(1998) 09 RAJ CK 0016

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 373/98

Jahangir Joiya APPELLANT

Vs

State of Rajasthan and Another RESPONDENT

Date of Decision : 01-09-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 181(4), 482
Penal Code, 1860 (IPC) — Section 354, 406, 408, 420, 509

Citation : (1999) CriLJ 154

Hon'ble Judges : S.C. Mital, J

Bench : Single Bench

Advocate : M.L. Garg, for the Appellant; S.K. Vyas, K.N. Joshi and J.S. Chaudhary, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Mital, J.—By this petition u/s 482 Cr. P.C., the petitioner Jahangir Joiya has invoked the inherent powers of this Court to quash F.I.R. No. 58 dated 27-3-98 P. S. Basni, Jodhpur.

2. The Director, Alcobex Metals Ltd., Head Office, Jodhpur, Shri Sampat Raj s/o Bes Raj Kanugo r/o A 27, Shastri Nagar, Jodhpur lodged a complaint under Sections 406 and 420 I.P.C, against the petitioner in the Court of Addl. Judicial Magistrate No. 4, Jodhpur on 24-3-98, which was forwarded for investigation u/s 156(3) Cr. P.C. to the Police Station, Basni, Jodhpur. The S.H.O. Basni, registered a case under Sections 406 and 420 I.P.C. under F.I.R. No. 58 dated 27-3-98, which is sought to be quashed by the petitioner.

3. According to this F.I.R., the petitioner Jahangir Joiya is the Area Manager of the Branch Office at Hyderabad (Andhra Pradesh) of the Alcobex Metals Ltd., Jodhpur. The petitioner''s duties were to purchase and sell the goods for the Company and to make the payments as well as to receive the payments on behalf of the Company. The petitioner was required to send regular statements and accounts of the transactions at Jodhpur Head Office. A sum of Rs. 60 lacs

became due for payment to the Company from various firms, who dealt with through the petitioner but the Company did not receive the payment for eight to ten months. The Officers of the Company wrote letters, issued telegram and also contacted on phone to arrange for the payment of the dues at the earliest. The petitioner replied on telephone that the parties who purchased the goods, are passing through acute financial stringency, therefore, the payment is likely to take time. However, the Directors and the Officers of the Company apprehended that the amount may not run in bad debts. The complainant Sampat Raj and the Accountant Mangi Lal Jain went to Hyderabad and contacted the petitioner and demanded to arrange the payment or to hold the meeting with the parties. At that stage, the petitioner started hesitating to meet the complainant and the Accountant Mangi Lal Jain and did not arrange for the payment or for meeting with the parties and staled that if they would meet the parties on their own accord, that will tarnish his reputation and he will anyhow arrange for the payment. It is further stated in the F.I.R. that when the complainant and the Accountant Mangi Lal asked the petitioner to reveal the truth, the petitioner confessed that he received the payment from M/s. G. K. Bayar Pvt. Ltd. and Advance Radiomast but he used it for his own personal purpose and promised to amend the mistake by making payment of Rs. 3,73,944.67 at the earliest possible time but the petitioner did not make the payment. The complainant and the Accountant Mr. Mangi Lal came back to Jodhpur on 4-1 -98 and contacted the parties on telephone, telegram and by writing letters. The proprietor of M/s. Guru Enterprises/Neha Enterprises Mr. Srinath Gaurcame to the Head Office of the Company on 10-3-98 and showed the receipt given by Jahangir Joiya showing the payment of Rs. 11,39,000/- to him. This payment was not found entered in the cash book at Hyderabad Branch Office. The payment of Rs. 18,65,000/- was shown in the cash book and accounts to have been made to M/s. Laxmi Metal Extension, Hyderabad by the petitioner but in fact, the said Company received only Rs. 14,65,000/-. M/s. Shahduls, Hyderabad also informed that Jahangir Joiya received payment from them of a sum of Rs. 3,25,689/- but the same was not shown in the cash book and also not deposited in the Company. In this way, the petitioner misappropriated a sum of Rupees 22,38,635/-. It is apprehended that the petitioner might have taken payments from other Companies also against whom a sum of Rs. 40 lacs is due to the Company and the accused has not deposited the amount to the Company Head Officer, Jodhpur. The petitioner was asked to attend the Head Office and to render the account but instead of that, he sent his resignation.

4. It is relevant to mention here that Mr. Nirmal Kuhad, the authorised representative of Alcobex Metals Ltd., Jodhpur at Hyderabad also lodged F.I.R. No. 71 dated 4-4-98 at Police Station, Jubilee Hills, Hyderabad and a case under Sections 406 and 420 I.P.C. had been registered and it is under investigation. In that F.I.R., Mr. Nirmal stated that the Company provided a fully furnished residential accommodation within the office premises to the petitioner for his convenience. The petitioner was also entrusted with the cheque drawing and

signing authority as the authorised signatory of the Company. He was also authorised to use the office equipments by taking on lease and paying rent but after five years, the petitioner started making money by illegal means. When the Company came to know and questioned him, he could not give proper reply and left the office locked without handing over the charge on 30-3-98 and took away the Company''s car bearing registration number AP 9K-3868 and the office records. He also burnt the important documents and account books in his custody, which could prove his guilt. He also thereafter started collecting money from the customers personating himself as the Area Sales Officer and started misappropriating the funds. His resignation was not accepted till he settled the accounts and records of the Company. He also started defaming the Company. A preliminary inventory was also enclosed showing the articles and the value taken away by the petitioner, for recovery. It was stated that the articles of the branch office alongwith cheque books be recovered and also to allow the informant to take the possession of the branch office premises for regular business dealings.

5. Thus, I find that two First Information Reports have been lodged against the petitioner as stated above. In the above background and facts and circumstances, the petitioner has prayed to quash the F.I.R. No. 58 dated 27-3-98, P. S. Basni, Jodhpur.

6. I have heard the learned counsel for the parties. I have perused the First Information Reports.

7. The learned counsel for the petitioner has vehemently argued that the dispute between the parties is entirely of civil nature regarding rendition of accounts. The Company has lodged two reports against the petitioner mainly to pressurise and cause harassment to him. The aforesaid two First Information Reports have been filed on the same set of facts and parallel investigation of both the First Information Reports is abuse of process of Court and should be quashed in the interest of justice. Moreover, Police Station, Basni has no jurisdiction to investigate the allegations made in the F.I.R. because the petitioner was admittedly Area Manager of the Hyderabad Branch and all the alleged payments were received by him and the payments were made by him at Hyderabad and other places and not at Jodhpur within the jurisdiction of the Police Station, Basni. Therefore, if any offence has been committed, then it has been committed at Hyderabad and Police Station, Basni has no territorial jurisdiction to investigate into the matter.

8. The learned P. P. and the learned counsel for the complainant strongly opposed the contentions raised on behalf of the petitioner that there are clear allegations of misappropriation of articles and money and the dispute is not of civil nature. The allegations made in the F.I.R. clearly disclose the ingredients of offences under Sections 406, 420 and 408 I.P.C. (Criminal breach of trust by clerk or servant). Both the First Information Reports are not based on the same set of facts but disclose independent, separate and distinct facts constituting an offence independent and distinct from each F.I.R. The Head Office of the

Company is located at Jodhpur and the petitioner was bound to send the accounts and the statements and to account for the money to the Company at the headquarters at Jodhpur and, therefore, the F.I.R. lodged against him at Police Station, Basni is to be investigated here in view of Section 181(4) Cr. P.C. Therefore, the contention of lack of territorial jurisdiction of Basni is completely meritless.

9. The scope of inherent powers u/s 482 has come up for consideration on number of occasions before the apex Court and High Courts. In Hira Lal Chaudhary and Others Vs. State, the prosecution launched at Bareilly criminal Court for alleged criminal breach of trust after period of three years from the date of the alleged commission of the offence was quashed on the ground that the allegations of the parties showed that in fact, it was a case of adjustment of accounts and payment by one party or other. The proceedings were not found initiated bona fide and were taken up with ulterior purposes to coerce the accused to come to settlement to the civil Court. It has been held that if no evidence is required, the High Court can quash the proceedings on the objection of territorial jurisdiction. In this case, there was some dispute about the transaction between the two firms at Bareilly and Calcutta.

10. In Harchand Singh v. State of Rajasthan 1998 Cr LR (Raj) 32 two First Information Reports were lodged for the offence committed on 2-7-92. Trial in relation to the first report was pending. The second F.I.R. was lodged regarding forged transaction of sale of car. It was for harassment of the petitioner and being a case of abuse of process of law, the second F.I.R. was quashed.

11. In Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another, the quashing of the F.I.R. was not held justified because prima facie, offences under Sections 354 and 509 I.P.C. were made out on the basis of the material on record. The guidelines laid down by the apex Court in State of Haryana and others Vs. Ch. Bhajan Lal and others, were reiterated with all force. The allegations contained in the F.I.R. shows the case prima facie against the accused. It was held that High Court erred in quashing the F.I.R. in Union of India and others Vs. B.R. Bajaj and others,

12. I am inclined to agree with the learned counsel for the respondents that the dispute between the petitioner and the complainant cannot be termed as a dispute of a civil nature. The F.I.R. contains clear allegations against the petitioner Area Manager of the complainant regarding misappropriation of the funds of the Company received by him from various firms and conversion to his own use, which he was required to remit to the Head Office of the Company at Jodhpur. The facts of this case do not disclose any transaction of a civil nature between the petitioner and the Company. I do not find any force in this argument raised on behalf of the petitioner that the dispute raised by the Company is of civil nature.

13. The next question, which arises for serious consideration is whether the First

Information Reports lodged at Hyderabad and Jodhpur contain the same set of facts. I have carefully perused the contents of F.I.R. No. 71 dated 4-4-98. I am of the view that the matter has been reported for action in respect of the misappropriation of the car and other articles of the office of the Company, removal of office articles and documents and other acts of the petitioner after leaving the office on 30-3-98. It has also been alleged that the petitioner started defaming the name of the Company in the business community. The informant also furnished a list of all the articles for effecting recovery and for taking possession of the office premises for running the business of the branch. The other allegation is the use of the cheques by the petitioner and collection of money from customers by personating himself as the Area Sales Officer and started misappropriating the funds. All these allegations relate to the period after 30-3-98. The occurrence of offence has been shown in this F.I.R. "Monday 30-3-1998" and the F.I.R. has been lodged on 4-4-98 whereas is F.I.R. No. 58 dated 27-3-98, P.S. Basni is regarding distinct and separate facts with specific particulars of the money received by the petitioner for the last 8 to 10 months i.e. from the date of lodging of this F.I.R. on 27-3-98 and a total sum of Rs. 22,38,635/ has been criminally misappropriated by him or committed that criminal breach of trust. Therefore, I hold that the impugned F.I.R. is entirely based on distinct and separate facts and clearly prima facie disclose the essential ingredients of offences under Sections 420, 406 & 408 I.P.C. In view of the foregoing discussion, the contention of the petitioner of filing two First Information Reports on same set of facts, is untenable.

14. The petitioner was Area Manager at Hyderabad office of the Company and he received money and retained the same at Hyderabad and not at Jodhpur. The payments to the firm on behalf of the Company was made by him at Hyderabad. It is, however, also stated by the complainant that the Head Office of the Company is situated at Jodhpur. The branch office at Hyderabad was governed by the Head Office by giving orders and directions from Jodhpur. The petitioner was doing the business dealing from the Companies relating to the area of Hyderabad branch and for that purpose, he was authorised by the Company to receive payments and also to make payment on behalf of the Company. It was the duty of the petitioner to send the accounts and the returns regularly showing the money received and payments made to the Head Office at Jodhpur and to account for the money to the Company at Jodhpur. Section 181(4) Cr. P.C. reads as under :-

Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject to the offence was received or retained, or was required to be returned or accounted for, by the accused person.

15. It is clear from the above provision that the offence of criminal misappropriation or criminal breach of trust can be enquired into or tried within

the local jurisdiction (i) where the offence was committed; (ii) any part of the property was received or retained; (iii) any property or part of the property was required to be returned or accounted for by the accused person. In the instant case, the F.I.R. discloses that the petitioner was required to remit and account for the money to the Company received by him to the Head Office at Jodhpur. Therefore, prima facie, at this stage, as per the allegations in the F.I.R., it cannot be said that Police Station, Basni had no territorial jurisdiction to investigate into the matter. Hence, the objection taken on behalf of the petitioner regarding lack of territorial jurisdiction is not acceptable.

16. In view of the foregoing discussion, I do not find any reason to hold that the lodging of the impugned F.I.R. and its investigation can be termed as "abuse of the process of the Court" and. no case is made out for quashing the F.I.R. in interest of justice also.

17. The petition being devoid of any merit, is hereby dismissed.

