short, 'IPC') is made out against the petitioner. It is further argued that in view of averments set up in the FIR, the same, at best, gives rise to civil dispute and the petitioner has already filed a civil suit in the Court in which the application for interim injunction, restraining respondent No. 2 from snatching JCB machine from the petitioner was disposed of by the Court vide order dated 14.12.2010 (Annexure P7). It is argued with vehemence that the criminal proceedings initiated by respondent No. 2 are nothing but an abuse and misuse of process of law in order to put pressure upon the petitioner to succumb to the terms and conditions of the respondent and return JCB machine which has been released in favour of the petitioner by the trial Court pending final decision. It is further argued that as the police recovered possession of the vehicle in question from custody of the petitioner who has already paid huge amount more than of Rs.15,00,000.00 to the Bank in discharge of outstanding liability of loan, the revisional Court committed a serious error in setting aside the order passed by the trial Court for release of the vehicle in question in favour of the petitioner and further directing the petitioner to hand over said vehicle to the respondent.

Counsel for the contesting respondent contends that JCB machine was purchased by the respondent from Krishna Automobiles, Chandigarh on Ist July 2009 for a sum of Rs.18,00,000.00 which was got financed from IndusInd Bank, Ludhiana. The said machine was given to the petitioner on rent at the rate of Rs.70,000.00 per month. The petitioner was to bear expenses on its maintenance and the vehicle was to be got registered by him in name of the respondent but expenses borne on registration were to be deducted from the rental. The petitioner back tracked from his promise, failed to pay the rental and refused to return the machine. He committed forgery by getting the vehicle registered in his name by misusing the documents received from the respondent on the pretext of getting the vehicle registered in his (complainant) name. It is further argued that during course of investigation, the petitioner himself produced registration certificate of JCB Machine which on inquiry was found to be forged one as said registration number was issued to one Alto Car (Maruti) in the name of Joga Singh son of Dewan Singh, resident of Village Mullabadha, Tehsil Malerkotla. Counsel would submit that besides committing the offence of breach of trust and cheating, the petitioner is also guilty of committing offence by forging the registration certificate, therefore, the petitioner is not entitled to indulgence of this Court in exercise of inherent jurisdiction.

With regard to the order dated 07.08.2010 passed by the revisional Court for handing over the vehicle in question to respondent No. 2 while setting aside the order dated 11.05.2010 passed by the Sub Divisional Magistrate, Malerkotla in favour of the petitioner (subject matter of CRR 2261 of 2010), it is argued that as respondent No. 2 had purchased aforesaid JCB Machine, he is entitled to its possession pending disposal of trial.

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

Before adverting to the rival submissions made by counsels, it is appropriate to note that same set of facts may give rise to both civil and criminal proceedings. Equally true is that many a times, civil dispute is given the colour of criminality in order to satisfy some ulterior design or a *modus operandi* to settle civil dispute by putting pressure on the adversary. It has been consistently held by the Courts that if a dispute which is simply civil in nature is sought to be put cloak of criminality, the Court should lift the veil and examine real dispute between the parties and in case it is found that dispute is purely civil in nature, criminal proceedings should not be allowed to continue.

A plain reading of the allegations set up in the FIR would make it manifest that as per case of the complainant/respondent No. 2, he had given the vehicle in question on rent @ Rs.70,000.00 per month, payable by the petitioner. The petitioner neither discharged his liability qua payment of rent nor returned the vehicle. Even if these allegations are accepted as correct on its face value, in my considered opinion, the same gives rise to a civil dispute which has been given the colour of criminality. I would hasten to add that the petitioner has deposited huge amount in the Bank to discharge outstanding liability qua the vehicle in question. Counsel for the respondent is not in a position to dispute the documents placed on record by the petitioner in regard to payment of installments of loan in the Bank and as per these documents, the petitioner has deposited an amount of Rs.15,00,000.00 approximately in the Bank. The payment of such a huge amount by the petitioner further creates a doubt in the version of the respondent if JCB machine was given to the petitioner on rental at the rate of Rs.70,000.00.

Taken from another angle, as the petitioner has already paid huge amount for discharge of liability of loan raised for purchase of JCB machine, his liability to pay rental would be liable to be adjusted qua the loan amount already deposited by him. In this view of the matter, I find force in the contention of the petitioner that no offence punishable under Sections 406 and 420 IPC is made out against the petitioner.

Much stress has been laid by counsel for the respondent that the petitioner has committed offence of forgery by preparing a registration certificate of aforesaid vehicle in his name. Indisputably, no charge for committing offence of forgery has been framed by the trial Court. I am well conscious that charge can be altered by the Court at any stage of the proceedings by invoking relevant provisions of Code of Criminal Procedure. However, perusal of the report submitted under Section 173 Cr.P.C. and documents appended thereto would reveal that no such forged document is a part of report (challan) prepared by the police. On the contrary, there is observation by the investigating officer that the said document has been torn and destroyed by the accused. Once the alleged forged document is neither in custody of the police much less in custody of the Court, there is no question of framing of charge for committing forgery by the petitioner.

In view of the above, I am of the considered opinion that it is expedient and in the interest of justice that the criminal proceedings are not allowed to continue and given a burial.

So far as release of vehicle in question on *superdari*, indisputably, the police recovered possession of the vehicle from the petitioner. As per plea of the complainant, said vehicle was given to the petitioner by the respondent on rent. The respondent can recover possession of the vehicle only by taking recourse to appropriate proceedings in accordance with law. The civil litigation is already pending between the parties in regard to vehicle in question and the parties would be bound by the same. The petitioner has already discharged huge liability in regard to loan outstanding against the vehicle in question. In this view of the matter, I am of the considered opinion that the order dated 07.08.2010 passed by the revisional Court while setting aside the order dated 11.05.2010 passed by the Judicial Magistrate, Malerkotla cannot be allowed to sustain. The revisional Court has committed a gross error and failed to appreciate the matter in right perspective. Even otherwise, as the impugned FIR and proceedings arising therefrom are liable to be quashed, the parties are to be restored to status quo ante as it existed prior to lodging of criminal proceedings. As a result, the order dated 07.08.2010 passed by the revisional Court cannot stand the test of judicial scrutiny and hence set aside.

For the reasons aforesaid, CRM M 752 of 2011 is allowed and FIR No. 10 dated 29.04.2010 for offence punishable under Sections 406 and 420 IPC registered in Police Station City 1, Malerkotla, District Sangrur (Annexure P6) and proceedings emanating therefrom are ordered to be quashed.

Similarly, CRR No. 2261 of 2010 is allowed and the order dated 07.08.2010 passed by the Additional Sessions Judge, Sangrur is set aside and the order dated 11.05.2010 passed by the Judicial Magistrate, Malerkotla is restored.

Photo copy of the order be placed on the connected file.

(Rekha Mittal)
Judge

29.01.2015
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