IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-7187 of 2015 (O&M)
Date of Decision: April 03, 2019

Ved Kundu and another

...Petitioners

VERSUS

M/s Eshma Tractors and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Loveleen Dhaliwal, Advocate
for the petitioners.

Mr.Munfaid Khan, Advocate for
Mr.Amit Jain, Advocate
for respondent No.1.

Mr.Sharad Kumar Yadav, DAG, Haryana
for respondent No.2-State.

****

INDERJIT SINGH, J.

Petitioners have filed this petition under Section 482 Cr.P.C. for quashing of criminal complaint No.404-I of 29.01.2009/06.04.2012 under Sections 403, 406, 418, 420, 120-B and 34 IPC, summoning order dated 11.08.2012 passed by learned JMIC, Jind, whereby the petitioners were summoned to face trial for the offences punishable under Sections 403, 406, 418, 420, 120-B and 34 IPC and judgment 06.02.2015 passed by learned Addl. Sessions Judge, Jind, vide which, revision petition filed by the petitioners was dismissed along with all subsequent proceedings arising therefrom.

Notice of motion was issued. Learned counsel for respondent

No.1 as well as learned State counsel appeared and contested the petition.

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

From the record, I find that M/s Eshma Tractors, Jind, through its proprietor filed a complaint against Ved Kundu and Ramphal Kundu under Sections 403, 406, 418, 420, 120-B and 34 IPC. The brief averments of the complaint as noted down by learned JMIC, Jind, are as under:-

> *"2. Precisely stated the allegation of complainant against the accused are that the complainant/applicant had filed criminal complaint titled as M/s Eshma Tractors vs. Ved Kundu and others in the Court on 07.05.2007 and the same was referred to P.S. City Jind under Section 156(3) Cr.P.C. for registration and investigation of the case. Police of P.S. City Jind had registered the case vide FIR No.274 dated 22.05.2007 against both the accused persons Ved Kundu and Ramphal Kundu. However, the police did not arrest both the accused persons despite having evidence against them and dismissal of their anticipatory bail application by the Court of ASJ, Jind, vide order dated 04.07.2007 and 25.08.2007. Accused No.2 Sh.Ram Phal Kundu is an Ex-MLA, Safidon and as such the police did not investigate the case properly by examining all the witnesses and documents annexed with the complaint under political pressure and just to favour the accused person. Whereas both the accused persons have committed the aforesaid offences. In case from the allegations levelled in the complaint if no prima facie case had been made out then certainly the Court of Ld. Addl. Sessions Judge, Jind had granted concession of anticipatory bail to them. The complainant is not satisfied with the investigation of the Investigating Officer in the case and lodges protest against his report. The complainant wants to prove the allegations levelled*

in the complaint by leading evidence in the Court. Accused No.2 is a fast friend and business partner of accused No.1 They both belong to the same political party and running joint business of real estate in their own name or in Benami names to earn more and more profit for each other. Both the accused persons used to sit and eat together at Jind as well as Gohana and other places. Complainant was wholesale distributor of Sonalika Tractors whereas accused No.1 was appointed as dealer of the tractor by the Company/Manufacturer of Tractors for Gohana. As such accused No.1 had purchased Sonalika Tractors from the complainant on credit basis during that period 14.09.2000 to 26.02.2002 for Rs.21,51,550/- and after part payment of Rs.9,80,000/- made by the accused No.1, a sum of Rs.11,71,550/- was due to the complainant from the accused No.1 towards principal amount. In addition to principal due amount, accused No.1 had agreed to pay to the complainant the financial charges @ 36% per annum inclusive of interest @ 2.5% per month and surcharge, compensation for delayed payment @ 6% per annum. Accused No.1 has made part payment to the complainant vide Cheque No.528664 dated 01.07.2003 for Rs.15,00,000/- drawn on Allahabad Bank, Gohana, but the said Cheque on presentation was dishonoured by the Allahabad Bank on 02.07.2003 on the ground of "Account Closed" and for this purpose a criminal complaint in C.C. No.1677 of 2003 filed U/s 138 and 142 of the Negotiable Instruments Act is pending in the Court of XI Additional Chief Metropolitan Magistrate, Secunderabad. Accused No.1 had put his appearance before the court on 15.03.2007 when the warrant of proclamation U/s 82 of the Cr.P.C. was issued by the Court against him and he is on bail. Accused No.1 had filed a petition before the Court of Andhra Pradesh praying to quash the aforesaid complaint, but the same was dismissed in favour of the complainant. Subsequently on the failure of accused No.1 to put in appearance in the Court at

Secunderabad, Hon'ble Court was pleased to order for issuance of non-bailable warrant of arrest of accused No.1 and the said warrant remained pending for a long time. The non-bailable warrant was sent to the place of the accused No.1 for execution but he managed to see that the same be not executed against him under any circumstances. Accused No.1 tried his level best to see that the complaint can be closed without causing any harm to him, but he could not succeed in his attempt. After realizing that accused No.1 would have to face the prosecution and that he would be sentenced to imprisonment in the complaint, accused No.1 approached the complainant with the proposal of settlement using indue influence through accused No.2. It appears that accused No.1 in collusion with the accused No.2 hatched a plan to wriggle out of the prosecution of criminal complaint and the imminent imprisonment under the guise of settlement and compromise. However, the complainant was unaware of the ill designs of the accused reciprocated for settlement in true spirit with the fond hope that the matter in controversy would be settled once for all. Both the accused induced the complainant to agree for the settlement with the promise to make the payment of the due amount without fail. Accused No.1 had indeed induced the complainant to part with the property of tractors promising to pay the amount and even at the time of making such promise they had no intention to make the payment to the complainant and did so to cause wrongly and illegal loss to the complainant and to have illegal gain/profit for themselves. However, believing the promise of both the accused and reposing confidence in their representations, the complainant agreed for compromise.

On 29.05.2006 an agreement/Ikrarnama was executed by the accused No.1 with the complainant at Jind to settle the Criminal Complaint No. 1677 of 2003 and accused No.2 became Guarantor of accused No.1 whereas Sh.Sat Paul

Bansal r/o Jind became guarantor on behalf of the complainant. As per the agreement/Ikrarnama it was settled that accused No.1 will pay a sum of Rs.16,00,000/- to the complainant and the amount paid on 02.05.2006 of Rs.5,00,000/- will be adjusted and the remaining amount was agreed to be paid on or before 30.11.2006. In the event of failure of the accused to pay the amount was agreed, the amount of Rs.5,00,000/- already paid by him will stand forfeited to the complainant. It was also settled that the accused no.2 stood as guarantor of accused No.1 and he will arrange and deliver the balance payment in time through accused No.1 and in that event that complainant will withdraw the criminal complaint. However, the accused No.1 did not make the aforesaid balance payment to the complainant nor the accused No.2 arranged the delivery of balance payment through the accused No.1 in pursuance of agreement on or before 30.11.2006 and as such the complainant did not withdraw the criminal compliant. Two copies of the agreement were prepared and one copy was handed over to the accused No.1 and another copy to the complainant. Both the accused persons have hatched a criminal conspiracy to commit act in furtherance of their common intention and common object and in connivance and consultation of each other with malafide intention to get the criminal complaint withdrawn without making the payment of balance amount along with financial charges under the garb of agreement/Ikrarnama. Accused No.1 had dishonestly misappropriated the balance amount and financial charges and converted the amount for his own personal use illegally and malafide intention in consultation, collusion and criminal conspiracy of accused no.2 by taking undue benefit of his political status being Ex-MLA. Complainant has dominion and legal right over the balance amount/moveable property and the same is lying as entrustment with accused No.1 and he has refused to *return/pay the same to the complainant despite demand, issuance of Cheque and entering into an agreement/Ikrarnama. Both the accused are dishonestly, willfully using the aforesaid amount of complainant for their personal gain and to cause unlawful loss to the complainant and using the same in purchasing and selling the land either in their own name or in the name of their own person by way of benami purchase to get maximum profits for themselves and to cause unlawful loss to the complainant in violation of legal contract made by them for touching the discharge of such trust knowing the fact that this amount belongs to the complainant only. Complainant has come to know that both the accused persons had purchased large piece of land along with big building constructed thereon village Rukhi near Gohana on Gohana Rohtak Road in the name of wife of accused No.1 and one hotel in the area of District Sonepat. After selling part of the property, both the accused have purchased in village Nidani/Nidana District Jind and in District Sirsa by using the amount of the complainant. The relations between both the accused persons can be verified by pursuing the details of telephone calls made during the last five years. Thus, both the accused persons have dishonestly converted the amount of complainant for their own use and they have dealt with the same otherwise. Both the accused persons have committed cheating with the complainant with knowledge of the fact that wrongful loss will ensue to the complainant by not repaying the amount and whereas they were bound to protect the interest of the complainant in the transaction. In this way, both the accused persons have dishonestly and illegally committed a fraud with the complainant with malafide intention to cheat the complainant for gaining unlawful and illegal profit for themselves by retaining and using the amount/moveable property for their own use and profit."*

From the perusal of the record, I find that the case of the complainant is that he is wholesale distributor of Sonalika Tractor. Ved Kundu was appointed as Dealer of the Tractors by the Company/Manufacturer of Tractors for Gohana. Accused No.1 Ved Kundu purchased Sonalika Tractors from the complainant on credit basis during the period 14.09.2000 to 26.02.2002 for ₹21,51,550/- and after part payment of ₹9,80,000/- made by accused No.1, a sum of ₹11,71,550/- was due. As per the case, accused No.1 also agreed to pay financial charges plus interest for delayed payment. As per case of the complainant, accused No.1 made payment of ₹15 lakhs but that cheque was dishonoured and criminal complaint was filed. The cheque is stated to be of 01.07.2003. As per complainant, the parties also reached to the agreement for payment of the money but that money was not paid. This agreement was of May 2006. the allegation against accused No.2 Ramphal Kundu is that he stood guarantor for accused No.1. Even if the case of the complainant is taken as it is that accused No.2 stood guarantor, even then, only amount can be recovered. In no way, it amounts to commission of any offence. Otherwise also, it is a business dealing and dispute regarding part payment. If the intention of accused No.1 would have been to cheat the complainant from very beginning, he would have not paid about ₹10 lakhs i.e. half of the amount.

Further, as per case of the complainant, accused No.1 also issued cheque for remaining amount, which has been dishonoured, qua which separate proceedings have been initiated. The Tractors were sold from September 2000 to February 2002 and even the cheque was given on 01.07.2003 but this complaint has been filed in January 2009 i.e. after a substantial delay. Next, I find that as per case of the complainant itself, earlier FIR was got registered qua the same facts.

Keeping in view the above facts, I find that as the dispute between the parties is mainly of civil nature i.e. regarding non-payment of the partial liability in the business transaction, therefore, no cognizable offence has been committed by the accused. Moreover, before filing the complaint, earlier FIR had already been got registered.

Keeping in view the above facts and circumstances of the present case and in view of the above discussion, I find that filing of complaint in the present case is nothing but abuse of process of law and amounts to miscarriage of justice.

Therefore, finding merit in the present petition, the same is allowed. Criminal complaint No.404-I of 29.01.2009/06.04.2012 under Sections 403, 406, 418, 420, 120-B and 34 IPC, summoning order dated 11.08.2012 and all subsequent proceedings arising therefrom, are hereby quashed.

April 03, 2019 **(INDERJIT SINGH)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **No**