IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-41226-2015 (O&M)
Date of Order: 19.11.2019

Ravi Kukreja and another

..Petitioners

Versus

State of Haryana and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gautam Dutt, Advocate and
Ms. Akanksha Verma, Advocate
for the petitioners.

Mr. Anmol Malik, AAG, Haryana

Mr. Harsh Aggarwal, Advocate
for respondent no.2.

ANIL KSHETARPAL, J.

Petitioners have filed this petition seeking quashing of FIR No.77, dated 12.03.2013, registered under Sections 406/420/467/471/120-B/506 IPC, at Police Station City Sonepat, District Sonepat, subsequent proceedings including final Police report dated 12.06.2014 and all consequential proceedings arising therefrom on the ground that the same gives rise to a civil dispute and not a criminal offence, hence, continuation of criminal proceedings shall result in abuse of the process of court.

In 2015, when the petition was filed, notice in the petition and notice regarding stay was issued. In nutshell, the allegations are that Ravi Kukreja and Jitendra Kukreja, petitioners herein are Directors of Presidium Breweries Private Limited. The company through the petitioners entered into an agreement authorising M/s Bhatia & Co. to sell its five alcoholic drinks in States of Punjab and Haryana. The brands which were permitted to be sold are as under:-

(1) Host whisky

(2) Block Forest whisky

(3) Lavansha Duet gin,

(4) Personal Adviser Whisky; and

(5) Lavasha Vodka.

For that, a sum of Rs.10,00,000/- was received as security for State of Haryana and Rs.5,00,000/- for state of Punjab. The agreement was valid for a period of 5 years. M/s Bhatia & Co. was supplied alcoholic drinks worth Rs.10,57,381/-. Thereafter, there was a tripartite agreement, on the representation of Ved Parkash son of Prabhu Dayal, on 29.12.2011 whereby M/s Bhatia & Co. transferred its business of authorized marketeer of these five alcoholic drinks on behalf of Presidium Breweries Private Limited to complainant/respondent-Vinod Chhabra. The gravement of the allegation is that petitioners or Presidium Breweries Private Limited are not manufacturers of the aforesaid alcoholic drinks and therefore, first informant-respondent no.2 herein has been cheated. It has been claimed that, after including the sum already paid by M/s Bhatia & Co., a total amount of Rs.48,00,000/- has been received and alcoholic drinks worth of Rs.11,07,381/- have been supplied including alcoholic drinks worth of Rs.50,000/- to respondent no.2 and therefore misappropriated Rs.46,92,619/-. It is claimed that these five brands referred above belong to company-Alcobrew Distilleries India Pvt. Limited and therefore, accused have misrepresented and cheated first informant.

Keeping in view the facts of the case, Superintendent of Police, Sonepat, was directed to file affidavit after consulting with the District Excise and Taxation Officer, Sonepat, as the practices in Excise Department can be best responded to by the concerned department.

Pursuant to the aforesaid order, Superintendent of Police, Sonepat, has filed affidavit disclosing that no offence of any nature under Punjab Excise Act, 1914 is made out. It has further been stated that petitioners who represent Presidium Breweries Pvt. Limited have an agreement for selling the aforesaid alcoholic drinks, bottled from M/s Alcobrew Distillers Pvt. Limited vide agreement dated 19.10.2010. These five brands referred above are duly approved for sale in Haryana in favour of Alcobrew Distilleries India Pvt. Limited (authorized bottling company).

In fact, in the present case from the documents available on the file particularly Annexure P-6, issued by Registrar of Trade Marks under the Trademark Act, 1999, it is apparent that it is Presidium Breweries Pvt. Limited, who owns the brands of alcoholic drinks referred above. The Presidium Breweries Pvt. Limited had been getting it bottled/manufactured, on job work basis, from Alcobrew Distilleries Pvt. Limited. Initially M/s Bhatia & Co. was given authorization to worker/sell these products in States of Haryana and Punjab for a period of 5 years. The aforesaid business was later on transferred in favour of first informant-respondent no.2 herein. Relevant terms of agreement dated 22.12.2011 are extracted as under:-

> "4. *Now it has been decided between parties No.1, 2 and 3 that due to some financial reasons party No.2 i.e. M/s Bhatia & Company is not willing to carry on the business with party No.1*
>
> *5. Party No.3 has been introduced by party No.2 No.1 with a proposal that party No.2 is transferring the business agreement and operations to Party No.3.*

6. For this party No.1 has agreed to do the busines with party No.3.

7. Party No.2 had done some business with party No.1 and in this business party No.2 had paid Rs.28 lakhs to party No.1. Now party No.2 has decided to transfer/credit this Rs.28 lakhs to the account of party No.3. This amount transferred is on account of money which was paid to party No.2 by party No.3 for which both parties No.2 and 3 mutually agreed.

8. Party No.2 had done some sales from the goods supplied from Party No.1, for which Party No.2 was entitled to receive the payment from the customers. Now it is decided that payments to be received from customers against these sales now ill be received by Party No.3.

9. After this party No.2 surrenders all his rights of business agreement with Party No.1 and business will now be carried betwwen Party No.1 and party No.3 as per terms and conditions of agreement between party No.1 and 2.

10. After this agreement there is no business understanding between party No.1 and 2 and all the previous agreement and terms and conditions stand cancelled. As the business is transferred from party No.2 to part No.3 Party No.1 does not hold any liabilities either to party No.2 and party No.3 arising due to this agreement.

11. Any disputes occurring due to this transfer of business/agreement are solely between party No.2 and 3 and true to be resolved between party No.2 and 3 solely and between them mutually. Party No.1 is not at all concerned with any of the disputes between party No.2 and 3.

In the aforesaid agreement, Party No.1 is Presidium Breweries Pvt. Ltd., whereas Party No.2 is M/s Bhatia & company, whereas Party No.3 is Mr. Vinod Chhabra, respondent no.2 herein.

From the reading of the statement of first informant, it is apparent that the first informant also admit that alcoholic drinks worth Rs.50,000/- have been supplied to him whereas M/s Bhatia & Co. had been supplied alcoholic drinks worth Rs.10,57,381/-. Thereafter, first informant had raised objection that the aforesaid brands does not belong to M/s Presidium Breveries Pvt. Limited from where the dispute arose. There is further reference to a subsequent agreement whereby M/s Presidium Breveries Pvt. Limited agreed to refund the amount. It is important to note that M/s Presidium Breveries Pvt. Limited is owner of the brand referred above. Thus, the only narrow dispute remains i.e. whether non refund of the money amounts to a criminal offence under Section 406/420.

This court has heard learned counsels for the parties and with their able assistance gone through the paper book.

It is apparent that a civil dispute between the parties is sought to be converted into a criminal case. Breach of contractual obligation normally do not give rise to criminal offence. The criminal prosecution is for punishing the offenders for having committed criminal offence. However, breach of an agreement between the parties does not necessarily result in criminal offence. Reference in this regard can be made to the judgments passed by the Hon'ble Supreme Court in the case of ***Indian Oil Corporation vs. NEPC India Ltd., (2006) 6 SCC 736***, ***G.Sagar Suri and another vs. State of UP and others, (2000) 2 SCC 636*** and ***Md. Ibrahim & Ors. vs State Of Bihar & Anr., (2009) 8 SCC 751***. The Hon'ble Supreme Court has cautioned the subordinate courts to be wary of tendency of the parties to criminalize the civil disputes which are essentially of Civil nature having no ingredients of the criminal offence.

In view of the aforesaid terms of settlement, at the most, case which can be made out against the petitioners who represent Presidium Breweries Pvt. Limited is in the nature of a civil dispute arising from violation of an agreement, if any, executed between the parties on 29.12.2011.

Hence, in view of the discussion made above, no criminal offence is made out. Accordingly, FIR and all subsequent proceedings arising therefrom are ordered to be quashed qua petitioners.

Petition allowed.

19th November, 2019 **(ANIL KSHETARPAL)**
nt **JUDGE**

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