IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-43384-2021 (O&M)
Date of Decision:- 10.04.2023

Alankrita Soni .....Petitioner

Versus

Nahar Industrial Enterprises Ltd. and another ..... Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Mudit Jain, Advocate for the petitioner

Mr.Aalok Jagga, Advocate for respondent No.1.

AMAN CHAUDHARY. J.

The challenge in this petition is to the complaint dated No.CRM-25/2020, Annexure P-1, dated 04.01.2020 filed by respondent No.1 as well as the summoning order dated 28.07.2021 passed by learned Judicial Magistrate, 1st Class, Ludhiana vide which the petitioner has been summoned to face the trial under Sections 420, 406 read with Section 120-B of the Indian Penal Code (for short 'IPC').

Briefly put, facts as emerge from the complaint are that the complainant-company is a textile manufacturing company which had been solicited by the accused for equity participation in the establishment of a power generation unit in Rajasthan on the condition that they had to subscribe to the shares of their company. It was further asserted that the unit falls within the purview of a captive power unit, which would entitle it to concessions with regard to government duties and cess. Agreement in that regard was entered into on 21.12.2006, followed by MOU dated 07.10.2018, with an investment as per which it would get electricity for a period of 20 years. The case set up against the petitioner and other co-accused is of having induced the complainant-company with ill-intentions right from the very inception by misrepresenting and making false promises, thereafter, deceiving them by not providing regular supply of electricity despite there being arbitral awards in their favour containing a direction dated 29.10.2017, to supply power to them.

Learned counsel for the petitioner without going into the merits of the issue involved, made his pointed submissions that the prosecution initiated against the petitioner at the hands of the complainant-company is only to harass her. She was inducted into the said company, only on 04.07.2018 and as an Independent Director, the position on which she continued till 14.02.2020. The ingredients of the offences are not attracted as the allegations levelled in the complaint and relied upon by the Magistrate with regard to the intent to cheat the complainant-company, from the very inception, non-adherence or violation of agreements etc. are not relatable to the petitioner, they being prior in time. She was not even a part of respondent No.2-company when the agreement/MOU, Arbitral awards etc. came into being and also when the letters dated 13.11.2017, on which heavy reliance has been placed by the co-accused of the petitioner were sent to the Rajasthan Government and rejection dated 27.11.2017. The learned Magistrate has wrongly summoned her, despite having noticed Ex.C5, being ROC document affirming the aforesaid factum of her having joined in the year 2018 only.

To bolster his submissions, he relied on **Ajay Mitra vs. State of MP,** (2003) 3 SCC 11**, Vesa Holdings (P) Ltd. vs. State of Kerala,** (2015) 8 SCC 293, and **Pooja Ravinderan Devidasani vs. State of Maharashtra and another,** (2014) 16 SCC 1**.**

Learned counsel for respondent No.1 (hereinafter referred to as 'complainant-company'), though not denying the date of joining of the petitioner, made five fold submissions with vehemence, namely, criminal conspiracy under Section 120-B IPC can be formed at any stage of the crime; co-conspirator need not know of the entire details of the offence been or being committed; petitioner herself may not be charged of ultimate offence but if she is a part of conspiracy under Section 120-B IPC, she is held to be independently part of the main offence; it is the conduct and knowledge of the commission of the offence in a conspiracy which makes a person liable under Section 120-B IPC and conspiracy has been held to be a secret affair. It is alright to not have direct evidence-nobody needs to know the mind and the complainant can prove it by circumstantial evidence. The petitioner being an Independent Director was responsible to protect the interest of minority share holders, which she did not during the period she was a part of the company, as such she has been rightly summoned. He placed reliance on **Desh Deepak Kumar Vihangam @ Deepak Kumar vs. State of Bihar,** 2022 (7) SCC 721, **Yash Pal Mittal vs. State of Punjab,** 1977(4) SCC 540, and **R.Venkatakrishnan vs. Central Bureau of Investigation,** 2004(13) SCC 659.

In rebuttal, the learned counsel for the petitioner, submitted that the learned counsel for the complainant-company has overlooked the fact that the learned Magistrate has summoned the petitioner not only under Section 120-B but under Sections 420 and 406 IPC as well, in wake of which, his aforesaid submissions are rendered hollow. Even otherwise, the thrust of his submission was on the conduct and knowledge of commission of crime in a conspiracy that would make the petitioner liable under Section 120-B IPC. However, once the petitioner was not even part of the company when the agreement was entered into, arbitration proceedings were carried out and at the time of their culmination into award or the letter dated 13.11.2017, addressed by respondent No.2-company to the Rajasthan Government. Further still, the petitioner being an Independent Director, was not supposed to be privy to each and every transaction that the company was undertaking. She was a part of the company only on account of the mandatory requirement of Section 149 of the Companies Act, as per which the Board of Directors, must include a woman, amongst others. The complainant-company has also not produced any document to show that they had ever sent any communication to the petitioner with regard to the dispute that was existing between them and the respondent No.2-company. Her responsibility even under Section 149 of the Act and Schedule IV would only arise when she would acquire any knowledge at the hands of an aggrieved party.

Heard learned counsel for the parties at length.

It may be accentuated at the outset that indubitably, the petitioner joined the company on 04.07.2018 for a period little over a year and a half, and that too in the capacity of an Independent Director, it being a mandatory requirement of a woman to be a part of Board of Directors in terms of Section 149 of the Companies Act. The complainant-company has not been able to demonstrate that petitioner can be related to in so far as the offences are concerned as alleged in the complaint, as the initial agreement was entered in the year 2006, MOU in the year 2008, further allurement and inducement of the complainant-company in Sep/Oct 2008, that it will get further cheap power in case of reallocation of 5 MW additional capacity and on payment of Rs.1,41,00,000/- more, besides the already invested huge amount, in finding of faults in novel designs to create impediments, so as to not supply the power as per the contract, demand of additional duty, bringing in the rights issue in November 2012, and pressing complainant-company to subscribe to the same, non implementation of arbitral awards, last of which was dated 29.10.2017, and rejection of request of respondent no.2-company by Rajasthan Government on 27.11.2017 to supply the power to industrial consumers and that fresh open access cannot be allowed, which would result in violation of terms of the Mining Department and would consequently, lead to cancellation of mining lease.

It would be apposite to refer to the judgment in the case of **Ajay Mitra** (supra),wherein the allegations were of A-1, entering into an agreement dated 01.03.1996, with complainant authorizing the letter to manufacture and sell certain specified beverages under trade mark owned by former for 5 years, <u>Hon’ble The Supreme Court quashed the proceedings against the appellant taking into account the fact that they had come into the picture much later in July 1999,</u> and when the complainant claims to have spent money in improvement of its bottling plant on the basis of the agreement and finding that no offence of cheating as provided in Section 420 IPC, can therefore said to have been committed by the appellants therein, even if the allegations made in the complaint are accepted to be absolutely true and correct.

In **Vesa Holdings (P) Ltd. vs. State of Kerala,** (2015) 8 SCC 293, it was held by Hon'ble The Supreme Court of India that breach of contract would not give rise to an offence of cheating unless, there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating, as the requirement for the purpose of constitution of an offence of cheating was to show that accused had fraudulent or dishonest intention at the time of making promise or representation.

Hon'ble The Supreme Court in **Pooja Ravinderan,** (2014) 16 SCC 1, quashed the complaint by observing that, "In spite of knowing the developments taken place in the Company that the appellant was no longer a Director of the Company and two new Directors were inducted, the Respondent No. 2 has chosen to array all of them as accused in the Complaints." The appellant was held not liable having resigned on 17.12.2005, while the trade finance facility was extended by the Respondent No. 2 to the default Company during the period from 13th April, 2008 to 14th October, 2008, against which the cheques were issued by the Company were dishonored. This fact itself emphasizes that the appellant was not involved in the affairs of the Company when the Cheques were issued and had no role either in the conduct of the business of the Company or in issuing the Cheques that got dishonoured.

There are no allegations as spelt out in the complaint against the petitioner which would show her active/passive participation or as a facilitator in the transaction between the co-accused/company and the complainant-company and in the commission of crime, which would constitute any offence against her. Moreover, by the time, she joined the accused-company, the dispute between the parties had culminated in Arbitral awards, to which she could not be said to be privy. The efforts in earnest, so to say by the co-accused to get the permission from the concerned Government to comply with the direction of the Tribunal, was an act also prior in time to the joining of the petitioner. There has been even no document produced by the complainant-company to show that the petitioner knew of the dispute brewing between them and the respondent no.2-company or that the complainant-company had ever sent any communication to the petitioner bringing it into her knowledge. Had the Magistrate properly taken into consideration the document Ex.C5, it being information obtained from website of Registrar of Companies with regard to the details of Directors, it would have been revealed that the petitioner joined much later to all the happenings in the case, thus, the facts aforesaid would have become pertinent for consideration before issuance of process against her.

The petitioner being in cahoots with the co-accused as per the theory of conspiracy coined in, that came about during the resumed hearing of the case, when having been confronted with the allegations against the petitioner not attracting offences as alleged in the complaint peculiarly in facts as lucidly and persuasively projected on behalf of the petitioner. The stance, though was unsuccessfully changed of her not having performed duties and responsibilities of the assigned role of as an Independent Director, assuming that too, it ipso facto would not be sufficient to attract criminality to her in bracket with the co-accused and justify summoning. To ascribe or import knowledge to the petitioner regarding the ill intention of other Directors, who are co-accused would be stretching it too far and can be termed as casting too wide a net at the hands of the complainant-company.

Criminal conspiracy is sought to be foisted on to the petitioner in absence of any specific allegation and material of definite nature or ingredients of the offences as alleged, attracted but still terming her to be one in mind with the other co-accused, who according to the complainant-company were at the helm of affairs right from the word go i.e., the agreement entered into in the year 2006 and onwards, when throughout the entire phase and till much after, the petitioner was not even a part of respondent no.2-company.

Fortiori, a wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into Court merely because a complaint has been filed.

Thus, it was not only imperative but also the bounded duty of the Magistrate to have factored the aforesaid aspects, more particularly, once having taken note of Ex.C5. To that aforesaid extent, the Magistrate has fallen in error.

In so far as the judgments relied upon by the complainant-company are concerned, the same lend no support in wake of the facts and circumstances of the case.

In **Ramesh Chandra vs. State of U.P.**, 2022 SCC OnLine SC 1634, Hon'ble The Supreme Court held thus:

> **"**15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in *Vineet Kumar* v. *State of Uttar Pradesh*[1] decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:
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> "*22.* Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.
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> 23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in **State of Karnataka vs. L. Muniswamy**, (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated:
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> '*7.* … In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. <u>The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature.</u> The compelling necessity for making these

> observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

The facts of this case when viewed from the exposition of law, this Court finds the proceedings if permitted to continue against the petitioner are bound to lead to an abuse of the process of law and ends of justice require them to be quashed in exercise of the wide and plenitude power under Section 482 CrPC.

As a sequel thereto, the present petition is allowed. The complaint dated 04.01.2020 and summoning order dated 28.07.2021 are quashed qua the petitioner.

10.04.2023 **[AMAN CHAUDHARY]**

GSV **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No