IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr.No.209

Criminal Misc. No.M-32351 of 2018 (O & M)
Reserved on:21.08.2018
Date of Pronouncement:23.08.2018

Arun Kumar Menon and another

....petitioners

Versus

State of Punjab

.....respondent

CORAM: HON'BLE MR.JUSTICE ARVIND SINGH SANGWAN

Present: Mr.Sangram S.Saron, Advocate
for the petitioners

Mr. Gaurav Garg Dhuriwala, Sr.DAG Punjab

Mr.J.S.Bedi, Senior Advocate with
Mr.S.S.Brar, Advocate
for respondent No.2-complainant

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ARVIND SINGH SANGWAN, J. :

CRM No.29202 of 2018

Application is allowed as prayed for. Reply filed on behalf of the complainant along with Annexures C1 to C5 is taken on record.

Criminal Misc. No.M-32351 of 2018

Prayer in this petition is for grant of anticipatory bail to the petitioners in FIR No.2 dated 09.06.2018, registered at Police Station Punjab State Cyber Crime Police SAS Nagar, Mohali, under Sections 66 Information Technology Act and Sections 406, 420 of the Indian Penal

Code.

At the very outset, learned counsel for the petitioners submits that petitioner No.2 namely Ajay Kumar Menon has been arrested on 20.08.2018 from Mumbai, therefore, the petition qua petitioner No.2 is rendered infructuous.

Learned counsel for the petitioners submits that the dispute between the petitioners and the complainant is arising out of a settlement agreement dated 20.09.2016 (Annexure P3), and as per the agreement, M/s AppsDaily Solutions Private Limited (hereinafter referred to as 'Company') and M/s Sahib Tradelinks Pvt.Ltd.-complainant (hereinafter referred to as 'National Distributor') have agreed to certain terms and conditions and the Company was to provide "AppsDaily Wallet Points", which mean the points issued by AppsDaily to be used for redemption of the Products or the Services offered by the AppsDaily, including the points to be added in future. The Distributors means the parties purchasing the AppsDaily Wallet Points from the Super Stockist and selling the same to the Retailers in the defined Distributor Territory.

It is further submitted that even the obligation and responsibility of the National Distributor were defined and the complainant having been appointed as National Distributor was to do the marketing, sale and distribution of the Daily Wallet Points from Stockiest of the distributor operating in their respective Territory.

It is further argued that as per Clause 3 of the agreement, the National Distributor was to place orders with AppsDaily for the AppsDaily Wallet Points and make payments for the same directly to AppsDaily and on receiving the payment, the National Distributor will issue the corresponding amount of AppsDaily Wallet Points and further it will be the responsibility of National Distributor to distribute the same to the Super Stockist, Distributor and key accounts within the Territory. It is further submitted that as per Clause 3.3, payments made against AppsDaily Wallet Points are non-refundable and once the points are transferred from one Wallet account to another, the same cannot be returned/refunded/cancelled as there was a risk in the marketing, distribution and sale of AppsDaily Wallet Points.

It is further argued that the obligation was on AppsDaily to transfer the points to the wallet account of National Distributor on receiving the corresponding order and payment. Learned counsel has further submitted that even there was termination clause, which provides that either of the party shall have a right to terminate the agreement at any time, after providing 90 days' written notice and on termination by either of the party, the liability was also fixed under Clause 11.3. It is further submitted that as per Clause 12, the National Distributor had agreed to indemnify its liabilities and the agreement was subject to the jurisdiction of Mumbai for any dispute arising out of or in connection with the subject matter of the agreement. Counsel for the petitioners has thus argued that in fact, it is a civil dispute between the petitioners and complainant, which has been given a colour of criminal litigation and from a perusal of the FIR, no offence is made out.

Counsel for the petitioners has further argued that the petitioners never promised to provide huge profit to the complainant and there is no mens rea on the part of the petitioners if the Company has gone into losses and could not pull on its business.

Counsel for the petitioners has further argued that the investigating agency/police want to arrest the petitioners without following the procedure under Sections 41 and 41-A of Cr.P.C. Counsel for the petitioners has relied upon judgment of the Hon'ble Supreme Court in ***Arnesh Kumar vs. State of Bihar and another (2014) 8 Supreme Court Cases 273*** and ***Rini Johar and another vs. State of Madhya Pradesh and others, (2016)11 Supreme Court Cases 703.***

In Arnesh Kumar's case (supra), the Hon'ble Supreme Court, while dealing with the investigation of the cases arising out of the matrimonial case under Sections 406 and 498-A or Section 4 of the Dowry Prohibition Act, 1961, had issued certain guidelines as per Section 41 of Cr.P.C.

In Rini Johar's case (supra), the Hon'ble Supreme Court, relying upon the aforesaid judgment of Arnesh Kumar (supra), quashed the FIR registered against the accused persons. It is also held by the Hon'ble Supreme Court that the arrest of the accused persons was not done by following the procedure under Sections 41 and 41-A of Cr.P.C. Counsel for the petitioners has further submitted that from a bare perusal of the FIR, no offence under Section 66 of the Information Technology Act is made out.

Counsel for the petitioners further argued that there is no direct allegation against petitioner No.1, who is the Chief Executive Officer of the Company. It is further submitted that in a similar complaint filed against the petitioners, the proceedings before the trial Court were stayed by the Rajasthan High Court in ***Criminal Misc.(Petition) No.2089 of 2018, vide order dated 30.07.2018,*** titled as ***Arun Kumar CEO AppsDaily vs. State of Rajasthan and others***, observing that there is no direction dealing between petitioner and complainant in said case.

Learned counsel for the petitioners has also submitted that even in a similar FIR registered in District Durg, Madhya Pradesh, no allegations could be proved in the investigation. Learned counsel for the petitioners has also submitted that the co-accused, who was the Investor Director of the Company had filed the anticipatory bail application before this Court, which was declined, and the case of the petitioner No.1 is on same footing. The co-accused filed SLP (Criminal) No.6368 of 2048 and 6473 of 2018, and thereafter, the Hon'ble Supreme Court has passed the following order:

> *"The petitioner(s) in SLP (Crl.) No.6468/2018 and 6473/2018 is/are directed to surrender before the trial Court within five days from today and on such surrender they/he shall be released on interim bail in connection with FIR No.114 of 2018 registered with Police Station Kotwali, Bathinda, for a period of three months.*
>
> *We direct all the petitioners to co-operate with the investigation.*
>
> *We also direct the Investigation Officer concerned to file a statement regarding the progress of the investigation within three weeks from today.*
>
> *List on 11.09.2018."*

In reply, learned State counsel, on instructions from the Investigating Officer has submitted that the case of the co-accused i.e. Rajiv Indur Dadlani is on different footing as he was the non-Executive Director, whereas, the allegations of cheating in the present FIR are directly against the petitioners in the present case. It is further submitted that the Company allured the complainant to invest the huge amount of ₹ 3 crores with the assurance that being the National Distributor, they will be granted all the rights, whereas, the petitioners have simultaneously started supplying AppsDaily Wallet Points to Stockist directly and they cheated the complainant/National Distributor.

Learned senior counsel appearing on behalf of the complainant has argued that as per the agreement dated 20.09.2016, the complainant was appointed as sole National Distributor for the State of Delhi, Rajasthan, Punjab, Haryana, Chandigarh, Himachal Pradesh and Jammu and Kashmir and was given right to distribute the AppsDaily Wallet Points to Stockist and distributor in the aforesaid States and on such assurance the complainant had made an investment of ₹ 3.25 crores. However, immediately after the agreement it came to the notice of the complainant that the accused Company had started selling AppsDaily Wallet Points directly to the Stockists and Distributors even prior and subsequent to the agreement. The learned counsel has relied upon document Annexure-C1, in this regard, where AppsDaily Wallet Points worth ₹36 lakhs were sold to one Stockist. Learned counsel submits that this show that the intention of the petitioners was dishonest since the inception of the agreement with complainant.

Learned senior counsel has further argued that apart from this, the accused sold AppsDaily Wallet Points worth Rs.1 crore directly to British Communication, a Ludhiana based Company. Though the complainant has already paid ₹3.25 crores to them, and thus, the petitioners have cheated the complainant.

Learned senior counsel for the complainant further argued that thought the amount of ₹3.25 crores was transferred by way of RTGS, but instead of AppsDaily Wallet Points worth ₹3.25 crores, points of only ₹ 1 crore were transferred to the complainant-Company and even that could not be redeemed because of the closure of the business of Company. Therefore, the submission that the Company is willing to transfer the remaining Wallet Points is meaningless. It is further submitted that the Company has even cheated the complainant, yet on another pretext by giving mis-representation that there is an agreement with the National Insurance Company to provide the insurance to the purchasers of mobile phone who can redeem wallet points, as on the closure of the Company, no such corresponding service could be provided by the small shopkeepers who are now facing multiple litigation before the Consumer Court in different States.

It is further argued that multiple complaints are lodged against the accused and a series of serious complaints have been lodged even on the website of the Company that the phones which were given by the consumers for the purpose of repairing were never returned. It is thus submitted that the petitioners being the CEO of the Company entered into an agreement with the complainant with dishonest intention since inception to cheat and have allured complainant to partway ₹3.25 crores and further cheated by selling the wallet points outside the purview of the agreement, to earn more profit and by mis-utilizing the amount paid by the complainant.

In reply, learned counsel for the petitioners has submitted that violation, if any, of the agreement, is of civil consequences.

Learned State counsel, on a Court query has replied that notice under Section 160 Cr.P.C was issued to the petitioners and the petitioners were changing their address as there are number of complaints filed against them at various places and thereafter, after obtaining the warrant of arrest against petitioners from the Illaqa Magistrate, petitioner No.2 was arrested and therefore the police has followed the proper procedure.

I have heard learned counsel for the parties. From the detailed arguments and documents, it emerges that the dispute cannot be termed as a pre dominating civil dispute, for the following reasons:

(i) The accused admittedly received ₹3.25 crores from the complainant by RTGS and have failed to provide corresponding wallet points and rather closed the business.

(ii) Further to cheat complainant, the accused directly dealt with other companies within the Territory of National Distributor/complainant with crore of rupees, in spite of the fact that amount of more than ₹ 1 crore of complainant was already with the accused, which demonstrate the dishonest intention to collect maximum money and then close the business.

(iii) Merely because there is a clause in agreement to terminate agreement, do not absolve the criminal liability of accused and the termination can be on given ground, which are not made out in this case.

(iv) It is own case of the petitioners that similar FIR are registered in different States alleging cheating by them.

(v) There is no denial that petitioner No.1 is not the CEO of Apps Daily Solution Pvt.Ltd and therefore his case is distinguishable from co-accused Rajiv Inder Dudlani, who has been granted interim anticipatory bail by Hon'ble Supreme Court.

(vi)The police has obtained warrant of arrest from the Illaqa Magistrate, after giving notice under Section 160 Cr.P.C. Hence, there is no violation of Section 41 and 41-A of Cr.P.C.

Considering the fact that there are serious allegations of cheating as the petitioners have withheld an amount of about ₹ 1.5 crores and have misrepresented the complainant to enter into a business agreement to become a National Distributor for online sale of AppsDaily Wallet Points, insurance plan, warranty and damage protection through its AppsDaily Wallet and by itself violating the agreement has directly sold the AppsDaily Wallet Points to other agencies within the Territory of the National Distributor/complainant, thereby earning huge profit of more than ₹ 1 crores and causing loss to complainant by retaining his ₹ 1.5 crores, I find that the custodial interrogation of petitioner No.1 is required. Therefore, the present petition for anticipatory bail stands dismissed.

[Arvind Singh Sangwan]
Judge

23.08.2018
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Whether speaking/reasoned Yes
Whether reportable- Yes/No