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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: August 13, 2015

+ **CRL.M.C. 236/2014**

MAHESH JAWA Petitioner

Through: Mr. Himanshu Jawa and Mr.
Pankaj Rehani, Advocates

versus

SHIVAM INFOCOM PVT LTD & ORS Respondents

Through: Mr. Pankaj Tripathy, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

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(ORAL)

Petitioner's complaint against his previous employer which contains allegations of misappropriation of petitioner's salary stands dismissed by trial court vide order of 22nd April, 2013 by holding that the dispute between the parties appears to be of purely civil nature. The aforesaid order stands affirmed by the revisional court vide impugned order of 12th September, 2013. The sum and substance of the concurrent findings returned by both the courts below is that if petitioner-complainant has any grievance regarding his salary being wrongly deducted, then the remedy of civil suit lies and no case for initiating criminal proceedings is made out.

The factual background of this case, as noticed in the impugned order, is as under: -

“As per his case, complainant is a law abiding citizen and B.Tech Communication Engineer. He was employed in the

project department of Shivam Infocom Pvt. Ltd. (respondent no. 1), which is a telecom company engaged in the maintenance work and new network installations at sites, having corporate office at 185, DSIDC Complex, Okhla Industrial Area, New Delhi. Respondent no. 2 is Manager of said company and respondent no. 3 is Head of quality and outsource Department of same.

Complainant joined the company on 27.10.2010 as a trainee engineer for three months. Respondent no. 2 assured him to pay Rs.5,000/- for next three months and to increase his salary after seeing his regularity and work. He was also assured for conveyance, other incentives and bonus time to time. Respondent no. 2 was well impressed by the responsibilities, qualities and skills shown by complainant. He was sent at Vodafone in O & M department situated at Ghazipur to replace an experienced engineer. He was assured for an increase in his salary up to Rs.10,000/- per month but said promise was never fulfilled. In the month of January 2011, respondent no. 2 transferred complainant in Ericson at Gurgaon for removal of faults from BTS sites. On being requested by complainant that he was unable to go there being resident of Sonapat, respondent no. 2 and 3 suggested him i.e. complainant to reside at Okhla on rented accommodation and also to increase his salary. Complainant accordingly took a house at Kalkaji on rent. Respondents did not fulfill their promise. He was compelled to do work till late hours.

In February 2011, respondent / accused no. 2 asked complainant to join O & M of ETISALAT at Gurgaon under the supervision of Ericson. He was assured for an increase in the salary by respondent no. 2. In April 2011, complainant was present in the project of Vodafone. Respondent / accused no. 2 and 3 assured him to increase his salary and he (complainant) came to know that his actual salary was Rs.15,500/- per month in April 2011 but he was being paid only a sum of Rs.8,000/-. In month of September 2011, he got promotion in the company and

joined as Off Role Engineer at Gazipur. He was paid Rs.8,000/- approximately after necessary deductions. About a month prior to filing complaint, complainant was not fit in health. Despite that he remained regular in doing his duty but on 30.09.2011, he became unable to do his duty due to health problem. He went to Sonapat after informing respondent no. 3 regarding his ill health. Complainant came to know that he was suffering with jaundice. Doctor advised him to take proper care and caution. After taking rest of four days, when he joined his job on 03.10.2012, he was shocked to see the behaviour of respondent no. 3. The latter asked him to submit his laptop to one Parteek who had been appointed to re-place the complainant.

Contending that respondent no. 3 compelled him to submit resignation, complainant requested for summoning the respondents as accused for offences as mentioned above. Complainant examined himself as CW-1 and reiterated his allegations.”

On petitioner’s complaint, Action Taken Report was sought and as per the said Report, there was no discrepancy between the salary disbursed to petitioner-complainant in terms of the salary sheet and ‘ESIC Contributions’ deducted from his salary. In short, the grievance of petitioner-complainant is that he was illegally terminated from service after he remained absent due to his ailment and he had come to know in April, 2011 that he was paid Rs.8,000/- per month whereas his salary was Rs.15,000/- per month, but he continued to work with his employer till September, 2011 and after termination of his service, petitioner had sent legal notice of 4th November, 2011.

At the hearing, learned counsel for petitioner had placed reliance upon decision in *Ravindra Kumar Madhanlal Goenka and Anr. V. M/s.*

Rugmini Ram Raghav Spinners P. Ltd. AIR 2009 SC 2383, *Smt. Rumi Dhar v. State of W.B. and Anr.* AIR 2009 SC 2195, *M. Krishnan v. Vijay Singh and Another* AIR 2001 SC 3014, *M/s. Medchl Chemicals and Pharma Pvt. Ltd. v. M/s. Biological E. Ltd. and Others* AIR 2000 SC 1869 and *Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and Ors.* AIR 1976 SC 1947 to submit that criminal proceedings cannot be foreclosed because the dispute is of civil nature and civil and criminal proceedings can proceed simultaneously and that the allegations levelled in the complaint have to be taken on their face value.

The afore-noted legal position, as highlighted by learned counsel for petitioner, cannot be disputed, but it has to be seen in the facts and circumstances of this case as to whether the dispute raised in the complaint in question is of purely civil nature or it gives rise to civil as well as criminal proceedings.

After having heard learned counsel for the parties and on perusal of the impugned orders, the material on record and the decisions cited, I find that the dispute raised in the complaint in question lacks any criminality. Infact, the dispute raised by petitioner is indeed of purely civil nature.

Thus, finding no palpable error in the impugned orders, this petition is dismissed while not commenting upon merits of the dispute raised as it may prejudice petitioner in the eventuality of his initiating the civil proceedings.

**(SUNIL GAUR)
JUDGE**

AUGUST 13, 2015

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