
(2013) 02 MP CK 0137
In the Madhya Pradesh High Court
Case No : M.Cr.C. No. 3549 of 2008

Duncans Industries Limited and Others	APPELLANT
Vs	
Jai Ramdas Panjwani and Another	RESPONDENT

Date of Decision : 21-02-2013

Acts Referred:

Citation : (2013) ILR (MP) 1483

Hon'ble Judges : R.C. Mishra, J

Bench : Single Bench

Advocate : Manish Datt and Pushpendra Dubey, for the Appellant; Surendra Singh and Manish Mishra, for the Non-Applicant No. 1 and R.P. Tiwari, G.A. for Non-Applicant No. 2/State, for the Respondent

Judgement

R.C. Mishra, J.—This is a petition, u/s 482 of the Code of Criminal Procedure (hereinafter referred to as "the Code"). The petitioners are aggrieved by the order-dated 27.1.2005 passed by Shri Sharad Bhamkar, Judicial Magistrate First Class, Katni in Criminal Case No. 513/04, rejecting their application for discharge that was moved in pursuance of the order-dated 17.12.2004 passed in an earlier petition, registered as M.Cr.C. No. 9206/04 and filed u/s 482 of the Code, for quashing the complaint made by respondent no. 1. Upon the complaint, cognizance of the offences punishable under Sections 409, 418, 420 read with 34 and 120B of the IPC was taken against the petitioners. Relevant allegations, as made in the complaint, may be summarized thus-

(i) At the relevant point of time, the petitioner nos. 2 to 5 were working as Chairman, Vice President, Vice President (Assistant) and General Manager of the petitioner no. 1, which is a Tea Company, registered under the provisions of Companies Act, 1956. The Company had appointed M/s. Jairam Suresh Kumar, a proprietary firm as the authorized dealer for Kami region at the time when the respondent no. 2 was the proprietor thereof.

(ii) Initially, the petitioner no. 1 had agreed to supply tea to the Firm on credit basis, subject to certain terms and conditions. Accordingly, within 15 days from

the date of receipt of the consignment, the Firm was required to pay the entire price and forward the debit note for being processed in the office of the Company that had agreed to make payment of commission etc. by issuing corresponding credit note.

(iii) In pursuance of a conspiracy to cheat the Firm and misappropriate the outstanding amount of Rs. 16,17,859/- in violation of terms of the contract, a sum of Rs. 21,53,463/- was deducted by the Company against a total amount claimed by the Firm by raising debit notes from time and time and even after deliberations with reference to repeated requests, the petitioner nos. 2 to 5 had failed to pay the same.

2. For a ready reference, the operative part of the order-dated 17.12.2004 (supra) passed by a co-ordinate Bench of this Court may be reproduced thus-

In the circumstance of the case, it is directed that the non-bailable warrant issued by the trial Court against the petitioner shall not be executed. The petitioner shall make an application before the trial Court for their discharge. The application shall be decided on merit by the trial Court. Till the disposal of the application, the personal appearance before the trial Court shall be dispensed with. If the application is rejected, the trial Court shall proceed against the petitioner in accordance with law.

3. A bare perusal of the order in question would reveal that learned Magistrate, while making reference to the decision of the Supreme Court in *Adalat Prasad Vs. Rooplal Jindal and Others*, , proceeded to dismiss the application inter alia for the reason that he had no jurisdiction to review his earlier order directing issuance of process.

4. The case registered against the petitioners is a warrant case that attracts the provisions of Section 244 to 246 of the Code. Sub-section (2) of Section 245 of the Code reads-

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

5. Although, *Adalat Prasad's* case was a warrant case yet, in a subsequent decision rendered in *Subramaniam Sethuraman Vs. State of Maharashtra and Another*, , a three-Judge Bench, while refusing to reconsider the decision in *Adalat Prasad's* case, proceeded to explain that it is the summon procedure that does not complete a stage of discharge. The relevant excerpts are set out below-

Having considered the argument of the learned counsel for the parties, we are of the opinion that the argument of the learned counsel for the appellant that the decision of this Court in *Adalat Prasad's* case requires reconsideration cannot be accepted. It is true that the case of *Adalat Prasad* pertained to a warrant case whereas in *Mathew's* case the same pertained to a summons case. To this extent, there is some difference in the two cases, but that does not, in any

manner, make the law laid down by this Court in Adalat Prasad's case a bad law.

6. Still, as the effect of sub-section (2) of Section 245 of the Code did not come up for consideration in Adalat Prasad's case, the decision cannot be understood to mean that the provision carves out a redundant exception. This view is fortified by the following observations made by the Apex Court in Ajoy Kumar Ghose Vs. State of Jharkhand and Another, -

The Magistrate has the power to discharge the accused u/s 245(2) Cr.P.C. at any previous stage, i.e., before the evidence is recorded u/s 244(1) Cr.P.C., which seems to be the established law, particularly in view of the decision in Cricket Association of Bengal and Others Vs. State of West Bengal and Others, , as also the subsequent decision of the Bombay High Court in Luis De Piedade Lobo Vs. Mahadev Vishwanath Parulekar and another . The same decision was followed by Kerala High Court in Manmohan Malhotra Vs. P.M. Abdul Salam and Another, and Hon"ble Justice K.T. Thomas, as the learned Judge there was, accepted the proposition that the Magistrate has the power u/s 245(2) Cr.P.C. to discharge the accused at any previous stage. The Hon"ble Judge relied on a decision of Madras High Court in Muhammad Sheriff Sahib Vs. Moulvi Abdul Karim Sahib and Others, , as also the judgment of Himachal Pradesh High Court in Gopal Chauhan Vs. Smt. Satya and Another, . We are convinced that u/s 245(2) Cr.P.C., the Magistrate can discharge the accused at any previous stage, i.e., even before any evidence is recorded u/s 244(1) Cr.P.C.

7. However, sub-section (2) of Section 245 of the Code corresponds to sub-section (2) of Section 253 of the Old Code, 1898 and the guideline for invoking the provision was laid down by a three-judge Bench in Mahant Abhey Dass Vs. S. Gurdial Singh and Others, . Accordingly, when on allegations made against the accused prima facie case is made out, he should not be discharged u/s 253(2).

8. As explained further in Ajoy Kumar Ghose's case-

The very heading of Section 246 Cr.P.C. viz., "Procedure where accused is not discharged" even indicates that it would come into play only after the matter is examined in the light of Section 245 Cr.P.C. and the accused is not discharged thereunder. Therefore, it is incumbent upon the Magistrate to examine the matter for purposes of considering the question whether the accused could be discharged u/s 245 Cr.P.C. and it is only when he finds it otherwise, he could have resort to Section 246 Cr.P.C.

9. Principles which can easily be deduced from the plethora of precedents cited above may be summed up as under-

(i) In a summons case, it is impermissible for the Magistrate to reconsider his decision to issue process in absence of any specific provision to recall such order.

(ii) By virtue of sub-section (2) of Section 245 of the Code, in a complaint case, the Magistrate has discretion to discharge the accused at any stage previous to recording of any evidence for prosecution, if he is satisfied that the charge is

groundless. As an obvious corollary, the formation of opinion before issuance of process in a warrant case that there is sufficient ground for proceeding against the accused does not preclude the Magistrate from exercising this discretion judicially if there are adequate reasons for doing so. Otherwise, it has bearing upon the duty of the Magistrate to take some evidence, though not all (See. Shah Jethalal Lalji Vs. Khimji M. Bhujpuria,).

10. Accordingly, the Magistrate could have discharged the petitioners under sub-section (2) [supra] only after arriving at a finding that the allegations made in the complaint were absurd and inherently improbable or did not constitute any offence.

11. Adverting to the factual aspect of the case, it may be observed that while placing reliance on the following precedents of the Supreme Court-

(i) Lalmuni Devi Vs. State of Bihar and Others,

(ii) M/s. Medchl Chemicals and Pharma P. Ltd. Vs. M/s. Biological E. Ltd. and Others,

(iii) Kamaladevi Agarwal Vs. State of West Bengal and Others,

learned Magistrate had refused to allow the application on the ground that the dispute was purely of a civil nature. In this view of the matter, his decline to discharge the petitioners without recording any evidence was justified in the facts and circumstances of the case as the same transaction relating to breach of contract, can give rise to civil as well as criminal liability. However, looking to nature of dispute, for considering the question of charge, the trial Magistrate would not be required to take down the entire evidence.

The petition, therefore, stands disposed of with the direction that the trial Magistrate shall decide the application after recording material evidence within a period of 3 months from the receipt/production of certified copy of this order. Till disposal of the application, exemption of the petitioner nos. 2 to 5 from personal appearance before the trial Court shall continue.