IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-64016-2023
Reserved on : 28.02.2024
Date of Pronouncement : 12.03.2024

Mahendra Kumar Dhanuka ...Petitioner

VERSUS

State of Punjab and another ...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present : Mr. R.S. Cheema, Senior Advocate with
Mr. Pratham Sethi, Advocate for the petitioner.

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HARKESH MANUJA, J.

1. By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing of the criminal complaint bearing COMI No. 16 of 2020 dated 03.02.2020 along with all consequential proceedings arising therefrom including summoning order dated 16.05.2023 (Annexure P-2) passed by the Court of Learned Judicial Magistrate Ist Class, District Faridkot, against the petitioner for the offences punishable under Sections 420/465/468/ 471/506 of the IPC, 1860 as well as the order dated 16.10.2023 (P-3) passed by the learned Sessions Judge, Faridkot, whereby revision petition filed by the petitioner impugning the summoning order dated 16.05.2023 was dismissed.

2. Briefly stated, facts of the case are that the Complainant / respondent No 2 is the sole proprietor of M/s.Dasmesh Agro. Center, who was admittedly procuring pesticides and other materials from the Company of the petitioner since 2013. It is alleged by him that while dealing with the company of the petitioner, the complainant had issued six signed blank cheques as security towards the business transactions.

Complainant / respondent No.2 filed criminal complaint before the Ld. JMIC bearing COMI No. 16 of 2020 dated 03.02.2020 to summon accused Dhanuka Agritech Limited and others under Sections 420/465/467/468/471/182/506/ 120-B IPC, on the allegations that though complainant has settled the whole account with accused company, however, accused persons still demanded Rs.35,26,379/- from complainant on the basis of a forged and fabricated bill dated 15.03.2019 and also filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') against the complainant. It was further averred that this demand is despite the fact that complainant had filed an application before SSP, Faridkot for enquiry of misuse of blank signed cheque of complainant for Rs.35,00,000/-.

2.1 Trial Court vide impugned order dated 16.05.2023 issued summoning order against the petitioner & Dhanuka Agritech Limited. It is relevant to mention here that summons were not issued against other persons as their relationship with the company was not found to be substantiated. Even necessary ingredients to summon the petitioner & company for the offences punishable under Sections 467/ 182/ 120-B IPC were not found to be made out, however, they were ordered to be summoned for commission of offence punishable under Sections 420/465/468/ 471/ 506 IPC.

2.2 Revision petition filed by the petitioner impugning the summoning order dated 16.05.2023 was also dismissed vide order dated 16.10.2023 by learned Sessions Judge, District Faridkot.

2.3 By way of present petition, challenge has been made to both the aforesaid orders as well as quashing the complaint and all consequential proceedings arising therefrom.

3. Contrarily, the case as projected by the petitioner is that Respondent No.2 placed an order dated 11.03.2019 for supply of insecticides along-with a request for enhancing of credit limit through mobile application. The said order of supply was accepted by the Petitioner's company and a tax invoice dated 15.03.2019 was issued against the same and the goods were duly supplied through M/s. Bhagwati Transport Company, Ahmedabad vide Bilty No. 5211 dated 15.03.2019 through Truck No. RJ-31-GA-9716, which was being driven by Mehnga Singh. It was also submitted that as per the business procedure, respondent No.2 used to confirm the balance in the beginning of each financial year and in pursuance of the same, a letter dated 18.04.2019 was issued to respondent No.2 along-with his account statement from 01.04.2018 to 31.03.2019 which was duly acknowledged by him by affixing his seal on the same. To discharge his liability, respondent No.2 issued a Cheque bearing No. 000975 dated 04.06.2019 for a sum of Rs.35,00,000/- . But subsequently, in order to wriggle out of his liability to make payment for the delivered goods, respondent No. 2 addressed a letter dated 05.07.2019 to the company of the petitioner whereby he sought return of certain cheques by stating that the accounts of respondent No.2 were closed and there was nothing due against him

or his firm contrasting the statement of accounts that was duly signed by him.

3.1 It was further submitted that when the petitioner presented the cheque issued by respondent No.2 to the bank, the same was dishonored. In furtherance of the same, a Demand Notice dated 28.08.2019 under Section 138 of the Act was served upon respondent No.2. Thereafter, a complaint dated 01.10.2019 under Section 138 of the Act was filed by the Petitioner against respondent No.2 before Ld. Metropolitan Magistrate, Central Delhi, Tis Hazari Court Complex bearing CC No. 10633 of 2019, which is still pending.

3.2 But meanwhile, Respondent No.2 filed a complaint before the Superintendent of Police, Faridkot which was assigned to Deputy Superintendent of Police (D), Faridkot, on which a thorough inquiry was done by the investigating authorities and after recording the statements of all the concerned persons, it was duly concluded that there was no substance in the complaint filed by respondent No. 2 and the same was consigned to record. Thereafter, respondent No.2 approached Ld. JMIC, Faridkot with the present complaint with similar allegations as enumerated before the Superintendent of Police which led to present proceedings.

4. Impugning the proceedings initiated against the petitioner, learned Senior counsel made manifold arguments before this court. Firstly, he submitted that as the petitioner was not residing within the jurisdiction of the trial Court, an enquiry was required to be made as

stipulated under Section 202 Cr.P.C., but no such enquiry in the present case was made.

4.1 Secondly, he submitted that there was no concept of vicarious liability in IPC and accordingly, petitioner cannot be made liable on behalf of the company in the absence of any specific allegations against him in the complaint. In support of his submissions, he placed reliance upon the following judgments:-

i. **"Maharashtra State Electricity Distribution company Ltd. & anr. Vs. Datar Switchgear Ltd. & Ors.",** reported as 2010 (10) SCC 479
ii. **"S.K.Alagh Vs. State of U.P & Ors."**, reported as 2008 (5) SCC 626
iii. **"Sunil Bharti Mittal Vs. C.B.I"**, reported as 2011 (4) SCC 609

4.2 Lastly, learned Senior counsel for the petitioner submitted that the report of the handwriting expert which the trial Court relied upon while issuing summoning order against the petitioner was on the basis of comparison with a photostat copy, which should not have been considered by the trial Court. He also submitted that the statement dated 13.09.2023 of Shri Amit Gautam, Authorised representative of the company before learned Sessions Judge was not taken into consideration, whereby it was specifically deposed that the cheque in question was issued by respondent No.2 to discharge his outstanding liability.

5. I have heard learned Senior counsel appearing for the petitioner and gone through the paper book. I do not find substance in

the submissions made on behalf of the petitioner.

6. With respect to the argument raised by learned Senior counsel that no inquiry was conducted by the Magistrate as mandated under Section 202 Cr.P.C., it is not in dispute that enquiry with respect to Section 202 CrPC can be conducted by the Magistrate himself. It was held by the Hon'ble Apex Court in **“National Bank of Oman vs. Barakara Abdul Aziz & Anr.”** reported in 2013 (2) SCC 488, that the scope of enquiry under this Section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Relevant para is reproduced hereunder:

> *“The scope of enquiry under Section 202 of the Cr.P.C. is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint –*
>
> *(i) on the materials placed by the complainant before the Court*
>
> *(ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made our; and*
>
> *(iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have.”*

6.1 At the stage of inquiry under Section 202 Cr.P.C., neither there was any requirement to join the accused (**"Adalat Prasad vs Rooplal Jindal & Ors"** reported as 2004(7) SCC 338), nor it is required that all the witnesses shall be examined **(“Shivjee Singh vs. Nagendra Tiwary & Ors.”** reported as AIR 2010 SC 2261).

6.2 In the present case, the complaint is dated 03.02.2020, while the process has been issued on 16.05.2023, after the complainant examined as many as six witnesses including himself (as CW2) and a handwriting expert (CW1). Further, process has been issued after considering the documents brought on record by the complainant as Ex-C1 to Ex-C28, and the documents/reports brought on record by the handwriting expert as CW1/B to **CW1/B** and in that eventuality, requirement of enquiry has been substantially complied with and no fault can be found on this account.

7. Another contention raised by Ld. Senior counsel regarding specific allegations not being made against the petitioner is also not acceptable. Perusal of paras 6,7 & 8 of the complaint reveals that specific allegations have been made that accused Nos.3 to 5 in collusion with accused Nos.1 and 2 submitted forged and fabricated receipt with regard to receiving of material by the complainant, with the intention to commit cheating with complainant and to grab huge amount from him. It was on this basis that trial Court accordingly & rightly framed the question to be decided in this case, which is reproduced hereunder:-

> *"Now, the question arises, whether bills no. SISND1819-03253 dated 15.3.2019 Ex.C9 and Ex.C10 and Ex.C11 consignment note are forged and fabricated document or not? In this regard complainant examined CW1 Anil Kumar Gupta handwriting and finger print expert, who deposed that signatures Q1, Q2, and Q3 are forged signatures by impersonation and are not similar in their writing characteristics with the standards/ specicimen signature of Bhupinder Singh mark S1 to S13 disputed*

signatures mark Q1 to Q3 are not written by a person, who wrote standard/ specimen signatures mark S1 to S13. Persual of the statement of Mehnga Singh Ex.C17 shows that he no where stated that he got signed of complainant Bhupinder Singh, rather he only stated that one turbaned person signed in english on bill regarding receipt of 1245 bags."

7.1 Under similar circumstances, the Hon'ble Apex Court in **"Tarun K. Shah v. C. R. Alimchandani"**, reported as (2001) 9 SCC 728, held that it was not appropriate for High Court to quash the proceedings. Relevant paras from this judgment are reproduced hereunder:

"10. After hearing learned counsel for the parties and without going into any great detail, we find that the High Court erred in quashing the proceedings which had been initiated against respondent Nos. 1 and 3. The learned Judge came to the conclusion that it was incumbent upon the part of the complaint to plead the role of each accused in the making or manufacturing of the document in question. This document had been produced in the Court on behalf of the Company of which accused No. 1 was Chairman and Managing Director and accused No. 3 was Joint Secretary and Manager (Finance). In the complaint it was specifically stated "I submit that the accused have together forged the subject certificate (letter) of viz. inspection extract in respect of A-ward No. 1316 (2-2-A) BBB-12.....".

11. Without expressing any opinion on the merits of the case so that no prejudice is caused to any party, we are of the opinion that the complaint *which was filed specifically alleged that all the three accused had in a sense together forged the document which was presented in the Court. It is possible that this allegation may be incorrect, whole or in part. We are not considering this question at this stage.*

12. The High Court, in our opinion, in the facts of the present case, was not justified in quashing the order of the Magistrate who had issued summons to accused Nos. 1 and 3. For the aforesaid reasons, the order of the High Court is set aside and that of the trial Court is upheld. The appeal is allowed. All the accused will be entitled to raise such pleas as are open to them in accordance with law."

7.2 In **"Smt. Nagawwa v. Veeranna"**, reported as (1976) 3 SCC 736, the Hon'ble Apex Court while illustrating the circumstances under which High Court exercising its power under section 482 of the Code of Criminal Procedure can quash or set aside an order of the Magistrate issuing process against the accused held as under:-

"(1) where the allegations made in complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

> (3) *where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and*
>
> (4) *where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.*
>
> *The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings.”*

7.3 In view of the above, case laws relied upon by learned Senior counsel for the petitioner are not applicable in the facts and circumstances of the present case as there are specific allegations against the petitioner in the complaint regarding forging and cheating in collusion with others. In the facts and circumstances of the present case neither it can be stated that the discretion has been exercised by trial Court in an arbitrary manner, nor from the material brought on record it can be concluded that there are no reasons to proceed against the petitioner. On the other hand, it can be safely stated that respondent No 2 has been able to *prima facie* establish his case.

7.4 It is also not the case of the petitioner that in the present case there is no application of mind by trial Court while issuing the summons, rather application of mind is clearly visible from the fact that not only the summons have been issued only against the petitioner in view of insufficient material to connect other accused persons but also from the fact that while allegations were made under Sections 467/ 182/ 120-B IPC, petitioner has been summoned only under sections 420/ 465/468/471/ 506 IPC.

7.5 There is another aspect as well i.e. one version as projected by complainant in the complaint, as well as another version as projected by the petitioner, in that view disputed questions of fact are involved which can only be gone into by the trial Court at an appropriate stage. Additionally, in case the summoning order is quashed against the petitioner herein, then it will leave respondent No.2 / complainant remediless. Reference in this regard can be made to the judgment of Hon'ble Apex Court in **"K.M. Mathew v. K.A. Abraham"**, reported as (2002) 6 SCC 670, it was observed by the Hon'ble Apex Court that in such scenario, complainant would be left without any remedy to redress his grievance. Relevant para from this judgment is reproduced hereunder:-

> *"20. In the instant appeals, the complainant in each case has alleged that these appellants who are either Managing Editor, Chief Editor or Resident Editor had knowledge and were responsible for publishing defamatory matter in their respective newspaper publications. Moreover, in none of these cases, the 'Editor' had come forward and pleaded guilty to the effect that he was the person responsible for selecting the alleged defamatory matter published. It is a matter of evidence in each case. If the complaint is allowed to proceed only against the 'Editor' whose name is printed in the newspaper against whom there is a statutory*

> *presumption under Section 7 of the Act, and in case such 'Editor' succeeds in proving that he was not the 'Editor' having control over the selection of the alleged libellous matter published in the newspaper, the complainant would be left without any remedy to redress his grievance against the real culprit. We are not unmindful of the powers of he Court under Section 319 of the Code of Criminal Procedure, but such powers are circumscribed by limitations."*

8. The last argument raised by ld. Senior counsel regarding primary evidence cannot be considered as at this stage, only a preliminary enquiry is required to be conducted by ld. JMIC. With respect to the statement dated 13.09.2023 of Shri Amit Gautam, Authorised representative of the company before learned Session Judge not being taken into consideration, it is settled principle of law that at this stage only the complainant's case is required to be considered and defence witnesses or evidences are not required to be taken into consideration.

9. Further, there have been queries to which Ld. Senior counsel for the petitioner upon instructions was not able to provide any satisfactory response. No explanation has come forward from the petitioner regarding the fact that in this case when the credit limit with respect to the account of respondent No. 2 / complainant was limited to approximately Rs.11 lakhs, on what basis goods amounting to Rs.35 lakhs were supplied to him. Though a bald statement has been made that a message was received from the mobile still no document, mobile message or electronic record has been brought on record to this effect,

existing on or prior to 15.03.2019. Admittedly, all transactions with the complainant took place on the basis of written records only, as such in the absence of any record regarding delivery of goods has to be seen with suspicion, at least at this stage, when only a prime facie case is required to be made out by the complainant/ respondent No.2.

9.1 During the preliminary evidence before the Magistrate, CW4 - Branch Manager ICICI to which the cheque in question was drawn, during his examination brought on record the closure statement dated 30.5.2018 related to the account of complainant/ respondent No 2, thereby showing that his account was closed as alleged by respondent No 2 when the cheque in question was issued, thereby further substantiating the case as projected by respondent No.2.

9.2 Though, all these allegations are subject to trial, it cannot be denied that requirement of *prima facie* case has been duly made out by the complainant/ respondent No 2 and accordingly no interference is warranted at this stage.

10. In view of the discussion made hereinabove, present petition is dismissed being devoid of any merit and thus no interference is warranted in the order dated 16.05.2023 passed by the trial Court or the order dated 16.10.2023 passed by learned Revisional Court.

11. Pending miscellaneous application(s), if any, shall also stand disposed of.

12.03.2024 **(HARKESH MANUJA)**
sanjay **JUDGE**

Whether speaking/reasoned ? Yes/No
Whether Reportable ? Yes/No