IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Miscellaneous No.M-42299 of 2014 (O & M)
Date of Decision: *August 03, 2015*

M/s DU Parts Export Private Limited & another
..... PETITIONERS

VERSUS

Davinder Singh
..... RESPONDENT

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

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

. . .

PRESENT: - Mr. J.S. Bedi, Senior Advocate, with Mr. Zorawar Singh, Advocate, for the petitioners.

Dr. Anmol Rattan Sidhu, Senior Advocate, with Mr. Vishal Aggarwal, Advocate, for the respondent.

. . .

Jaspal Singh, J

1. M/s DU Parts Exports Private Limited and its Managing Director have filed instant petition under Section 482 Cr.P.C. for quashing complaint case No.285 dated August 12, 2013 (Annexure P-1) under Sections 406, 420 IPC, as well as summoning order dated March 29, 2014 (Annexure P-3) passed

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by Judicial Magistrate Ist Class, Ludhiana, vide which they have been summoned to face trial for an offence under Section 420 IPC.

2. Briefly stated, facts giving rise to instant petition are that respondent preferred a complaint under Sections 406, 420 IPC with the allegations that petitioners approached him and represented that they are potential buyers of his product and told him that they would be required a huge quantity of said product and agreed to make payment of each supply within 15 days from the date of receipt of each consignment of product. Believing the assertion of petitioners to be correct, respondent agreed to their proposal and started supplying his products to them vide different bills. Infact, petitioners had prepared a long drawn plan to cheat him. As such, they, with that intention, induced him to supply the goods. To win his confidence, they made certain part payments but as their intention was dishonest, they discontinued to make payment of entire supply of products purchased by them. As such, huge amount of ₹ 1,41,06,011/- is outstanding them. Petitioners were approached several times by him to adjust the account but they postponed the matter on one pretext or the other. Had he known that petitioners will not make payment of products, so purchased by them, he would not have sold the same to them on credit and would not have parted

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with the goods. Since petitioners had dishonest and deceitful intention of cheating, they made illegal gains for themselves and caused wrongful loss to him. The goods, so purchased, have been utilized by them by way of sale to their customers. Consequently, he lodged a complaint before the jurisdictional magistrate. On the basis of evidence adduced, petitioners were summoned to face trial under Section 420 IPC vide order dated March 29, 2014.

3. Feeling disheartened, petitioners preferred instant petition for quashing the complaint as well as summoning order.

4. In response to notice of motion issued by this Court, respondent appeared and resisted the petition.

5. While assailing the impugned complaint as well as summoning order, it has been ebulliently argued by learned counsel for petitioners, Mr. J.S. Bedi, Senior Advocate, with Mr. Zorawar Singh, Advocate, that respondent filed a false and frivolous complaint with malafide intention to harass petitioners in which they have been summoned to face trial under Section 420 IPC. Infact, respondent has miserably failed to establish the ingredients which constitute an offence under Section 420 IPC. Respondent has merely annexed certain arbitrary invoices raised upon the petitioners and has failed to *prima facie* prove that alleged outstanding amount is actually and legally due from

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them. Even if, contents of said complaint are believed to be true, at the most, it makes out civil case for recovery of unpaid amount of various invoices. Learned trial Magistrate has failed to appreciate the fact that transactions between petitioners and respondent are purely of commercial and civil nature. Petitioners have, till date, paid a total amount of more than ₹ 5.44 crore to respondent pursuant to said commercial transactions.

6. The learned counsel for petitioners has further urged that respondent has lodged a complaint on frivolous ground just to do away with court fee which is required for filing a suit for recovery as well as in order to unnecessarily harass petitioners, and taint their image in market with a criminal intent. If at all, there exists any dispute, same is of civil nature and does not stand the test of law, to be tried before a criminal court.

7. It has further been urged by learned counsel that there is a tendency in business to convert a simple dispute into criminal case because civil remedies are time consuming as well as to tarnish image and status of firm as well as its managing officers/officials. Moreover, summoning of a person is a serious matter which involves him in a protracted trial. He should be put to trial if there are some materials pointing out *prima facie*

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commission of some offence, and not just on the basis of a complaint and statement of complainant corroborated by one or other witnesses. Infact, there is no other material brought on record by respondent which may constitute the ingredients of cheating. The lodging of complaint is nothing but a novel device adopted by respondent to harass and hussle the petitioners. Even prior to the filing of instant complaint, respondent preferred a frivolous complaint under Section 138 of Negotiable Instruments Act, 1881 and in the said complaint, respondent had not even once demanded the alleged outstanding amount from petitioners. There is not a single letter, e-mail, notice or any other communication to this effect ever made by respondent to the petitioners. Matter of fact is that there was never an outstanding amount to be paid by petitioners to respondent. The complaint has been moved by respondent with a sole motive and malice to unnecessarily harass petitioners for the reasons best known to him.

8. While concluding his arguments, learned senior counsel submitted that all the factors disclosed by him coupled with each other are suggestive of the fact that complaint is false and at the most, dispute, if any, can be termed to be of civil nature as there is nothing to show that there was any malafide or

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dishonest intention at any point of time, what to talk of at its inception to commit any cheating with respondent.

9. Per contra, learned counsel for respondent, Mr. Anmol Rattan Sidhu, Senior Advocate, with Mr. Vishal Aggarwal, Advocate, has argued that various submissions made by learned counsel for the petitioners are without any legal substance. Infact, it is settled proposition of law that where parties are having commercial transaction and the person purchasing various goods made the complainant to believe that there was a genuine dealing and would make the payment on receipt of invoices and only made part payments, though, he sold the entire goods to others, offence of cheating *prima facie* is made out and no ground is made out to quash the complaint as well as stall criminal proceedings by declaring it as a commercial transaction. Moreover, in the case in hand, there are definite and specific allegations that petitioners started dealing with respondent, made certain part payments and thereafter, discontinued to make payments though the products were received by them from respondent. An amount of more than ₹ 1.40 crore is outstanding against petitioners which they have not paid despite several requests made to them. It was only thereafter, respondent was constrained to lodge a complaint and they were rightly summoned to face trial under Section 420 IPC

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on the strength of evidence adduced by respondent before the learned Magistrate. It is also well settled that criminal and civil proceedings can be proceeded with simultaneously. Mere fact that dispute is of civil nature does not *ipso facto* mean that aggrieved person is debarred or precluded from initiating criminal proceedings.

10. Moreover, allegations, set out in complaint, clearly establish a case of cheating and it cannot be said that these allegations, if taken at their face value and accepted in their entirety, do not *prima facie* constitute offence or make out a case against the accused or that the same are so absurd and inherently improbable on the basis of which no prudent person can ever reach at a conclusion that there is sufficient ground for initiation of proceedings or that criminal proceeding is manifestly attended with malafide and/or proceeding is maliciously instituted with an ulterior motive for wreaking vengeance.

11. It was next argued by him that instant petition under Section 482 Cr.P.C. for quashing is also not legally maintainable as other efficacious remedy by way of filing revision before learned Sessions Judge against summoning order is available to petitioners which has not been exhausted by them before approaching this Court. Thus, instant petition is

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nothing but an abuse of process of law and deserves to be dismissed.

12. After bestowing due consideration to the rival submissions made by learned counsel for parties, appraisal of various documents on record and scrutinizing contents of complaint as well as impugned summoning order, this Court finds substance in the contentions put-forth by learned counsel for the petitioners.

13. A glance at the contents of complaint (Annexure P-1) transpires that respondent has not disclosed various material aspects while filing the complaint. There is nothing in the complaint to suggest as to when commercial dealings started in between the parties and when some part payments were made. Similarly, there is nothing in the complaint to suggest as to when petitioners were approached by respondent to lodge a protest that they have committed cheating or that an amount of more than ₹ 1.40 crore is due and payable by them. However, during the course of arguments, it revealed that dealings in between parties started in the year 2008 and same were running smoothly till around 2011. During this period, petitioners have paid an amount of more than ₹ 5.40 crore to respondent as is evident from ledger account (Annexure P-2). Complaint, Annexure P-1, was lodged by respondent in the month of

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August 2013, whereas, summoning order, Annexure P-3, was passed by learned Magistrate on March 29, 2014. Complaint is also silent as to when petitioners discontinued to make payment. Here, it would be pertinent to mention that respondent did not opt to file a civil suit for recovery if any amount was outstanding against petitioners. It appears that he intends to extract the amount which is, otherwise, not recoverable under law by lodging instant complaint. No reason is also forth-coming as to why he did not exercise his right to recover the amount before Civil Court if it was actually outstanding or has been dishonestly retained or unpaid by petitioners, fully knowing that through instant complaint, he is not going to recover that amount which would otherwise become time barred. Even otherwise, if contents of complaint are believed to be true, at the most, it makes out a civil case for recovery of unpaid amount of various invoices. Respondent has also averred in his complaint that petitioners have made part payments. Assuming the same to be correct, question of part payment or complete payment is to be adjudicated upon by a Civil Court. The transaction in between parties can be termed to be purely of commercial and civil nature, and instant complaint preferred by respondent, is nothing but appears to have been filed with a view to convert purely simple dispute of recovery into a

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criminal one. No doubt, criminal and civil proceedings can continue simultaneously but facts and circumstances of each case are to be taken into consideration in this regard.

14. In the case in hand, there is nothing on record to suggest that there was malafide or dishonest intention on the part of either of petitioners, either at the very inception of dealings between parties or at any subsequent stage. Moreover, criminal complaint preferred by respondent also appears to have been maliciously instituted with an ulterior motive as petitioners discontinued their dealings while finding that products being supplied were not of that quality as were being supplied earlier. This Court finds sufficient ground to hold that complaint as well as summoning order are nothing but an abuse of process of law as well as Court.

15. As a sequel to aforesaid discussion, petition is allowed. Complaint case No.285 dated August 12, 2013 (Annexure P-1) under Sections 406, 420 IPC, as well as summoning order dated March 29, 2014 (Annexure P-3) are hereby quashed.

(Jaspal Singh)
Judge

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