IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CRM-M-10547-2024

Date of Decision:-09.08.2024

M S Narula S/o Sh. Balbir Singh Narula Aged About 56 Years, Director of DSC Ltd.

......Petitioner.

Versus

Bansi Lal.

......Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Rohit Khanna, Advocate,
Ms. Simran Sharma, Advocate &
Ms. Arshya Arora, Advocate for the Petitioner.

Mr. Surinder K. Daaria, Advocate for the Respondent.

***

JASJIT SINGH BEDI, J.

The prayer in the petition under Section 482 Cr.PC is for quashing of the Complaint instituted on 08.08.2014 under Sectioins 406, 420, 323, 506 and 120-B IPC bearing Criminal Complaint No.193/2014 titled as "Bansi Lal Vs. D.S. Constructions Ltd. & Ors (Annexure P-5), the summoning order dated 01.02.2017 (Annexure P-7) along with all consequential proceedings arising therefrom

2. As per the allegations levelled by the complainant/respondent he had supplied construction material amounting to Rs.7,43,55,590/- (Rupees Seven Crore Fourty Three Lac Fifty Thousand Five Hundred Ninety only) to the firm of the petitioner, namely, D.S. Construction with respect to the construction of the Kundli Manesar Palwal Expressway. While a

payment of Rs.5,99,21,605/- had been made, the accused had refused to pay the balance amount of Rs.1,44,33,985/-. As the said payment was not made, he had gone to their office in South Extension, New Delhi where he was beaten up by the accused and threatened that he would be finished off if he demanded his money. A copy of the said complaint dated 08.08.2014 is attached as Annexure P-5 to the petition.

3. Based on the complaint and preliminary evidence, all the accused including the petitioner came to be summoned by the court of Judicial Magistrate, Ist Class, Gurugram for having committed the offences punishable under Sections 420, 406, 323, 506 and 120-B IPC vide order dated 01.02.2017. A copy of the said order is attached as Annexure P-7 to the petition.

4. The aforementioned complaint and summoning order are under challenge in the present petition.

5. The Counsel for the petitioner contends that a bare perusal of the complaint and the summoning order would reveal that the case is purely of a civil nature. As per the allegations, the material had been supplied for which part payment had been made but the remaining payment had not been made. This would constitute the filing of a civil suit for recovery at best and there was nothing to suggest that the accused had a dishonest intention at the very inception. Be that as it may the entire amount had been paid to the complainant. There was no corroborative evidence of the complainant being beaten up. In fact the complaint had been filed since the civil suit was barred by limitation. The cheating pertained to the year 2011 but he had chosen to file a complaint only in 2014 by setting up the allegations of beating. The summoning order was completely cryptic and non speaking. The petitioner was a resident of a New Delhi and the complaint had been

filed at Gurgaon. Therefore, there was violation of Section 202 Cr.PC as no enquiry had been held prior to the passing of the summoning order. He, therefore, contends that the complaint and the summoning order were liable to be quashed. Reliance is placed on the judgments in ***Deepak Gaba & Ors. Vs. State of Uttar Pradesh & Another 2023 (1) RCR (Criminal) 659, Veer Prakash Sharma Vs. Anil Kumar Aggarwal 2007(3) RCR (Criminal) 960, V.Y. Jose & Ors. Vs. State of Gujrat 2009(1) RCR (Criminal) 869 and Anil Kumar & Ors. Vs. State of Punjab & Ors. CRM-M-23194-2010 Decided on 23.05.2019***.

6. The Counsel for the Complainant on the other hand contends that there was no evidence to substantiate the argument of the petitioner that the complete payment had been made to the complainant. In fact the petitioner had cheated the answering respondent because all the relevant record had been misappropriated. From a reading of the complaint and the preliminary evidence the offences under Sections 323, 506 IPC were clearly made out. The petitioner was an accused in other cases of similar nature. As the offence was *prima facie* established, the present petition was liable to be dismissed.

7. I have heard Counsel for the parties and examined the record.

8. Before proceeding further it would be apposite to refer to the judgments relied upon by the counsel for the petitioner and the same are reproduced hereinbelow:-

In ***Deepak Gaba & Ors case (supra***) the Hon'ble Supreme held as under:-

> " *21. We are therefore of the opinion that the assertions made in the complaint and the pre-summoning evidence led by respondent no. 2 - complainant fail to establish the conditions and incidence of the penal liability set out under Sections 405, 420, and 471 of the*

IPC, 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 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 Limited and Others V. K.M. Johny (2011) 13 (SCC 412****, as it refers to earlier case laws in copious detail. In Thermax Limited and Others (Supra), it was pointed 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. 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 scrutinize 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. 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.*

22. 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 No. 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. In the present case, the said exercise has not been undertaken.

xxxxx xxxxxx

xxxxxx

24. 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. 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."

In ***Veer Prakash Sharma's case (supra)*** the Hon'ble Supreme Court held as under:-

" *8. The dispute between the parties herein is essentially a civil dispute. Non-payment or under-payment of the price of the goods by itself does not amount to commission of an offence of cheating or criminal breach of trust.*

No offence, having regard to the definition of criminal breach of trust contained in Section 405 of the Indian Penal Code can be said to have been made out in the instant case.

Section 405 of the Indian Penal Code reads, thus:

> *"Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits criminal breach of trust".*
>
> *Neither any allegation has been made to show existence of the ingredients of the aforementioned provision nor any statement in that behalf has been made.*
>
> *Ordinarily, bouncing of a cheque constitutes an offence under Section 138 of the Negotiable Instruments Act. No complaint thereunder had been taken."*

In ***V.Y. Jose's case(supra)*** the Hon'ble Supreme Court held as under:-

> " *15. There exists a distinction between pure contractual dispute of civil nature and an offence of cheating. Although breach of contract per se would not come in the way of initiation of a criminal proceeding, there cannot be any doubt whatsoever that in absence of the averments made in the complaint petition wherefrom the ingredients of an offence can be found out, the court should not hesitate to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure.*
>
> *We may reiterate that one of the ingredients of cheating as defined in Section 415 of the Indian Penal Code is existence of an intention of making initial promise or existence thereof from the very beginning of formation of contract.*
>
> *Section 482 of the Code of Criminal Procedure, saves the inherent power of the court. It serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years although no case has been made out against him.*
>
> *It is one thing to say that a case has been made out for trial and as such the criminal proceedings should not be quashed but it is another thing to say that a person should undergo a criminal trial despite the fact that no case has been made out at all.*

xxxx xxxxx xxxx

18. A matter which essentially involves dispute of a civil nature should not be allowed to be the subject matter of a criminal offence, the latter being not a shortcut of executing a decree which is non-existent. The Superior Courts, with a view to maintain purity in the administration of justice, should not allow abuse of the process of court. It has a duty in terms of Section 483 of the Code of Criminal Procedure to supervise the functionings of the trial courts.

19. An offence of cheating may consist of two classes of cases :

(1) where the complainant has been induced fraudulently or dishonestly. Such is not the case here;

(2) When by reason of such deception, the complainant has not done or omitted to do anything which he would not do or omit to do if he was not deceived or induced by the accused.

20. It is in that sense, a distinction between a mere breach of contract and the offence of cheating should be borne in mind. We, having regard to the facts and circumstances of the case, are of the opinion that no case has been made out and against the appellant so as to hold that he should face the criminal trial.

21. Before parting, however, we may notice a decision of this Court in from ***State of Madhya Pradesh v. Awadh Kishore Gupta, 2004(1) RCR (Criminal) 233 : 2004(2) Apex Criminal 158 : [(2004)1 SCC 691]*** *whereupon strong reliance has been placed by Mr. Jain. This Court, therein upon referring to Bhajan Lal (supra) opined as under:*

> *"11. As noted above, the powers possessed by the High Court under section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary*

> *jurisdiction of quashing the proceedings at any stage. (See **Janata Dal v. H.S. Chowdhary** and **Raghubir Saran (Dr) v. State of Bihar**) It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceedings instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decide the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceedings."*

22. No exception can be taken to the aforementioned principles of law, as therein also it has categorically been held that exercise of inherent power under Section 482 is permissible where allegations set out in the complaint do not constitute the offence for which cognizance has been taken by the Magistrate. It is evidently a case of that nature.

23. For the reasons aforementioned, the judgment of the High Court cannot be sustained. It is set aside accordingly. Criminal proceedings against the appellants are quashed. The appeal is allowed."

In ***Anil Kumar's case (supra)*** this Court held as under:-

" *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 Rs.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."

9. A perusal of the aforementioned judgments would show that there was a growing tendency of converting purely civil disputes into criminal cases with a view to recover money quickly as civil cases take time to get decided. Further for the commission of an offence there must be a clear intention to cheat at the very inception of the transaction. Mere subsequent breach of a contract or non payment or underpayment would not

amount to the commission of an offence and in such cases, the criminal proceedings ought to be quashed.

10. Coming back to the facts of the this case, a bare perusal of the complaint and the summoning order would go to show that the allegations pertain to supply of construction material by the complainant to the accused for which a substantial payment had been made but the balance payment had not been made. This allegation would constitute a civil liability at best for which the complainant ought to have initiated necessary civil action. There is absolutely nothing to suggest that the accused-petitioner had any dishonest intention at the very inception of the contract. It appears that the complaint has been filed with a view to pressurize the accused as the filing of a civil suit was barred by limitation, the transaction having taken place in the year 2010-2011. The summoning order is also cryptic to say the least. After the reproduction of the complaint the Court has gone on to hold that detailed reasons were not required to be spelt out without even *prima facie* forming an opinion that the reading of the complaint constituted the commission of an offence. Further, the allegations of the commission of offences under Sections 323 and 506 IPC have been levelled with a view to increase the severity of the crime without any corroborative evidence whatsoever. Further as the petitioner was a resident of New Delhi and the complaint was instituted at Gurgaon, the Court ought to have held an inquiry under Section 202 Cr.PC prior to the passing of the order of summoning as all the accused were residing beyond the territorial jurisdiction of the Court as has been held in ***Deepak Gaba & Ors. case (supra)***. The same has not been done in the instant case.

10. In view of the above, I find considerable merit in the present petition and therefore, the complaint dated 08.08.2014 (Annexure P-5),

summoning order dated 01.02.2017 (Annexure P-7) and all consequential proceedings arising therefrom stands quashed qua the petitioner.

(JASJIT SINGH BEDI)
JUDGE

August 09, 2024
Vinay

Whether speaking/reasoned	***Yes***
Whether reportable	***Yes***