HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
****
CRM-M-17025-2019 (O&M)
Decided on 01.04.2024
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Amit Kumar ... Petitioner

VS.

Goodyear India Ltd. ... Respondent

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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Mr. Wazir Singh, Advocate for the petitioner

Mr. Yashwant Singh Rathore, Advocate and
Mr. Yuvraj Singh Rathore, Advocate and
Ms. Sudha Singh, Advocate for the respondent

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Sandeep Moudgil, J.

(1). The jurisdiction of this Court has been invoked under Section 482 CrPC seeking quashing of the criminal complaint No.158/15 titled as *"Goodyear India Ltd. vs. Amit Kumar"* (Annexure P1) under Sections 406/420 IPC as well as the summoning order dated 27.11.2018 (Annexure P2) passed by the JMIC, Karnal in the above-said complaint vide which the petitioner has been summoned to face trial.

(2). Brief facts of the case are that the complainant-company, namely, the Goodyear India Ltd. – the respondent is a registered Company wherein the petitioner was appointed as Professional Business Counselor w.e.f. 23.10.2008 followed by his promotion to the post of Territory Sales Incharge w.e.f. 01.05.2012 and being as such, the petitioner's responsibility was to obtain sales order from the authorized dealers of the company and communicate the same to the distributor of the complainant-company, namely, RSG Enterprises and as such, it could only collect the sale consideration from the dealers. However, since the petitioner could not fulfill the ill-demands of Nitin Verma, Business Manager, the petitioner was meted with undue torture and harassment by the said Nitin Verma. The distraught petitioner took extreme step to end his life by attempting to commit suicide by swallowing sleeping pills and thus remained admitted in the hospital. The respondent-company, instead of releasing all his service dues, raised claim of Rs.18,38,320/- and resultantly, the petitioner lodged a complaint before the police dated 14.07.2014 (Annexure P4) followed by an email dated 12.06.2015 to the Headquarter of complainant-company at Akron, Ohio (USA) (Annexure P6). The respondent-company, evidently as a counter-blast, filed Civil Suit No.1515/2015 against the petitioner for recovery of Rs.11,73,179/-. However, the said suit was dismissed with cost vide judgment and decree dated 08.08.2018 by the Additional Civil Judge (Sr.Divn.), Karnal (Annexure P7).

(3). Thereafter, the respondent-Company did not stop here and went on to file the criminal complaint in question on 10.07.2015 alleging therein that the petitioner, being an employee of the respondent-company induced the dealers to give him the amounts of payments but never deposited the same. It is in the said criminal complaint that the summoning court vide impugned order dated 27.11.2018 (Annexure P2) has called upon the petitioner to face trial under Sections 406 & 420 IPC.

(4). Learned counsel for the petitioner contends that the petitioner was merely a salesperson of the respondent-Company whose job responsibility was only to collect sale orders from the dealers and promote sales and it was not under his job responsibility to collect sale consideration from the authorized dealers of the company and this fact was very much in the knowledge of the distributor, namely, RSG Enterprises and it was the sole responsibility of the said distributor to collect cash from the market.

(5). It is argued that no offence under Sections 406 and 420 IPC is made out from the averments made in the complaint as there is nothing material placed before the trial court which may suggest that there was dishonest inducement or cheating by the petitioner from the very inception of the transaction. He further urged that there is no question of any misappropriation or embezzlement at the hands of the petitioner because had it been so on the part of the petitioner, the same would have been detected by the respondent-company inasmuch as the ledger accounts with respect to each authorized dealer were sent to them on quarterly basis by RSG Enterprises in which the outstanding amount, if any, is also depicted. It is further vehemently averred that the alleged misappropriation took placed from 2013 till March, 2014 and it took more than one year for the respondent-company to lodge the complaint.

(6). On the other hand, learned counsel for the respondent-company has filed its reply wherein it has been averred that the petitioner taking benefit of the trust and faith of the dealers in him, with a dishonest intention, started collecting payments from the dealers located throughout Haryana, which were due towards the RSG's Distributors, with the assurance that he will deposit the same with the RSG Enterprises and will provide them deposit receipts and these payments were relating to the supply of tyres by RSG Enterprises to the dealers pertaining to the year 2013 and upto March 2014 and when the RSG Enterprises Distributor, demanded the outstanding payments from the dealers, then the dealers disclosed that as per their record, certain payments were made by them, but have not been adjusted by the RSG Enterprises in its account.

(7). Mr. Yashwant Singh Rathore, Advocate assisted by Mr. Yuvraj Singh Rathore and Ms. Sudha Singh, vehemently argued that the RSG Distributor also raised the matter with the complainant Company and maintained that since its payments have been taken away by the employee of the complainant Company, therefore, it is the complainant Company which is responsible for the acts done by its employee and is thus liable for making the said payments. It has further averred that coming to know of the said acts of the petitioner, the complainant made inquires and it revealed that the petitioner was not in the market and he has vanished away in April 2014 from the Market. That the petitioner was tried to be contacted, but he could not be contacted on his given address/mobile number.

(8). Heard learned counsel for the parties and gone through the record.

(9). From the reading of the above contentions and counter thereto by the respective parties, it culls out that the petitioner was appointed by the respondent-company to promote sale of tyres by interacting with the dealers and if the dealers wishes to place any order, that was required to be approved and its payments was necessarily required to be made to the authorized distributor of the respondent-company i.e. RSG Enterprises.

(10). Every company or firm works on set pattern and their internal regulations/policy which is governed over its employees and the agency involved in its business transaction and thus it is imprudent to think that the employees and agencies involved to carry out such transaction do not have proper knowledge of such regulations/policy framed by the company. One such policy framed by the respondent-company placed on record as Annexure P3 which is dated 14.05.2013 which unequivocally makes it clear that as per the policy of the respondent-company, there will no cash transactions which can be handled by its employees and if any employees wants to make payment in hard cash, the same needs to be informed to the distributor. The relevant portion of the email dated 14.05.2013 from respondent-company to all its employees and distributor reads as under:-

> *"Dear Team,*
>
> *This is to re-iterate the policy of Goodyear India Ltd, that there will be no cash transactions handled by Goodyear employees. Hard cash cannot exchange hands among Goodyear employees.*
>
> *In case, any party wants to make any payment in hard cash, then the same needs to be informed to the distributor who'll get the cash picked up by themselves or by their staff. But no money can be given to any Goodyear employee at any point in time.*
>
> *This comes under the integrity & ethics policy of Goodyear and is non-negotiable.*
>
> *Dear Channel partners: This is for your information & action, Kindly get the hard cash picked up by your staff only & not by Goodyear employees."*

(11). Most importantly, the civil suit filed by the respondent-company against the petitioner seeking recovery of Rs.11,73,179/- along with interest itself has been dismissed by the Civil Court on the ground of absence of any evidence of the dealers to depose regarding the payments made to the petitioner. Vide judgment and decree dated 08.08.2018, the respondent-complainant/plaintiff failed to prove the fact that the petitioner-defendant had received any payment from various dealers and the dealers, who were the best persons as they are alleged to have made payment to the petitioner, have failed to depose against the petitioner and neither there is any particular or evidence given by the respondent-plaintiff or the dealers as to how much payment was received by the petitioner-defendant. That being so, the ingredients of Sections 406 and 420 IPC also cannot be said to be made out against the petitioner as the very basis on which the respondent-company built its castle to harass and intimidate the petitioner, has been devastated.

(12). Another astonishing fact that frowned the attention of this Court is the respondent-plaintiff filed suit for recovery of Rs.11,73,179/-, however, notice was issued to the petitioner-defendant claiming recovery of Rs.18,38,320/- and the difference of both the amounts allegedly liable to be recovered runs into lakhs and that different too has not been explained by the respondent-plaintiff.

(13). As regards the impugned complaint and the summoning order are concerned, the same ought not have been entertained predominantly on the ground that the claim for recovery lodged by the respondent-company itself has been found to be false and baseless and thus in such circumstances, there was no occasion or any new ground for the respondent-company for filing the criminal complaint against the petitioner.

(14). It is well settled that the criminal prosecution cannot be used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurize the accused. The inherent jurisdiction of this Court under Section 482 CrPC, though wide in nature, but has to be exercised sparingly and cautiously as in the present case, the purely civil dispute regarding recovery has been sought to be given a criminal colour by the respondent-company just to entangle the petitioner. The respondent-company who, instead of filing appeal or accepting the findings of judgment and decree of the Civil Court, has initiated and persisted with the prosecution, being fully aware that the criminal proceedings are unwarranted, for which the respondent-company must be made accountable at the ends of such misconceived criminal proceedings. This view of mine is reinforced by the decision of the Apex Court in ***Indian Oil Corporation vs. NEPC India Ltd. & Ors., (2006) 6 SCC 736***.

(15). So much so, the judgment rendered by the Civil Court dismissing the suit for recovery filed by the respondent-Company against the petitioner has been decided on 08.08.2018 whereas the impugned summoning order has been passed on 27.11.2018 i.e. much after the passing the Civil Court decree against the respondent-Company and this fact is conspicuously missing in the order dated 27.11.2018. Meaning thereby that the respondent-Company has concealed the material facts from the Civil Court and managed to obtain an order to summon the petitioner evidently to harass him and to brow-beat the process of law. This practice of the respondent-Company is highly deprecable and contemptuous as no-one can be allowed to take the Court for a ride and misuse the judicial system for their personal gains and ego.

(16). Reliance can be placed on ***Mitesh Kumar J. SHA v. The State of Karnataka, 2021 SCC OnLine SC 976***, whereby the Apex Court inter alia observed as under:-

> *"47. Moreover, this Court has at innumerable instances expressed its disapproval for imparting criminal color to a civil dispute, made merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute. Such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety."*

(17). The parameters pertaining to the inherent powers and discretion of this Court under Section 482 of the CrPC have been well known and well read since the time of ***State of Haryana & Others v. Bhajan Lal & Others, (1992) Supp. (1) SCC 335***, whereby it was held that powers under Section 482 CrPC could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice where the allegations made in the FIR, even if taken at the face value, does not prima facie constitute any offence or make out any case against the accused and moreover, the uncontroverted allegations/averments made in the FIR or the evidence collected in support of the same does not make out any case against the petitioner.

(18). For the reasons mentioned above, this petition is allowed and the complaint No.158/15 (Annexure P1) as well as the summoning order dated 27.11.2018 passed by the JMIC, Karnal in the said complaint are hereby quashed.

(19). Considering the fact that the civil suit for recovery filed by respondent-plaintiff was dismissed with cost for its failure to produce any evidence to establish its claim that the petitioner received Rs.11,73,179/- *(or Rs.18,38,3208/- as claimed by the respondents in the notice which is contradictory to the stand taken in its civil suit)* from various dealers as averred by the respondent in its plaint; the manner in which the respondent-company lodged the present complaint against the petitioner raising same very allegations which has otherwise been found to be false and frivolous by the Civil Court, cited supra; and the petitioner has been subjected to undue harassment and humiliation at the hands of the officials of the respondent-Company which constrained him to commit suicide coupled with the fact that the respondent-company consciously concealed the factum of dismissal of its civil suit, before the summoning court, leads to only one inevitable conclusion that the present criminal prosecution has been lodged with ulterior motive by the respondent-company just to settle their personal grudge and vendetta against the petitioner.

(20). Having given thoughtful consideration to the above aspects, in my opinion, it is a fit case where exemplary costs need to be imposed.

(21). Therefore, to quantify the cost, the conduct of the respondents is to be seen who have gone to the extent of concealing material fact before the Court, hence it is directed that the respondent-company shall pay cost of Rs.1 lakh out of which Rs.50,000/- shall be as compensation to the petitioner for the undue harassment, mental agony and torture which he was made to face by the respondent-Company and for misusing the judicial process of law for personal gains besides another Rs.50,000/- shall be paid for the welfare of leprosy patients at Chandi Kusht Ashram, Sector 47, Chandigarh.

(22). Registry is directed that in case, the order is not adhered to within 2 months from the date of receipt of certified copy of this order, the matter be placed before this Court for further consideration.

(23). Ordered accordingly.

01.04.2024
V.Vishal

(Sandeep Moudgil)
Judge

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