IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-23194-2010 (O&M)
Date of decision : 23.05.2019

Anil Kumar and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Gagandeep Singh Virk, Advocate for the petitioners.

Mr. Bhupender Beniwal, AAG, Punjab.

Mr. A.D. Narula, Advocate for
Mr. Rahul Sharma, Advocate for respondent No.2.

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ANIL KSHETARPAL, J.

Petitioners, who are partners of a partnership firm M/s Satish Kumar Anil Kumar, have filed this petition under Section 482 of the Code of Criminal Procedure for quashing of FIR No.320 dated 14.10.2003 under Sections 406, 420, 506, 120-B of the Indian Penal Code registered at Police Station Focal Point, Ludhiana, a final report under Section 173 Cr.P.C.- challan No.53/1 dated 05.02.2005, order dated 08.04.2005 framing the charge, affirmed in revision by the Additional Sessions Judge, vide order dated 06.07.2010.

The allegations made in the complaint lodged with the police which has resulted into registration of FIR are to the effect that complainant-respondent No.2 is carrying on business of manufacturing and supplying of fertilizers including Di-Ammonium Phosphate (DAP in short). It is the case of the complainant (an incorporated company) had been supplying DAP to the accused from time to time and payments of those supplies were always made by the accused which had been duly adjusted by the petitioners against their outstanding bills. It is further alleged that there was meeting in the office of the complainant company where accused assured remaining payment. It is pleaded that out of Urea (another kind of fertilizer) supplied worth ₹48,47,028/-, payment of ₹27,77,085/- has been received whereas remaining payment of ₹20,69,943/- has not been paid. It has further been alleged that some post dated cheques worth ₹20,26,890/- were issued with a promise that the same will be encashed on presentation but these cheques have been dishonoured with the remarks "payments stopped by the drawer". It is alleged that accused has hatched deep rooted conspiracy to defraud and cheat the complainant company. Once again meeting was held at the office of complainant company wherein payment was demanded, however, accused refused to make the payment and threatened the petitioners with dire consequences and even threatened to eliminate an official of the company.

After investigation, police presented challan (report under Section 173 of the Code of Criminal Procedure) which is Annexure P-2.

Some more facts would be required to be noticed.

Petitioners who are accused in the criminal case had instituted a suit for mandatory injunction directing defendants including the complainant company to settle the accounts with the plaintiff firm for the years 2001-2002 and 2002-2003 with consequential relief of directing the defendants to hand over regular statements, genuine and valid invoices for whole supply of DAP to the plaintiffs and to pay the amount as per final account, if any and to return the cheques of the plaintiff which had been taken as security. The aforesaid suit was decreed with following directions:-

> *"6. Under these circumstances, suit of the plaintiff is decreed to the effect that defendants are directed to settle the accounts with the plaintiff firm, for the year 2001-02 and 2002-03. The defendants are also directed to handover the required statement of account, genuine and valid bills of whole supply of DAP to plaintiff and to pay the amount, if any as per the final account and also to handover the cheques of plaintiff which the defendants had taken as security. Decree sheet be prepared. File be consigned to the record."*

It may further be noted that although it is alleged that on the dishonour of the cheque, complaint under Section 138 of the Negotiable Instruments Act, was filed, however, although a period of more than 7 years have elapsed but accused-petitioners have not even received notice of the aforesaid complaint under Section 138 of the Negotiable Instruments Act, allegedly instituted by the complainant-respondent No.2 company.

This Court has heard learned counsel for the parties and with their able assistance gone through the documents filed in the paper book.

Learned Senior Counsel for the petitioners while opening his arguments has submitted that petitioners accused in the FIR had been repeatedly requesting complainant company respondent No.2 herein to give complete invoices of the fertilizers supplied enabling them to settle the accounts. He has referred to letters Annexure P-5 (Colly). He further submitted that now once the civil suit has been decided, wherein it has been found that cheques in question were given as security cheques, not against any settled payment, and respondent No.2 company-complainant has not supplied invoices of the whole supply of DAP fertilizer, therefore, continuance of the proceedings is abuse of the process of the Court. He further submitted that the fertilizer which has been supplied to the petitioners is a Government controlled business and officials of the agriculture department keep a check on every step. Hence, proper record and valid invoices are required which the complainant company had failed to supply.

On the other hand, learned counsel appearing for respondent No.2 has submitted that officials of respondent No.2 company have not come forward to assist him and, therefore, he is not in a position to admit or deny the contentions raised by learned counsel for the petitioners.

Learned counsel for the State has submitted that on the basis of the assertions made in the complaint, investigation was carried out and challan was presented, charges have been framed.

It has been noticed that there is growing tendency of converting civil disputes into criminal one as there appears to be an impression with the business community that through criminal proceedings, recovery can be made faster. Hence, the Courts under an additional duty to examine the facts of each case, scrutinize the same and after analysing, come to a prima facie finding as to whether proceedings initiated are only to pressurize and in fact it is dispute of civil nature.

In the present case, business dealings between the parties are not in dispute. It is also not in dispute that partial payment has been made. It is further not in dispute that Civil Court in a suit inter parties have held that the cheques in questions in fact were issued as a security cheques and complainant has been directed to hand over required statement of account and genuine and valid invoices enabling petitioners, their firm to settle the accounts. It may be noted that in the judgment passed by the Civil Court, it has been pleaded by the plaintiff-firm therein that in January 2003, petitioners and officials of defendant No.2 company alongwith others settled their accounts for ₹17,00,000/- and plaintiffs petitioners got prepared demand draft of ₹17,00,000/- bearing No.090515 dated 18.02.2003 but thereafter complainant-respondent No.2 company did not come forward to receive the amount. It is in wake of these pleadings that the Civil Court decree has been passed.

In such circumstances, this Court has come to a conclusion that the dispute between the parties is of civil nature and initiation of criminal proceedings and continuation thereof shall be an abuse of the process of Court and hence cannot be sustained.

Hence, FIR, the challan and subsequent proceedings shall stands quashed.

Accordingly, the present petition is allowed.

23.05.2019 **(ANIL KSHETARPAL)**
Pawan **JUDGE**

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