HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
****
CRM-M-15805-2015 (O&M)
Decided on 19.09.2024
****

Aman Trehan & Ors. ... Petitioners

VS.

State of Haryana & Anr. ... Respondents

****

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

****

Present: Mr. Dinesh Arora, Advocate for the petitioners

Mr. BS Virk, Sr.DAG Haryana

Mr. Sunil Chadha, Sr.Advocate with
Mr. Akshay Chadha, Ms. Taanvi Dhull, Mr. Raghav Chadha,
Advocates for respondent No.2

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<u>Sandeep Moudgil, J.</u>

(1). The petitioners have filed the instant petition under Section 482 CrPC for quashing of the FIR No.17 dated 06.01.2015 (Annexure P7) under Sections 384/511/34 IPC, registered at Police Station Sadar Gurgaon.

<u>Facts</u>

(2). The petitioner are the partners/employees/authorized signatories of the firm, namely, M/s Iris Tech Park Facility Management Service fully authorized and developed by M/s Trehan Promoters and Builders P.Ltd. and it provides facilities, services and maintenance of equipments installed in the complex and also work for the management, operation and maintenance of building, common areas of the complex and thus entitled to take maintenance charges in lieu of their services

(3). Complainant is an employee of the company, namely, YSR Bearing Company located at Office Premises No.311, IRISTec-Park, Gurgaon. Initially office premises No.311 was sold to Mrs. Poonam resident of #149,

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Sector-5, Gurugaon vide conveyance deed dated 26.08.2011. A maintenance agreement dated 10.08.2011 was entered into by her with the petitioner-firm. (Annexure P-1) and the said property came to be sold to one Rantej Singh by Mrs. Poonam. The Petitioner-firm informed the broker Mr. Vikas Manchanda and also Mr. Rantej Singh that an amount of Rs.5,12,962/- is outstanding of Sinking Funds and as per Article 4 of Maintenance Service Agreement, an interest free refundable maintenance security of Rs.4,09,710/- needs to be paid and a maintenance contract need to be signed before enjoying service provided by the petitioner's firm. M/s YSR Bearing P.Ltd. company of Mr. Rantej Singh assured that they would clear all the dues as the same has been deducted/adjusted from the sale consideration paid to seller, namely, Poonam and on this assurance, the petitioners allowed their services to the respondent-company. However, the complainant/YSR Company kept on putting off the matter on one pretext or the other as is evident from the communications Annexures P2 to P5, though on 31.12.2014, complainant wrote a letter (Annexure P6) stating that they were ready to pay the dues with the petitioners. However, instead of settling their dues, respondent-company/complainant got registered the present FIR (Annexure P7) leveling the allegation of extortion.

Submissions by the petitioners

(4). Learned counsel for the petitioners contends that as per the maintenance agreement, the property holder has to pay the charges to avail the facilities as well as services in the complex and for that purpose, the property holder has to enter into agreement and clear the dues, if any. He submits that the exchange between the purchaser and the vendor is not controlled by the maintenance agency and the petitioners continued to provide its services only

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on the assurances and promises made by the respondent-company to clear their admitted liability and in such circumstances, requisite dues are not even denied by the respondent-company, the offence under Section 384 & 511 cannot be made out. He urged that once the liability has been accepted and duly admitted by the respondent-company, where is the question of lodging the present FIR by leveling false allegation of extortion. Reliance has been placed on ***Dhananjay @ Dhananjay Kumar Singh vs. State of Bihar & Anr. (2007) 14 SCC 768***; and ***Issach Isanga Musumba & Ors. vs. State of Maharashtra & Ors., (2014) 15 SCC 357*** to contend that the offence of extortion under Section 384 IPC is carried out by overpowering the will of the owner and in commission of an offence of theft, the offender's intention is always to take without that person's consent.

(5). Learned counsel further argued that none of the ingredients of the penal provisions invoked in the FIR are made out or established and beside that the FIR in question is merely an attempt to intimidate the petitioners inasmuch as the same has been filed maliciously to give a purely civil and contractual dispute a criminal colour. It is urged that already a civil suit was filed by respondent No.2 against the petitioners and under the garb of criminal proceedings, respondent-Company has sought to avoid its admitted and genuine penal liability against the petitioners by coercing them camouflaging it to be a case of extortion. In this regard, much reliance has been placed on ***Md. Ibrahim & Ors. vs. State of Bihar & Anr., (2009) 8 SCC 751*** to contend that though several disputes of a civil nature may also contain the ingredients of criminal offences but it is for the superior courts to ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil dispute.

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(6). Learned counsel pressed into aid clause 17.6 of the Maintenance and Services Agreement dated 10.08.2011 (Annexure P1) wherein the parties agreed for appointment of Sole Arbitrator in the event of any difference or dispute arising in respect of any matter connected with the accuracy of bills, supply of services etc. which cannot be settled amicably and therefore, there was no occasion for the respondent-company to lodge a frivolous FIR instead of invoking the arbitration proceedings.

Rebuttal contentions

(7). Reply dated 25.07.2015 has been filed by Dhaarna Yadav, HPS, ACP, Sadar Gurgaon wherein it has been averred that during the course of investigation incriminating evidence came forth against the petitioners and after completing the investigation, report under Section 173 CrPC has been submitted before the trial court.

(8). Respondent No.2 – the complainant-company has also filed its reply dated 26.09.2016 in terms whereof, it is stated that from the very beginning all the due payments as demanded by the petitioners were made, however, their intention was to grab more money from the respondent No.2-company which created dispute regarding the terms and conditions of the agreement formulated by the petitioner which respondent No.2 requested to amend/change in order to simplify the agreement.

(9). Mr. Sunil Chadha, learned senior counsel exhorted that since the petitioners were persistent in making their illegal demands, respondent No.2 even filed contempt application No.172/2016 in suit No.155/2015 and since the petitioners used force and threat for wrongful gains from the respondent No.2 leading to signing of the letter of admittance by respondent No.2 accepting the

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liability, the present FIR has been lodged. He submits that even as per the police report/challan, the ingredients of Section 384 IPC are made out against the petitioners.

(10). Learned senior counsel then urged that mere existence of arbitration clause provided under the Maintenance and Services Agreement cannot ipso facto absolve the petitioners of their criminal liability which can be pressed into aid as a ground for quashment of the FIR proceedings. He relies upon the judgment of the Apex Court in ***Trisuns Chemical Industry vs. Rajesh Agarwal & Ors. (1999) 8 SCC 686***, wherein it has been held that criminal prosecution cannot be thwarted merely because civil proceedings are also maintainable as well as existence of an arbitration clause in the contract/agreement was held to be not a sufficient ground for quashing the complaint against the supplier.

Factual Analysis

(11). Having heard learned counsel for the parties and after going through the record and submissions made by the parties, the following questions arise for consideration before this Court:-

(I) Was there any legitimate liability upon respondent-Company to pay sinking fund and other maintenance charges to the petitioners?

(II) Whether it's a case of extortion?

(III) Whether a civil proceeding is clothed with criminal colour?

(IV) Can the Courts interfere to quash the proceedings when the challan/charge-sheet has been presented before the trial Court?

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(12). The allegation leveled in the FIR is that the petitioners had disconnected the electricity until respondent No.2-company makes payment of Rs.9 lakhs. A perusal of the contents of the FIR itself speaks that there existed business relations *inter se* parties inasmuch as the petitioners are admittedly the service providers in respect of the office premises bearing No.311 in IRIS Tec-Park which was purchased by respondent-company through Mr. Rantej Singh from its erstwhile owner Mrs. Poonam. The petitioners had entered into Maintenance and Services Agreement with Poonam (erstwhile owner), however, the said agreement could not be executed with the respondent-company despite various communications exchanged between them which ultimately culminated with the registration of the present FIR at the instance of respondent-company.

(13). Learned counsel for the petitioners handed over synopsis pointing out that the respondent-company even approached Saket Court, New Delhi by filing civil suit for permanent mandatory injunction qua the suit property by staking their ownership rights therein on the ground that since it has its registered office, the local court in New Delhi has jurisdiction to entertain such plaint under Order VII Rule 10 & 11 CPC. The said suit bearing No.CS SCJ/350/2018 was dismissed vide judgment dated 25.08.2020 by the Civil Judge-01 (South), Saket Court, New Delhi opining that since admittedly, the suit property is situated in Gurgaon which is beyond the jurisdictional limits of that Court, the plaint was liable to be returned under Order VII Rule 10 CPC. The respondent-company thereafter filed appeal before Senior Civil Judge, South District Saket Courts which too was dismissed vide judgment dated 28.01.2023 wherein it was observed that merely by the fact that summons have

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been served in Delhi upon the defendant/respondents (petitioners herein) do not give rise to any cause of action, wholly or in part, in favour of the plaintiff/appellant (respondents herein).

DISCUSSIONS :

(I) Was there any legitimate liability upon respondent-Company to pay sinking fund and other maintenance charges to the petitioners?

(14). Article 10 of the Maintenance and Service agreement which was entered into by Mrs. Poonam from whom Rantej Singh of respondent-Company purchased the office premises, pertains to Assignment and its *Clause 10.2* specifies that *in the event the IT/Commercial Space is sold by the Second Party (i.e. Mrs. Poonam) to any third party (purchaser i.e. Rantej Singh of respondent-company), then such purchaser shall be bound by all the terms of this Agreement*. In case no agreement is executed by the purchaser, then the seller and purchaser shall be jointly and severely liable to pay the charges and be bound by the terms of the agreement. The agreement unequivocally specifies that the petitioners will be well within their rights to stop providing services including electricity, power backup… till the time all formalities are completed by the second party (Mrs. Poonam) and the purchaser (Rantej Singh). *Clause 9.3* further stipulates a condition agreed between the parties that in no event the second party (Mrs. Poonam or the purchaser Rantej Singh) shall have any right to terminate this agreement.

(15). It thus culls out that though respondent-company failed to execute any agreement with the petitioners, albeit, the respondent-company remained bound by the stipulations of the agreement. The moment Mr. Rantej Singh (owner of respondent-company) purchased the office site No.311 from Mrs.

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Poonam, he entered into her shoes for all intents and purposes and as such, respondent-company now cannot fight shy of its liability towards the petitioners who are essential service providers. This gains pertinence in view of the stipulation that the second party (respondent-company) cannot terminate this agreement as the petitioners are solely the developers and promoters of the building IRIS TECH PARK where the office commercial space of the respondent-company is situated.

(16). There is no gainsaying to hold that the respondent-company was liable to the dues which led to arrears of the Electricity and maintenance charges towards the petitioners. That being so, since the respondent-company has not completed all the formalities regarding execution of the agreement with the petitioners, the action of non-providing/disconnecting electricity/power backup cannot be faulted with.

<u>(II) Whether it's a case of extortion?</u>

(17). While Section 384 IPC prescribes the punishment for a term which may extend to three years for the offence of extortion, what would be 'extortion' is provided in Section 385 IPC which reads as under:-

> "*Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both".*

(18). The essential ingredients under Section 385 can be divided into two halves viz., (i) the accused puts or attempts to put a person under fear, and (ii) the said fear is that some injury is going to be caused to the said person. Extortion occurs when a person uses physical violence or threat of violence to obtain property or money, whether or not the accused has a claim to the

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property. By contrast, where the accused has a claim of right to property or money or dues and exerts economic pressure to obtain that property or money or dues, that conduct is not extortion under Section 384 & 385 IPC.

(19). The contents of the FIR must be read in its entirety. Undisputedly, the respondent-company had no option but to enter into an agreement and avail the services rendered by the petitioners in the complex. The fact that certain mandatory charges were overdue and admittedly those charges were adjusted by Mrs. Poonam (the original owner) at the time of entering into agreement to sell to be paid by Rantej Singh of respondent-company to the petitioners at the time of execution of maintenance and services agreement with the petitioners. That was, however, not done though initially the liability was admitted by the respondent-company as is evident from letter dated 31.12.2014 (Annexure P6). There is no allegation by respondent-company or by respondent No.2 that any money was paid by the informant having been put in fear of injury or putting him in such fear by the petitioners intentionally.

(20). Reliance can be safely placed on Bombay High Court judgment in ***Shaikh Muib & Ors. vs. State of Maharashtra & Anr. 2017 (2) AIR Bom. (Crl.) 361***, following the dicta of the Supreme Court in ***Dhananjay @ Dhananjay Kumar Singh*** and ***Issach Isanga Musumba & Ors***., wherein it is held that unless property is delivered to the accused persons pursuant to the threat, no offence of extortion is made out and the FIR for the offence of extortion under section 384 could not have been registered by the Police.

(21). In view of legal guidelines delineated by the Supreme Court, this Court is of the opinion that there was no offence made out under Section 384 of IPC committed as alleged on behalf of respondent No.2. The exercise of a

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punitive right provided under the Agreement by a party executant to such agreement cannot be said to be an illegal act and thus any harm suffered due to exercise of such right cannot satisfy the legal requirements of the term "injury" nor can make out a basic ingredient of the offence "extortion".

<u>(III) Whether a civil proceeding is clothed with criminal colour?</u>

(22). After filing of the FIR, the respondent-company filed a civil suit on 23.01.2015 (Annexure P8) impugning the demand made by the petitioners to deposit sinking funds as interest free maintenance security deposit of Rs.9 lacs with a direction to the petitioners-respondent No.1 to 3 to connect the electricity supply of the plaintiff's IT Space. Thereafter, the amended suit was filed on 23.04.2016 vide Annexure P10 seeking a decree of permanent injunction restraining the defendant-petitioners from further harassing and further demanding to deposit of sinking funds as interest free maintenance security deposit of Rs.9 lakhs. The case was adjourned time and again on the request of counsel for the respondent No.2-plaintiff for arguments on injunction application as is evident from the zimni orders (Annexure P12 to P16) until 31.08.2015 when the arguments were advanced on the injunction application and following order was passed:-

> *"Arguments on injunction application advanced. Learned counsel for the defendant has argued that he has no objection if the plaintiff is ready to pay the current Electricity and maintenance charges' other than the disputed amount. Learned counsel has also filed statement of accounts according to which the plaintiff is in arrears of Rs. 7,43,823.* ***<u>Learned counsel for the plaintiff has argued that he is ready and willing to pay Current Electricity and maintenance charges but the statement as provided by the</u>***

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> ***defendants is exaggerated***. *Learned counsel has argued that he wants to verify the real and actual payable amount from the plaintiff company.* ***However learned counsel has endorsed no objection to the payment of Rs.6 lakhs towards payment of current Electricity and maintenance charges*** *Heard. Perused in view of the statement of the learned counsel for the plaintiff, plaintiff is directed to make a payment of Rs. 6 lakhs towards the Payment of current Electricity and maintenance charges. Now to come up on 8.10.2015 for final arguments on the application. Till then the interim stay already granted in favour of plaintiff is extended subject to the payments of the above mentioned amount of Rs. 6 lakhs."*

(emphasis by me)

(23). The respondent-plaintiff came forward with a demand draft of Rs.6 lakhs which was ordered to be handed over to counsel for the defendants-petitioners. Thereafter, the Civil Court vide order dated 21.01.2016 accepted the application under Order 39 Rule 1&2 CPC in view of the statement suffered by the plaintiff-respondent No.2 that they are ready to clear the balance amount pertaining to maintaining etc. and would also pay the current maintenance charges. However, the said civil suit was dismissed for non-prosecution on 04.07.2017 (Annexure P30). The respondent-plaintiff filed application under Order IX rule 8 read with Section 151 CPC for restoration of the civil suit. The said application too was dismissed in default by the trial court vide order dated 25.10.2021 as none of the representative of the respondent-complaint appeared throughout the day. They even approached Civil Court at New Delhi but their civil suit and appeal thereagainst were dismissed for lack of jurisdiction as the office was situated in the jurisdiction of Gurgaon and not Delhi.

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(24). A reading of the above prayer of the suit and the zimni order passed by the trial court would only lead to a conclusion that the respondent-company and petitioners had service-seeker and service-provider relationship as is evident from the prayer clause of the civil suit and the conspicuous admission made before the trial court, as reproduced above, vide which the respondent-company was ready and willing to pay Current Electricity and maintenance charges of Rs.6 lakhs. Meaning thereby that it was due to non-payment of mandatory service charges while the petitioners were engaged in an honest attempt to collect their legitimate debt due or believed due and in these circumstances, referring it to be a criminal liability or threatening criminal prosecution in attempting to collect a debt or prosecute a claim before subjecting oneself to criminal liability and thereby giving a criminal colour to a civil dispute is reprehensive and deprecated.

(25). Reference can be made to ***G.Sagar Suri vs. State of UP (2000) 2 SCC 636*** where the Supreme Court held that the High Court should not examine the matter superficially and it is to be seen if a matter which is essentially of civil nature has not been given cloak of criminal offences. It further held that criminal proceedings are not a short cut of other civil remedies available in law and while issuing process, the courts are to exercise great deal of caution. Following the observations made in ***State of Karnataka v. L.Muniswamy & Ors. AIR 1977 SC 1489*** and ***Kurukshetra University & Anr. Vs. State of Haryana, AIR 1977 SC 2229,*** the Supreme Court further held that jurisdiction under Section 482 CrPC has to be exercised to prevent abuse of process of law and if allowing proceedings to continue would be abuse of process of court, then the courts can quash the proceedings.

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(26). In ***Joseph Salvaraj A vs State Of Gujarat & Ors. (2011) 15 SCC 449***, the Supreme Court while holding that when a purely civil dispute, is sought to be given a colour of a criminal offence to wreak vengeance, it does not meet the strict standard of proof required to sustain a criminal accusation and in such such type of cases, it is necessary to draw a distinction between civil wrong and criminal wrong as has been succinctly held in ***Devendra Vs. State of U.P., (2009) 7 SCC 495***, relevant part thereof is reproduced hereinbelow:-

> *"A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out."*

(27). Besides, a complaint disclosing civil transactions may also have a criminal texture but then the Court has to see whether a dispute which is essentially of a civil nature has been given a cloak of criminal offence and in such a situation, if a civil remedy is available and is in fact adopted as has been happened in this case, the Court has no reason to hesitate in quashing the criminal proceedings to prevent abuse of process of law. This view of mine is reinforced by the decision of the Supreme Court in ***Paramjeet Batra vs. State of Uttarakhand & Ors. 2014 (6) RCR (Crl.) 187***.

(28). From the series of facts enumerated above, it can be safely inferred that respondent No.2-company were in arrears of dues in lieu of the service rendered by the petitioners-company. Evidently, the prayer made in the civil suit coupled with the conspicuous admission vide zimni order dated 31.08.2015 wherein the respondent No.2-plaintiff was ready and willing to pay

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Current Electricity and maintenance charges and had also endorsed no objection to the payment of Rs.6 lakhs to the petitioners-defendant. Once the liability has been accepted by the respondent No.2 in its plaint itself, where is the question of extortion by the petitioners. The criminal proceedings has been launched against the petitioners as an instrument of harassment and with ulterior motive to pressurize the petitioners and avoid making legitimate due payments.

<u>(IV) Can the Courts interfere to quash the proceedings when the challan/charge-sheet has been presented before the trial Court?</u>

(29). At this stage, learned senior counsel submitted that the allegations in the FIR constituted the commission of a cognizable offence and since the charge sheet has been filed, the trial court should be left to adjudicate the correctness or otherwise, the allegations made by the informant and thus this Court should not exercise extraordinary jurisdiction and quash the proceedings especially in view the current development when the case before the trial court is ripened.

(30). In the reply filed by the respondent-State, there is nothing new even after investigation. Moreover, once this Court has come to the conclusion that the respondent No.2-Company owed towards the petitioners the mandatory charges and fees in relation to the services it was providing to their office premises and that the allegations of extortion against the petitioners has been leveled just to clothe a civil dispute with a criminal colour, by the respondent No.2, there is no scope left but to quash the criminal proceedings even after the charge sheet has been filed. Even otherwise, the position of law is well entrenched.

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(31). In ***Anand Kumar Mohatta v. State (NCT of Delhi), 2019 (11) SCC 706,*** the Supreme Court placed reliance upon another judgment by it in ***Joseph Salvaraj A vs State Of Gujarat & Ors.*** (supra) wherein while deciding the question whether the High Court could entertain petition for quashing of FIR under Section 482 CrPC, when the charge sheet was filed by the police was *pendente lite,* it was observed was under: -

> *"16. Thus, from the general conspectus of the various sections under which the appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the complainant's FIR. Even if the charge-sheet had been filed, the learned Single Judge could have still examined whether the offences alleged to have been committed by the appellant were prima facie made out from the complainant's FIR, charge- sheet, documents, etc. or not."*

(32). The Supreme Court in ***Anand Kumar Mohatta v. State (NCT of Delhi)*** (supra) referred to Section 482 CrPC which does not restrict the exercise of the power of the Court to prevent the abuse of process of the court. It further authoritatively held that:-

> *"16. There is nothing in the words of this section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High Court can exercise jurisdiction under Section 482 CrPC even when the discharge application is pending with the trial court. Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced and the allegations have materialised into a charge-sheet. On the contrary it could be said that the abuse of process caused by FIR*

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stands aggravated if the FIR has taken the form of a charge-sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court."

(33). This Court's power to prevent abuse of process or miscarriage of justice is not limited to the FIR stage inasmuch as it is well settled, as is evident from the case laws cited above, that the High Court can intervene under Section 482 CrPC even when a discharge application is pending before the trial court. To sum up, even if the charge-sheet had been filed, this Court can still examine whether the offences alleged to have been committed by the accused/petitioners were prima facie made out from the complainant's FIR, charge-sheet, documents, etc. or not.

Conclusion:

(34). Having considered the matter in detail, I am of the considered view that none of the ingredients of Sections 384/511/34 IPC are made out against the petitioners and as such, I have no hesitation in arriving at the conclusion that if the criminal proceedings are allowed to continue against them, the same will be nothing short of abuse of process of law and travesty of justice.

(35). In view of the above discussion, this petition is allowed and the FIR No.17 dated 06.01.2015 (Annexure P7) under Sections 384/511/34 IPC, registered at Police Station Sadar Gurgaon is hereby quashed qua the petitioners.

19.09.2024
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*

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