

In the High Court of Punjab and Haryana at Chandigarh

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(1) Criminal Misc. No.M-20549 of 2013

.....

Date of decision:21.02.2019

Joginder Sondhi and another

...Petitioners

v.

Rajnish Pahuja

...Respondent

....

(2) Criminal Misc. No.M-20700 of 2013

.....

Paola Giordano and others

...Petitioners

v.

Rajnish Pahuja

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. R.S. Rai, Senior Advocate with Mr. Kunal Dawar,
Advocate for the petitioners.

Mr. K.S. Nalwa, Advocate for the respondent.

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Inderjit Singh, J.

This order will dispose of the above mentioned two criminal miscellaneous petitions filed under Section 482 Cr.P.C. for quashing of criminal complaint No.154 RS dated 3.3.2008 (Annexure-P.1), titled “Rajnish Pahuja Vs. Joginder Sondhi and others” filed under Sections 420,

406, 467 and 506 IPC pending in the Court of learned Judicial Magistrate Ist Class, Gurgaon along with all subsequent proceedings arising therefrom including the summoning order dated 15.5.2013 (Annexure-P.2) passed by learned Judicial Magistrate Ist Class, Gurgaon summoning petitioners under Sections 420, 406, 467 and 506 IPC.

Notice of motion has been issued in these cases.

Mr. K.S. Nalwa, learned has appeared on behalf of the respondents and contested these petitions.

I have heard learned counsel for the parties and have gone through the record.

A perusal of the record shows that Rajnish Pahuja filed complaint against Joginder Sondhi, R. Sunil employees, Ian M. Nolan-Plant Director, Ivano Giordano-Owner, Sergio Collambato-Director, Antenelo Vautero-Director and MS. Paola Giordano, Director of OCAP Chassis Parts Pvt. Ltd. under Sections 420, 406, 467 and 506 IPC. It has been stated in the complaint that the complainant is engaged in the business of manufacturing of rubber products for automobile industries since long. The complainant entered into an agreement with accused Nos.3 to 7, who agreed throughout the said agreement to purchase rubber boots used in the automobile sector with the complainant vide agreement dated 22.8.2001. Since then accused Nos.3 to 7 have been purchasing rubber boots from the complainant as per their requirements and agreement. The accused stopped the payment amounting to ₹9,21,899/- of the complainant without any rhyme and reason of the rubber products from 20.8.2007 to 19.11.2007.

The accused were having fraudulent intention to cheat the complainant and

instead of making payment started taking excuse that the Companies in Germany, with which the accused are having business transaction for rubber products, are not satisfied with the products supplied by the complainant. It has also been stated that the accused withheld the payment to the complainant yet form-'C' was executed by the accused for exemption of tax to be paid by the accused in the Taxation Department. It is also stated that on 11.1.2008 at about 11.30 p.m. accused No.1 and 2 came to the house of the complainant, knocked the door and when the complainant came out from his house, they threatened the complainant to withdraw the case for demanding outstanding dues otherwise the complainant would be killed.

After perusing the complaint, I find that firstly, no criminal offence is made out. It is a dispute between the parties regarding business transactions. The business transactions were being carried out from the year 2001 and the dispute had arisen in the year 2007 for payment of ₹9,21,899/-. As per the complaint itself, the accused were stating that the products were defective and withheld the payment. It means that the accused had no intention to cheat the complainant or to commit the fraud from the very beginning as they were already for six years purchasing the goods and paying the money. A perusal of the complaint itself shows that the dispute regarding this payment is of civil nature and no cognizable offence is made out.

Secondly, as regards the fact as to whether accused No.3 to 7 entered into agreement is also pleaded as false in the complaint. It is admitted by the learned counsel for the respondents at the time of arguments that the contract was with the Company and none of these accused No.3 to 7

had signed on the agreement. It is settled law as held by the Hon'ble Supreme Court that in the case under Section 406 IPC etc. the Directors and other employees cannot be held liable vicariously without impleading the Company as accused. In the present cases, the Company has not been impleaded as accused. Furthermore, the version that accused No.1 and 2 came to the house of the complainant on 11.1.2008 also cannot be believed. It is the money of the Company and accused No.1 and 2 are not personally interested in the amount or withdrawal of the case etc. Furthermore, the occurrence took place on 11.1.2008 and the complaint had been filed on 3.3.2008.

A perusal of the record shows that firstly, the complaint is not maintainable against the accused as the Company has not been impleaded as party. Furthermore, this case is of civil nature and the filing of the complaint by showing threat etc. on 11.1.2008 also looks doubtful in the facts and circumstances. The Police has not taken any action on the complaint filed by the complainant regarding that occurrence and there is unexplained long delay in filing the complaint. In these circumstances, I find that the filing of this complaint is nothing but an abuse of the process of law and amounts of miscarriage of justice.

Therefore, finding merit in these petitions, the same are allowed. Criminal Complaint No.154 RS dated 3.3.2008 (Annexure-P.1), titled "Rajnish Pahuja Vs. Joginder Sondhi and others" filed under Sections 420, 406, 467 and 506 IPC pending in the Court of learned Judicial Magistrate Ist Class, Gurgaon along with all subsequent proceedings arising therefrom including the summoning order dated 15.5.2013 (Annexure-P.2)

passed by learned Judicial Magistrate Ist Class, Gurgaon, summoning petitioners under Sections 420, 406, 467 and 506 IPC are hereby quashed qua the petitioners.

February 21, 2019.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No