IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-42478 of 2016
Date of Decision: 12.09.2018

Gaurav Kaushal ....Petitioner

VERSUS

Rajinder Singh Tohra ....Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Pritam Singh Saini, Advocate
for the petitioner.

Mr. Bhanu Pratap Singh, Advocate
for the respondent.

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SURINDER GUPTA, J.

This petition has been filed under Section 482 Code of Criminal Procedure (for short, 'Cr.P.C.') seeking quashing of Criminal Complaint No. 87 dated 05.05.2011 (Annexure P-4), instituted for offences punishable under Sections 420/465/467/471/477-A/120-B of Indian Penal Code (for short 'IPC') and summoning order dated 06.09.2016 (Annexure P-5) passed therein by learned Judicial Magistrate Ist Class, Hoshiarpur whereby petitioner has been directed to appear and face trial.

2. As per case of complainant-Rajinder Singh Tohra, he was appointed as General Manager/Managing Director of the Hoshiarpur Express Transport Company Ltd. on 28.02.2004 and till date he has been conducting affairs of the said company. Accused no. 1-Jasbir Singh Raja, in order to get control of the company, has been using illegal means and accused no.2-Gaurav Kaushal (petitioner), who was Managing Director of Kotak Mahindra Bank had connived with him to falsify the record of company in order to cause wrongful loss to it and wrongful gain to Jasbir

Singh Raja. In the meeting held on 18.08.2010, it was resolved that Jasbir Singh Raja has committed fraud of ₹20,33,070/- with the company with the help of petitioner. It was also revealed that Jasbir Singh Raja without consent of company and its directors had pledged ten buses of the company and had withdrawn ₹17,86,025/- from the bank on 15.03.2010, ₹2,47,015/- on 19.03.2010 and deposited the said amount in his personal savings account bearing no. 0004-0-050-001614. The loan was taken on behalf of the company by Jasbir Singh Raja and there was no reason for the petitioner to issue cheque in the personal name of Jasbir Singh Raja. This shows that both the accused have hatched a criminal conspiracy to play fraud and commit forgery in order to cheat the company and its share-holders. When complainant raised hue and cry, Jasbir Singh Raja in connivance with local police and in order to put pressure on complainant and his companions, got registered a false criminal case against them with the police of Police Station Model Down, Hoshiarpur. The complainant had reported the matter to Senior Superintendent of Police, Hoshiarpur and also Inspector General of Police, Jalandhar but no action was taken, hence this complaint.

3. The trial Court after recording preliminary evidence summoned Jasbir Singh Raja and petitioner for offences punishable under Sections 420/465/467/471/477-A/120-B IPC.

4. Learned counsel for the petitioner has argued that the petitioner has been made scapegoat in a dispute between complainant and Jasbir Singh Raja, who both are directors of M/s The Hoshiarpur Express Transport Company Ltd. The petitioner being manager of Kotak Mahindra Bank had sanctioned and paid the loan to company as per its resolution dated 20.02.2010, which is an admitted document. Vide this resolution, company

had authorized Jasbir Singh Raja to accept disbursement of payment of loan in his personal account. The petitioner being manager of the bank had no reason or concern to involve himself in a dispute between two directors and had discharged his duties as per law and rules of the bank.

5. As per resolution dated 20.02.2010, the Hoshiapur Express Transport Company Ltd. had opted to avail financial facility in the form of loan of ₹22 lakhs from Kotak Mahindra Bank Ltd. Jasbir Singh Raja was authorized to accept offer letter given by the bank and to execute required documents. It was also resolved in the above resolution that Jasbir Singh Raja be authorized to accept disbursement of payment of loan in his personal account The resolution, copy of which has been placed on file as Annexure P-1, reads as follows:-

> *"Format of Board Resolution*
>
> *Certified copy of resolution of Board of Directors*
>
> *The undersigned hereby certifies that he is Director of the Hoshiarpur Express Trpt. Co. Ltd. incorporated under the Companies Act, 1956, having its registered office at 217-L, Model Town, Hoshiarpur, hereinafter referred to as the "Company" and that the following is true, correct and complete copy of resolution adopted by the Board of Directors of the Company at a meeting duly called and held on 20.02.2010 at which a quorum was present and voting, and that the said resolutions are unchanged and are now in full force and effect:-*
>
> *Resolved that the Company do hereby convey its acceptance to avail the financial facility in the form of loan*

amounting to upto ₹22,00,000/- from the Kotak Mahindra Bank Ltd. on such terms and conditions as the bank may prescribe from time to time. Further resolved that the company be authorized and empowered to enter into financial (sic) with Kotak Mahindra Bank Limited ("the Bank") in such form and upon such terms and conditions as the Bank may require and to execute and deliver from time to time such documents as may require including promissory notes and other evidences of indebtedness bearing such rate of interest as the Bank may require from time to time, and other title detentions or securities as and in such form by the Bank may require evidencing any financing extended by the Bank to the Company.

Further resolved that Mr. Jasbir Singh be authorized to accept the offer letter given by the Bank, containing the detailed terms and conditions and also to execute and deliver on behalf of the Company, facility agreement and all other documents and instruments in connection therein including Demand Promissory Note, Power of Attorney and other documents as may require by the Bank from time to time.

Resolved further that a certified copy of the resolution to be given by any of the directors and/or company secretary of the company to the Bank. Further resolved that Mr. Jasbir Singh be authorized to accept the disbursement payment in his personal account."

6. It is clear from perusal of above resolution that Jasbir Singh

Raja was not only authorized to deal with the bank for taking loan of ₹22 lakhs but he was also authorized to execute required documents. Jasbir Singh Raja was specifically authorized to accept disbursement of payment in his personal account.

7. The petitioner being Manager of the bank had complied with terms of above resolution and had paid loan accordingly. The dispute is in between two directors of the company and if any embezzlement is there on the part of Jasbir Singh Raja, it is for him to explain. It appears that petitioner has been arrayed as accused with ulterior motive and only to put pressure on him and complaint filed against him is a clear case of misuse of process of court and calls for its quashing.

8. Consequently, this petition is allowed and Criminal Complaint No. 87 dated 05.05.2011 (Annexure P-4), and summoning order dated 06.09.2016 (Annexure P-5) along with all consequential proceedings arising therefrom, qua petitioner, are quashed.

August 12, 2018 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No