
(2007) 05 AHC CK 0124
In the Allahabad High Court

Densen Joseph

APPELLANT

Vs

State of U.P. and Puran Chand Pandey

RESPONDENT

Date of Decision : 21-05-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 203
Penal Code, 1860 (IPC) — Section 323, 406, 420, 504, 506

Citation : (2007) 05 AHC CK 0124

Hon'ble Judges : K.N. Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K.N. Sinha, J.—By means of present writ petition under Article 226 of the Constitution of India the petitioner has sought for issue of a writ in the nature of certiorari for quashing of the entire proceedings of complaint case No. 4848 of 2002, Puran Chand Pandey v. Densen Joseph, under Sections 420, 406, 323, 504 and 506 I.P.C, Police Station Mandi Saharanpur, including impugned order dated 5.7.2005, summoning the petitioner as an accused, pending in the court of Additional Civil Judge (Junior Division/Judicial Magistrate) Court No. 21, Saharanpur.

2. The brief facts, giving rise to the present writ petition, are that the petitioner was appointed as sales Manager with M/s Somaan Brothers FZC, C-3-18/08, Post Office Box No. 7803.Saif Zone, Sharjah, U.A.E where he worked from 15.6.2002 to 3.2.2003. The respondent No. 2 is engaged in the manufacture of wood carving materials, which is prepared and sold at different places. A purchase order was placed by M/s. Somaan Brothers F.ZC, Saif Zone, Sharjah, U.A.E, to the respondent No. 2, M/S Shivam Enterprises, Gali No. 14, Peer Wali Gali, Mandi Samiti Road, Saharanpur on 15th of August, 2002 for purchase of certain wood carving materials with the terms that goods must be shipped in one lot within a period of 45 days from the date of the order and timely delivery of the

consignment was very important. The copy of the purchase order is annexure-2 to the writ petition. The debit note was prepared on 30. 9. 2002 by I.C.I Container Line Pvt. Ltd. for the consignment of M/s Shivam Enterprises which was booked to M/s Somaan Brothers. The copy of the debit note dated 30.9.2002 is annexure-3 to the writ petition. The proforma Invoice and bill were also prepared by M/s Shivam Enterprises Saharanpur, respondent No. 2, which are annexures-4 and 5 to the writ petition. The purchase order, Proforma Invoice debit note, Bill of Lading etc indicate that the purchase was made by M/S. Somaan Brothers from respondent No. 2 which were booked directly in the name of M/s Somaan Brother, Sharjah, U.A.E and the petitioner has nothing to do with this purchase order or consignment. The petitioner worked with M/s. Somaan Brothers from 15.6.2002 to 3.2.2003 and thereafter he left M/S. Somaan Brothers and had come back to India and had joined M/s Vertex Customer Management, 3rd Floor, DLF Centre Court, DLF City, Phase V, Gurgaon, Haryana.

3. The respondent No. 2 filed a complaint case on 4.10.2004 in the court of Chief Judicial Magistrate, Saharanpur stating that the goods worth Rs. 1,47,000/- and total amount of Rs. 1,59,000/- was received by petitioner but petitioner did not make the payments. When the petitioner had come to district Saharanpur, the respondent No. 2 (sic) the petitioner but the petitioner beat the respondent No. 2 with "Danda" which resulted in injuries to him. The Magistrate summoned the petitioner for the said offence. It has been further submitted that the petitioner was never present at Saharanpur on 5.9.2004 but in his office petitioner has also received salary for the month of September, 2004. There was, thus, no question of beating the respondent No. 2. The salary slip is annexure-8 to the writ petition. It appears that there was some Invoice regarding payment of consignments which was despatched to M/S Somaan Brothers. This payment has nothing to do and the petitioner who was only an employee of M/S Somaan Brothers, cannot make any payment from his pocket but the petitioner was an employee and available in India. The respondent No. 2 thought it fit to attack the petitioner so as to take out money from the petitioner whereas the petitioner is nobody in the firm and has got nothing to do with the consignment. The petitioner had never visited Saharanpur at any point of time. Not only this the entire episode is connected with the payment of money of M/s Somaan Brothers and respondent No. 2 on account of contract entered into between the parties and the matter is purely of civil nature and money can be recovered by filing a civil suit and not by filing a complaint.

4. The respondent No. 2 has filed counter affidavit stating that the contents of para 3 of the writ petition are not admitted, fabricated and concocted as the petitioner himself signed as Director. The petitioner caused injury to respondent No. 2 when he was at Saharanpur on 5.9.2004. The goods have been supplied to M/s Somaan Brothers to set forth that he was director and is responsible for the payment. The petitioner approached police station of Kotwali Dehat to lodge a report but the same was not lodged, then he approached S.S.P. Saharanpur. He also did not take any action. Thereafter he filed a complaint case. The

respondent No. 2 got injury and it is for the trial court to examine the matters and no relief can be granted to the petitioner in the writ petition.

5. The petitioner filed a (sic) reiterating the incident as disclosed in the main affidavit.

6. I have heard Sri R.B. Singhal, learned Counsel for the petitioner and Mod. Usuf, learned Counsel for respondent No. 2.

7. The quashing of the complaint has been sought mainly on the two grounds, firstly the petitioner was not an employee of M/s Somaan Brother on the relevant date and time. Secondly he was not, at any point of time, at Saharanpur on 5.9.2004. Moreover, it was a civil matter. So far as the first point is concerned, the learned Counsel for the petitioner has taken me through annexure-3, the debit note sent by the I.C.I. Container Line Pvt. Ltd, annexure-4, Proforma Invoice Bill of Lading and annexure-5 of the papers between respondent No. 2 and M/s Somaan Brothers. There is nothing on record to suggest that petitioner was director of M/s Somaan Brothers. The letter, annexure-1, shows that one Arif Hussain is the director who had offered the terms and condition to employ the petitioner but this letter is dated 5th of May, 2002. In para-10 of the writ petition it has been stated that the petitioner has worked with M/s Somaan Brothers from 15.6.2002 to 3.2.2003 which has not been connected nor there is any document to show that he was in any way connected with this bill. He was present at Saharanpur on the day of alleged incident but at per annexure-8 he was in his office and received his salary. The paper annexure-8 is on record. The contents of para 10 of the affidavit shows that the petitioner worked with M/s. Somaan Brothers from 15.6.2002 to 3.2.2003, thereafter he left M/s Somaan Brothers and had come back to India and joined M/s Vertex Customer Management, Floor, DLF Centre Court, DLF City, Phase V, Gurgaon, Haryana. In para 6 of the counter affidavit, this fact has not been controverted by mentioning that it needs no reply as it has no concern with the answering respondent. Thus, contents of para 10 remains un-controverted and are taken to be true.

8. Thus, the contention of the learned Counsel for the petitioner is that he was not at Saharanpur but he was in his office which is verified by annexure-8, and further it is strengthened by a mere denial of this para. Besides, the petitioner was not in service of M/s Somaan Brothers and left M/s Somaan Brother which is also confirmed by averment in para 10, which is not controverted. The Magistrate should have examined the facts as to whether the petitioner is in any contact with the bill or not and whether it was a civil dispute or not.

9. Learned Counsel for the petitioner has relied upon Indian Oil Corporation Vs. NEPC India Ltd. and Others, wherein the Apex Court has held that "while on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil dispute into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in

several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discourage."

10. Hon"ble the Apex Court further held that "While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law."

11. The principle, laid down above, clearly applies on the facts of the present case for the reason that it is purely a contractual matter between respondent No. 2 and M/s Somaan Brother and whatever breach of contract is there, it can be enforced on civil side against the party concerned.

12. It is true that when a complaint case is filed, after examining the evidence, the Magistrate is bound to summon the accused if a prima facie case is made out. The Code of criminal procedure gives ample power to the Magistrate to examine the evidence as to whether the prima facie case is made out or not. If no case is made out he shall dismiss the complaint case u/s 203 Cr.P.C and he shall also summon the accused only when a prima facie case is made out.

13. Hon"ble the Apex Court in in the case of Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, has held as follows.

summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

14. In case at hand when the magistrate read the contents of complaint and evidence of complainant and witness, it should have definitely sparked his mind that this is a matter of some contract between two parties and in that case he could have minutely examined as to whether the petitioner was director or not

and whether he was in any connected with this bill or not before passing the summoning order.

15. Sri R.B. Singhal, learned Counsel for the petitioner has rightly pointed out that the parties M/s Somaan Brothers belonged to Sharjah, U.A.E and it would be difficult for respondent No. 2 to lay hands on him, hence the previous employee can be pressurised by means of a criminal complaint who denied the money.

16. Considering the above facts, evidence and law, no case is made out against the petitioner. Consequently, the writ petition under article 226 of the Constitution of India is liable to be allowed and it is hereby allowed and the proceedings of complaint case No. 4848 of 2002, Puran Chand Pandey v. Densen Joseph, under Sections 420, 406, 323, 504 and 506 I.P.C., Police Station Mandi, Saharanpur is hereby quashed. The petitioner/accused if, on bail, need not surrender before the Court and sureties stand discharged.