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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 1st September, 2023

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CRL.M.C. 1551/2014 & CRL.M.A. 5276/2014 (Stay)

MANOHAR BHASIN HAZOORIA & ANR Petitioners

Through: Mr. Luv Manan, Ms. Supriya Manan,
Ms. Komal Vashisht, Mr. Jatin Singh,
Ms. Soumya Pandotara and Mr.
Jitendra, Advocates.

versus

THE STATE & ANR Respondents

Through: Ms. Meenakshi Dahiya, APP for State.
Mr. Diwan Singh Chauhan, Advocate
for R-2.

**CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA**

JUDGMENT

AMIT SHARMA, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') seeks quashing of summoning order dated 18.12.2013, passed by learned Metropolitan Magistrate, Tis Hazari Courts, Delhi, in Complaint Case No.12257/2013, P.S. Rajouri Garden.
2. The facts of the present case, as stated in the present petition are as under:



- i. The complainant is allegedly engaged in the business of property dealing and the Petitioner No. 1 being the owner of the premises in question, bearing no. 60, Ground Floor, Ring Road, Lajpat Nagar-III, New Delhi approached the complainant to lease out her commercial showroom.
- ii. It is further alleged that accordingly the complainant showed the said property to many prospective tenants and thereafter, on 05.03.2013, a deal was finalized to let out the said property to one M/s Biba Apparels Pvt. Ltd. Wherein it was also agreed that the Petitioner No. 1 shall pay two months' rent as commission and service tax for every year of tenancy. The rent was fixed to the tune of Rs. 7 Lacs for the first year and Rs. 7.5 lacs for next year.
- iii. The contract between the Petitioners and M/s Biba Apparels Pvt. Ltd. was finalized through some exchange of emails. It is alleged that the email communication was done by her grandson Petitioner No.2, on behalf of Petitioner No. 1 who is the owner of the said showroom.
- iv. It is alleged that after finalization of the deal to let out the premises at the agreed rate of Rs. 7 lacs and Rs. 7.5 lacs, the Petitioners turned dishonest and in order to escape the payment of commission and service tax which amounted to Rs. 30 lacs, the Petitioners played a fraud by sending an email stating that they are not ready to lease out the said property for less than Rs. 8.5 lacs per month.
- v. It is further alleged that after a lapse of some time, the complainant came to know from the market sources that the Petitioners have leased the said premises to M/s Biba Apparels Pvt. Ltd. without informing the



complainant, for the earlier settled amount of Rs. 7 lacs. It is alleged that the Petitioners, in a planned manner had misappropriated his commission and when the complainant approached the Petitioners with the demand of his commission, they threatened him.

- vi. Subsequently, the complainant filed an application under section 156(3) of Cr.P.C. and the application was dismissed as withdrawn by the learned Metropolitan Magistrate, Tis Hazari Courts, Delhi *vide* order dated 16.12.2013. Thereafter the complainant was examined and the arguments were heard, after which the learned Trial court was pleased to take cognizance and summoned the present petitioners *vide* order dated 18.12.2013 for offences under Sections 420/406 and Section 506 of the Indian Penal Code, 1860 ('IPC').

3. Learned Counsel appearing on behalf of the petitioners submitted that learned Metropolitan Magistrate has acted in a mechanical fashion and has not considered the contents of the complaint and merits of the case properly and has passed the impugned summoning order without due application of judicial mind.

4. It was further submitted that petitioner no.1 is an old lady, who is 78 years of age, who is not even able to walk properly due to her spine injury and in spite of this, respondent no.2 continuously harassed her. It was submitted that respondent no.2 even visited the house of petitioner no. 1, where she was living alone with her husband who is 86 years of age and is suffering from progressive Alzheimer's disease and threatened to implicate them in false cases in order to extort money from them illegally and to use his political influence and contacts.



5. It is the case of the petitioners that the last correspondence through e-mail was done on 21.03.2013 wherein petitioner no.2 had clearly mentioned that they are not willing to lease out the premises for any amount less than Rs. 8,50,000/- per month and after which no further communication was done with respondent no. 2. Respondent no. 2 had approached the petitioners for his illegal demands of commission after 3 months of sending this last e-mail which clearly establishes the fact that the sole intention of respondent no. 2 is just to harass the petitioners and extract money illegally by embroiling them in false and frivolous criminal litigation.

6. After filing of the complaint, the learned Metropolitan Magistrate was pleased to call for a status report from the concerned police station and in the said status report, it was clearly mentioned that it is respondent no.2 who is continuously calling petitioner no. 1 and is harassing her and threatening to implicate her in some false case. Further, in the said status report, it is clearly mentioned that the matter is of a civil nature. Learned counsel appearing on behalf of the petitioners submitted that the dispute is of a civil nature and merely by using the words like blackmail, cheating, fraud etc., the civil dispute does not get converted into a criminal offence. It was submitted that this is being done to put more pressure on the petitioners.

7. Learned counsel appearing on behalf of the petitioners submitted that respondent no. 2, in his complaint and also in the statement recorded before the learned Trial Court, has not been able to make out a case for commission of any offence under Sections 406/420/506 of the IPC. It was submitted that ingredients of the aforesaid sections are not satisfied as per the complaint as well as the statement of respondent no. 2 recorded before the learned Trial



Court. It was urged that the learned Metropolitan Magistrate ordered to issue summons for offences under the aforesaid provisions without appreciating the fact that no ingredients of the aforesaid provisions were satisfied. It was further argued that there is no deception, as well as entrustment alleged with regard to the present petitioners to make out a case under Sections 420/406 of the IPC. It was further stated that ingredients of Section 506 of the IPC are also not made out and apart from bald allegations, nothing has been placed on record to support the case of the complainant.

8. Learned counsel appearing on behalf of the petitioners relied upon the following judgments:

(I) In Indian oil Corporation v. NEPC India Ltd. and others, AIR 2006 SC 2780 the Hon'ble Supreme Court has held as under:

“13. It is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is done obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged.”

(II) Also in G. Sagar Suri and another v. State of Uttar Pradesh and others, 2000 (2) SCC 636 the Hon'ble Supreme Court held as under:

“8. Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before



issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

(III) Ramaswami Nadar v. State of Madras, AIR 1958 SC 56, wherein it has clearly been mentioned that the word ‘entrustment’ in Section 406 of the IPC is important and unless there is entrustment, there can be no offence under Section 406 of the IPC.

(IV) Anil Bothra & Ors v. State & Ors, (2013) 197 DLT (CN) 56, wherein it was held as under:

“7. It has to be borne in mind that as per the case of the complainant himself, the amount was given as a loan. So, there was no entrustment for a specific purpose making the Petitioners liable for criminal misappropriation. Similarly, there is not even a whisper as to when the alleged threat of kidnapping or murder was extended and by which of the Petitioners. The framing of the charge itself shows that the entrustment and alleged threat was alleged to be extended sometimes between December, 1998 to January, 2001. This shows that the complaint lacked specific allegation with regard to threat; admittedly there was no allegation of criminal misappropriation. Thus, charges for the offence punishable under Sections 406/34 and 506(ii)/34 IPC are quashed.”

(V) Pepsi Foods Ltd. v. Special Judicial Magistrate, 1998 Crl. LJ 1 wherein it has been categorically observed that summoning of an accused in a criminal offence is something very serious, as it puts the accused persons, so summoned, to a great degree of peril of facing an unending trial, mental torture and harassment and, therefore, this should not be done in a casual manner.



9. *Per contra*, learned counsel appearing on behalf of respondent no. 2 submitted that the impugned order dated 18.12.2013, passed by the learned Metropolitan Magistrate suffers from no infirmities. It was pointed out that the learned Metropolitan Magistrate, while passing the impugned order, has discussed the statements made before it in detail and after examining the records of the case, the said order was passed, summoning the present petitioners for offences punishable under Sections 420/406/506 of the IPC.

10. It is the case of respondent no. 2 that the present petitioners, despite assuring respondent no. 2 of giving the commission, went ahead and leased the property to M/s Biba Apparels Pvt. Ltd., despite the fact that it was respondent no. 2 who introduced the said company to the petitioners for the purpose of leasing out their property. It was further submitted that in view thereof, the complaint is at the stage of summoning and the petitioners will have ample opportunity to establish their defence before the learned Trial Court during the course of the trial.

11. Heard the learned counsel appearing on behalf of the parties and perused the record.

12. The Hon'ble Supreme Court, in **State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335**, while noting that the power of quashing of criminal proceeding should be exercised very sparingly and with circumspection, has laid down the following principles with regard to quashing:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.



(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

(emphasis supplied)



13. The Hon'ble Supreme Court, in **Deepak Gaba and others v. State of Uttar Pradesh and Another**, 2023 SCC OnLine SC 3, while discussing the criteria for quashing a summoning order, held as under:

“12. In case of a private complaint, the Magistrate can issue summons when the evidence produced at the pre-summoning stage shows that there is sufficient ground for proceeding against the accused. The material on record should indicate that the ingredients for taking cognizance of an offence and issuing summons to the accused is made out. [Dipakbhai Jagdish chandra Patel v. State of Gujarat, (2019) 16 SCC 547 : (2020) 2 SCC (Cri) 361; Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687; and Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400. The proviso to Section 200 of the Code is not applicable in the present case.]

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28. We are, therefore, of the opinion that the assertions made in the complaint and the pre-summoning evidence led by Respondent 2 complainant fail to establish the conditions and incidence of the penal liability set out under Sections 405, 420 and 471IPC, as the allegations pertain to alleged breach of contractual obligations. Pertinently, this Court, in a number of cases, has noticed attempts made by parties to invoke jurisdiction of criminal courts, by filing vexatious criminal complaints by camouflaging allegations which were ex facie outrageous or pure civil claims. These attempts are not to be entertained and should be dismissed at the threshold. To avoid prolixity, we would only like to refer to the judgment of this Court in *Thermax Ltd. v. K.M. Johny* [*Thermax Ltd. v. K.M. Johny*, (2011) 13 SCC 412 : (2012) 2 SCC (Cri) 650] , as it refers to earlier case laws in copious detail.

29. In *Thermax* [*Thermax Ltd. v. K.M. Johny*, (2011) 13 SCC 412 : (2012) 2 SCC (Cri) 650] , it was pointed out that the court should be watchful of the difference between civil and criminal wrongs, though there can be situations where the allegations may constitute both civil and criminal wrongs. The court must cautiously examine the facts to ascertain whether they only constitute a civil wrong, as the ingredients of criminal wrong are missing. A conscious application of the said aspects is required by the Magistrate, as a summoning order has grave consequences of setting criminal proceedings in motion.



30. Even though at the stage of issuing process to the accused the Magistrate is not required to record detailed reasons, there should be adequate evidence on record to set the criminal proceedings into motion. The requirement of Section 204 of the Code is that the Magistrate should carefully scrutinise the evidence brought on record. He/She may even put questions to complainant and his/her witnesses when examined under Section 200 of the Code to elicit answers to find out the truth about the allegations. Only upon being satisfied that there is sufficient ground for summoning the accused to stand the trial, summons should be issued. [Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd., (2019) 16 SCC 610 : (2020) 2 SCC (Cri) 828 : (2020) 2 SCC (Civ) 713; Pepsi Foods Ltd. [Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400]; and Mehmood Ul Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124.]

31. Summoning order is to be passed when the complainant discloses the offence, and when there is material that supports and constitutes essential ingredients of the offence. It should not be passed lightly or as a matter of course. When the violation of law alleged is clearly debatable and doubtful, either on account of paucity and lack of clarity of facts, or on application of law to the facts, the Magistrate must ensure clarification of the ambiguities. Summoning without appreciation of the legal provisions and their application to the facts may result in an innocent being summoned to stand the prosecution/trial. Initiation of prosecution and summoning of the accused to stand trial, apart from monetary loss, sacrifice of time, and effort to prepare a defence, also causes humiliation and disrepute in the society. It results in anxiety of uncertain times.

32. While summoning an accused who resides outside the jurisdiction of court, in terms of the insertion made to Section 202 of the Code by Act 25 of 2005, it is obligatory upon the Magistrate to inquire into the case himself or direct investigation be made by a police officer or such other officer for finding out whether or not there is sufficient ground for proceeding against the accused. [Vijay Dhanuka v. Najima Mamta, (2014) 14 SCC 638 : (2015) 1 SCC (Cri) 479; Abhijit Pawar v. Hemant Madhukar Nimbalkar, (2017) 3 SCC 528 : (2017) 2 SCC (Cri) 192; and Birla Corpn. Ltd. [Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd., (2019) 16 SCC 610 : (2020) 2 SCC (Cri) 828 : (2020) 2 SCC (Civ) 713.] In the present case, the said exercise has not been undertaken.

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34. We must also observe that the High Court, while dismissing the petition filed under Section 482 of the Code, failed to take due notice that



criminal proceedings should not be allowed to be initiated when it is manifest that these proceedings have been initiated with ulterior motive of wreaking vengeance and with a view to spite the opposite side due to private or personal grudge. [Birla Corpn. Ltd. [Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd., (2019) 16 SCC 610 : (2020) 2 SCC (Cri) 828 : (2020) 2 SCC (Civ) 713]; Mehmood Ul Rehman [Mehmood Ul Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124]; R.P. Kapur v. State of Punjab, AIR 1960 SC 866; and State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426.] **Allegations in the complaint and the pre-summoning evidence on record, when taken on the face value and accepted in entirety, do not constitute the offence alleged. The inherent powers of the court can and should be exercised in such circumstances.** When the allegations in the complaint are so absurd or inherently improbable, on the basis of which no prudent person can ever reach a just conclusion that there is sufficient wrong for proceeding against the accused, summons should not be issued.”

(emphasis supplied)

14. By way of present petition, the impugned summoning order dated 18.12.2013 has been sought to be challenged primarily on the ground that on a bare reading of the complaint, no ingredients of the offences punishable under Sections 420/406/506 of the IPC are satisfied. The essence of the complaint initiated on behalf of respondent no. 2 is that the petitioners took assistance of the said respondent to search for a prospective tenant to lease out their property but after identifying the prospective tenant, the petitioners went ahead and entered into an agreement with the said proposed tenant behind the back of respondent no. 2 thereby, not paying him his commission and service tax, as had been alleged to have been agreed between the parties.

15. Perusal of the impugned order passed by the learned Metropolitan Magistrate reflects that it was passed after discussing the contents of the



statement made by the complainant as CW-1, under Section 200 of the CrPC, and records as under:

“6. It is vehemently argued that after finalization of the deal to let out the premises at the agreed rate of Rs.7Lacs and Rs.7.50 Lacs, the accused persons turned dishonest and in order to escape the amount of commission and service tax which is to the extent of Rs.30 lacs approximately, they played a fraud by sending email that the accused persons are not ready to lease out the said property for less than Rs.8.5 lacs per month (in this regard an e-mail dated 21.03.2013 was sent by accused no. 3 to complainant). It is alleged that after gap of sometimes, the complainant came to know from market sources that the accused persons leased out the property in question to his client M/s. BIBA Apparels Private Limited by bypassing the complainant for the earlier amount of Rs.7 lacs. It is thus alleged that the accused persons in a planned manner mis-appropriated the commission of the complainant to the tune of Rs.30 lacs. The complainant further alleged that when he approached the accused persons to demand the said amount, the accused persons gave threats to falsely implicate him in cases against woman. The complainant placed on record copies of various e-mails and other documents which include the certified copy of the lease deed between the accused no. 1 and the client of complainant M/s. BIBA Apparels Private Limited for the amount of Rs. 7 lacs for first year and Rs.7.50 lacs for the second year.

7. Keeping in view the aforesaid deposition of CW 1, e-mail communications and other material, I am of the opinion that prima facie, there is sufficient ground to summon the accused no. 1 and 3 for the offences under section 420/406 and 506 IPG. I do not find any sufficient ground to summon the accused no. 2. Accordingly on filing of PF, summons be sent to the accused no. 1 and 3 for 29.01.2014.”

16. It is pertinent to note that the learned Metropolitan Magistrate did not give any finding with regard to the satisfaction of the ingredients for offences punishable under Sections 420/406/506 of the IPC. A bare reading of the averments made in the complaint and the statement of the complainant recorded before the learned Metropolitan Magistrate demonstrates that the



dispute between the parties is purely of a civil nature. Respondent no. 2 was aggrieved by the fact that the petitioners went behind his back and entered into an agreement with the prospective tenant that was introduced to them by the complainant/respondent no. 2. In his statement recorded on 16.12.2023 before the learned Metropolitan Magistrate, respondent no. 2 states as under:

“At this stage, the intention of all the accused persons became dishonest and to cheat and bypass me, they refused to sign the proposed agreement between me and accused no. 1.”

17. In view of the said agreement directly entered into between the petitioners and the said prospective tenant, respondent no. 2 was deprived of his commission which would have accrued to him if the said agreement was executed through his office.

18. The case of respondent no. 2, at best, is that there was a breach of a contractual obligation on behalf of the petitioners. It is settled law that at the stage of issuing process, the learned Metropolitan Magistrate is not required to record detailed reasons, however, there should be adequate application of judicial mind before setting the criminal proceedings in motion by summoning the proposed accused.

19. In view of the aforesaid discussion and the judicial precedents cited hereinabove, the present petition is allowed and the summoning order dated 18.12.2013 passed by the learned Metropolitan Magistrate, Tis Hazari Courts, Delhi against the petitioners in Complaint Case No. 12257/13 is set aside and quashed.

20. The petition is allowed and disposed of along with all the pending application(s), if any.



21. Let a copy of this judgment be communicated to the concerned Trial Court for necessary information and compliance.
22. Judgment be uploaded on the website of this Court *forthwith*.

AMIT SHARMA
JUDGE

SEPTEMBER 01, 2023/bsr