(2009) 12 DEL CK 0378

In the Delhi High Court

Case No : Criminal M.C. No. 3855 of 2008

Adarsh Bhushan Mitra and Another — APPELLANT

Vs

State, Govt. of NCT and Another — RESPONDENT

Date of Decision : 16-12-2009

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 120B, 182, 211, 34, 403

Citation : (2009) 12 DEL CK 0378

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Tarkeshwar Nath and B.K. Pandey, for the Appellant; Pawan Bahl, Rajiv Arora and Anish Paul, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shali, J.—This is a petition filed by the petitioner for quashing of the FIR No. 474/2006 under Sections 406/420/120B of the IPC registered at P.S. Sriniwaspuri, New Delhi.

2. Briefly stated the facts leading to the filing of the present petition are that National Agricultural Co-operative Marketing Federation of India Ltd. lodged a complaint on 20th August, 2006 with police station Sriniwaspuri, New Delhi within whose jurisdiction it has an office that it has been cheated and breach of trust has been committed by M/s Kripa Overseas, a company having its office at 469, Katra Ishwar Bhawan, Khari Baoli, Delhi-110006 and its proprietor Mr. Sandeep Khanna in collusion with another company known as M/s Pylon Traders Pvt. Ltd. of which Mr. Adarsh Bhushan Mitra the present petitioner was the Director. The exact language of the complaint on the basis of which the aforesaid FIR was registered needs to be reproduced in order to appreciate the submissions made by the learned Counsel for the petitioner for quashing of the FIR. The said complaint read as under:

To Deputy Commissioner of Police, Economic Offences Wing, Crime Branch, Delhi

Police C-22, Udyog Sadan, Qutab Institutional Area, New Delhi Sub: complaint against M/s Kripa Overseas & Pylon Traders Pvt. Ltd. Delhi for the economic and other offences of cheat, fraud, misappropriation of funds, criminal breach of trust, conspiracy etc. Complaint by: NAFED, New Delhi (National Agricultural Cooperative Marketing Federation of India Ltd. having its office at NAFED building, Sidharth Enclave, Ashram Chowk, Ring Road, New Delhi through A.M.D. (F&A) Against: (1) M/s Kripa Overseas 469, Ishwar Bhawan Khari Baoli, Delhi-110006 (2) Sh. Sandeep Khanna, Proprietor M/s Kripa Overseas 469, Ishwar Bhawan Khari Baoli, Delhi-110006 also at (residence) E-18, East of Kailash, New Delhi (3) M/s Pylon Traders Pvt. Ltd. O-63, 1st Floor Lajpat Nagar-II, New Delhi-110024 (4) Adarsh Bhushan Mitra, Director, Pylon Traders Pvt. Ltd. O-63, 1st Floor, Lajpat Nagar-II, New Delhi-110024. Sir, The above named complainant states as under:- (1) that complaint-National Agricultural Co-operative Marketing Federation of India Ltd. (hereinafter referred to as & ldquo NAFED & rdquo) is a national level cooperative society under Multi State Cooperative Societies Act having its registered office at NAFED building, Sidharth Enclave, Ashram Chowk, Ring Road, New Delhi carrying on business of trading of agricultural and non-agricultural items like food gains, edible oils, dry fruits, spices, metal ore, meal scrap, chemicals, petroleum products etc. NAFED provides financial assistance to persons, firms, companies for doing business if proposal from such person, companies/firm is found viable. 2. That the accused No. 1 M/s Kripa Overseas is a proprietary firm with accused No. 2 Sh. Sandeep Khanna as its proprietor while accused No. 3 is a private limited company with the accused No. 4 as its Director M/s Kripa Overseas has later on being converted into private limited company namely M/s Kripa Overseas Pvt. Ltd. (3) That the accused No. 3 M/s Pylon Traders approached the complainant through accused No. 4 in the month of February 2004 vide their letter dated 19th February, 2004 representing themselves as leading traders of amongst other things Aestophedia (Heeng) and Pistachio (Kaju) and expressed desire to become business associate of NAFED for import of heeng from CIS countries with financial support from NAFED. Copy of the letter dated 19.2.2004 is being enclosed herewith as Enclosure-1. (4) That letter on vide their letter dated 15.5.2004 they (M/s Pylon Traders) introduced M/s Kripa Overseas as leading dealers of dry fruits and kirana items and requested to consider heir (Kripa Overseas) proposal for import of heeng and scrap from Kyrgystan and Tazakistan. Photocopy of the above said dated 15.6.2004 is enclosed as Enclosure-2. (5) That accused No. 1 M/s Kripa Overseas submitted its proposal vide letter dated 29.7.2004, 3.8.2004 and 16.9.2004 for import of heeng and rolling scrap from Kyrgystan and Tazakistan and requested to approve the proposal. (6) That believing and relying on the representations, assurances, promises and commitments and also on the request made by accused, NAFED agreed to enter into an agreement for extending financial facility to M/s Kripa Overseas the purposes of procurement and import of heeng rolling scrap. Consequently an agreement dated 20.9.2004 was executed between NAFED & M/s Kripa Overseas. Photocopy of the agreement is enclosed herewith as

Enclosure-3. That believing and relying on the representation, promises and assurances made by the accused, the complainant paid Rs. 10 crores to M/s Kripa Overseas vide cheque No. 903517 dated 22.9.2004 receipt of the same issued by Kripa Overseas enclosed a Enclosure-4. (7) That M/s Kripa Overseas have not repaid any amount till date and even today. (8) Cheating and fraud by way of giving cheques that bounced on presentation. The accused gave open No. 411372 towards security for repayment of their dues. This cheque bounced on presentation due to reason & Idqo Insufficient funds & rdqo. A criminal complaint u/s 138 N.I. Act is pending in the Court New Delhi. (9) False promises. Assurance: there are letters dated 15.10.2004, 31.10.2004, 28.02,2005, 9.6.2005 and 1.6.2005 showing how M/s Kripa Overseas have making false promises. They do not appear to have any real intentions of repaying the loan. Photocopy of these letters are enclosed herewith as Enclosure-5 collectively. It has come to complaint''s knowledge that even the necessary license/permissions from that purpose has not been obtained by M/s Kripa Overseas. (10) Diversion of loan funds: Accused (Kripa Overseas) have not procured and imported the quantity of heeng and rolling scrap as they agreed under the agreement and as they promised and claimed while demanding funds from NAFED. Thus, there are strong apprehension that the funds has been diverted to some other use (or misuse). NAFED extended financial support to Kripa Overseas for the scientific purpose of procuring and importing heeng and rolling scrap from Kyrgystan and Tazakistan. The Agreement was executed for this specific purpose and Kripa Overseas themselves requested/indented for funds for this specific purpose. Therefore, they cannot apply and are not entitled/authorized to apply the funds to any other use. This is clear case of cheating, criminal breach of funds and misappropriation of funds. The above stated fact and circumstances make it clear that the accused intentionally and knowingly committed offences of fraud, cheating, criminal breach of trust, misappropriation of fund and hatching conspiracy against the complainant with the large sum of money taken from the complainant in the name of exporting iron ore. It is, therefore, requested that (a) FIR may kindly be lodged against the above named company and persons (b) investigate the matter to find out the funds and use of the large sum of fund as the complainant have been diverted to be used for the purpose other than it was obtained for (c) Recover the fund. (d) Take necessary action in accordance with law to bring the culprits/offenders to book.

Sd/-

N.K. Sharma

Branch Manager,

2423/29 Surekha Building,

2nd Floor Shardha nand Marg, Delhi.

3. On the basis of the aforesaid FIR the offence has been registered and investigations are being conducted by the police although earlier there was a

restraint order that the charge sheet may not be filed.

4. I have heard the learned Counsel for the petitioner as well as the learned Counsel for the complainant apart from the learned APP.

5. The main contention of the learned Counsel for the petitioner has been that there are no allegations against the petitioner which prima facie shows that the petitioner had committed an offence of breach of trust or cheating because there was no inducement on the part of complainant to deliver any property much less the money by the petitioner.

6. It is also submitted even though if it is assumed for the sake of argument that the allegations made in the complaint are correct, the said allegations are so vague and inaccurate that they do not warrant the registration of an FIR against the petitioner for an offence of breach of trust or cheating. The learned Counsel for the petitioner has also urged that although the point of quashing the FIR has not been raised but the entire FIR is actuated by malafides against the petitioner and it has no relation or concern whatsoever with M/s Kripa Overseas. It was also contended by the learned Counsel for the petitioner that the entire case of the respondent/complainant hinges on the letter dated 15th June, 2004 purported to have been written by M/s Pylon Traders Pvt. Ltd. of which the present petitioner happens to be the Director for the purpose of introducing the M/s Kripa Overseas to the complainant.

7. It was contended that the said letter is actually forged and on that forged letter, the local police has already registered an FIR No. 364 under Sections 182/211/469/471/500/501B and 34 IPC registered at P.S. Sriniwaspuri, New Delhi on 9th July, 2007, and therefore, this clearly establishes that the present FIR is actuated with mala fides in which the officials of the complainant are involved.

8. The learned Counsel for the petitioner in order to substantiate his prayer for the quashing of the FIR has placed reliance on case titled Ram Biraji Devi and Another Vs. Umesh Kumar Singh and Another, and U. Dhar and Another Vs. The State of Jharkhand and Another, and State of Haryana and others Vs. Ch. Bhajan Lal and others,

9. I have gone through all these three judgments. In the case of U. Dhar (supra), it was held by the Supreme Court that for registration of an FIR u/s 403 IPC, accused should dishonestly misappropriate the money. This was a case where there were three parties and the allegations were made by the subcontractor on the basis of which an FIR was registered against the contractor and was quashed on the ground that the contractor and the PSU were separate parties where the payment was allegedly received by the contractor and yet not paid to the sub-contractor for which there was a separate contract, the FIR was accordingly quashed.

10. In Ram Biraji?s case (supra), the Apex Court observed that the taking of

cognizance for an offence of 420/120-B IPC by the learned Metropolitan Magistrate was abuse of processes of law on account of contradicting stand of the complainant and further there was delay in lodging the FIR. The FIR was accordingly quashed. Thus, both these cases are different than the present one.

11. So far as the Bhajan Lal?s case (supra) is concerned, that only crystallizes the law regarding quashing and gives seven illustrative contingencies in which FIR can be quashed. It was observed that the power of quashing should be exercised very sparingly.

12. The learned Counsel for the respondent has refuted the submissions and so has been done by the learned APP with regard to mala fides. It was contended by the learned Counsel for the respondent that so far as the question of the letter dated 15th June, 2004 allegedly being forged is concerned, the said question is already under investigation by the local police in the FIR in question which is prayed to be quashed. Therefore, at this point of time this plea of the petitioner herein that the FIR No. 474/2006 ought to be quashed because the petitioner has got the cross FIR on the allegations of forgery registered against the officials of the complainant is not tenable. Further, while making the allegations of mala fides not only the petitioner is required to give specific instances to show malafides but the onus of prima facie proof of the same is also very heavy on the person alleging malafidies which the petitioner has miserably failed to discharge.

13. As against this, the contention of the learned Counsel for the complainant as well as the learned APP is that the FIR need not contain the entire sequence of events which constitutes the ingredients of the offence. The complaint made by the complainant clearly discloses the commission of a cognizable offence of breach of trust and cheating in as much as the complainant was made to pay a sum of Rs. 10 crores for the purpose of import of ''Hing'' while as the said goods were never imported nor was any license for that purpose obtained by the accused company namely M/s Kripa Overseas which was introduced by the present petitioner and its company, therefore, they have been impleaded as an accused because there was a consensus ad idem between these two accused companies. The learned Counsel for the respondent also placed reliance on case titled Superintendent of Police, C.B.I. and Others Vs. Tapan Kr. Singh, wherein the Hon?ble Supreme Court has clearly observed that it is not necessary to disclose all facts and details relating to the offence and the true test is that the police officer has reason to suspect the commission of an offence which empowers him to register and investigate the offence.

14. I have considered the respective submissions made by the learned Counsel for the parties and gone through the record.

15. The first contention of the learned Counsel for the petitioner is that the allegations against the petitioner are vague, indecisive and even if it is accepted on the face value they do not make out a prima facie case either u/s 406 or 420 IPC thus without any merit.

16. If one reads the entire complaint in its totality the grievance of the complainant federation is that M/s Kripa Overseas of which Sh. Sandeep Khanna was the proprietor and he was introduced by the petitioner in the capacity of Director of M/s Pylon Traders Pvt. Ltd. and on its letter head that the former has the license to import dry fruits and ''hing'' from Central Asian Countries, and therefore, there can be a gainful joining of hands by them which would benefit both the parties. It was on the basis of this letter date 15th June, 2004 drawn on the letter head M/s Pylon Traders Pvt. Ltd. that the complainant company acted and disbursed an amount of Rs. 10 crores as advance for the purpose of import of ?Hing? and dry fruits from Kyrgyzstan and Tazakistan while as it was found that it did not have even the license to import the said goods and the aforesaid funds were diverted to different companies and individuals one of which was a study centre a group or body or a company associated with the M/s Pylon Traders Pvt. Ltd. and therefore, the allegations made by the petitioner in sum and substance was that there was a conspiracy between the petitioner in the capacity of a Director of M/s Pylon Traders Pvt. Ltd. and M/s Kripa Overseas which was to do an illegal act or a legal act by illegal means and it has admittedly caused wrongful loss to the complainant company. Therefore, it can by no stretch of imagination be said that the ingredients of the offence u/s 406/420 IPC are not prima facie made out against the petitioner because prima facie there existed dishonest intention at the time of representation itself.

17. So far as the question of letter dated 15th June, 2004 being forged is concerned, this is a defence of the petitioner herein. The petitioner has to prove his defence during the course of trial merely because the petitioner or the petitioner''s signature on the said letter head are written in a different manner than the manner in which he normally writes or that he has obtained an opinion of a handwriting expert in his favour which at best prima facie is a self-favouring admission would not exonerate the petitioner or warrant the quashing of the FIR in question on this ground itself much less the same would become malafide.

18. So far as the question of malafides are concerned, the Hon?ble Supreme Court in case titled State of Bihar and Anr. v. P.P. Sharma, IAS and Anr. AIR 1991 1260 has very categorically observed that it is very easy to make allegations of mala fides but very difficult to prove and in order to prove the allegations of malafides the onus is very heavy on the petitioner. The petitioner has not only to make an averment in the petition but also substantiate the same by prima facie proof of the same. Further, the petitioner has to make the person, against whom malafides are urged, as a party in the petition. No person against whom malafidies are alleged has been made a party, instances of incident on the basis of which malafides are alleged have not been given. Thus the petitioner has failed to discharge this onus even in slightest manner, therefore, the second ground of the petitioner that the FIR is actuated by mala fides is also without any merit.

19. For the reasons mentioned above, the petition of the petitioner for quashing

of FIR No. 474/2006 under Sections 406/420/120B of the IPC registered at P.S. Sriniwaspuri, New Delhi is totally misconceived and the same is dismissed.

Crl. M.A. No. 14369/2008

Since the main petition has been dismissed, no order is called for on this application. Accordingly, the same is also dismissed.