
(2000) 01 MP CK 0063

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 3953/98

Nirmal Suryaji More and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 12-01-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(3), 438, 482

Citation : (2000) 4 MPHT 284 : (2000) 3 MPLJ 599

Hon'ble Judges : Fakhruddin, J

Bench : Single Bench

Advocate : Rakesh Saxena, for the Appellant; K.B. Chaturvedi, Government Advocate for Respondent No. 1 and Sanjay Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Fakhruddin, J.

Heard.

This petition u/s 482 Cr.P.C. has been filed by the applicants on 16-12-1998, which came up for hearing on 18-12-98. On 18-12-98 counsel for the applicant sought for an adjournment and on 6-1-1999 again time was sought. On 25-1-99 amendment in the petition was made and respondent No. 2 was impleaded as party. On 1-2-1999 notices were issued to the respondents.

The prayer in the petition is for quashing of the FIR and further investigation pursuant thereto.

The contention of the counsel for the applicant is that the FIR has been lodged malafide against the applicants whereas the grievances could be against the American Company M/s. Itochu International Inc., 5847, Sanfelipe, Suite 1100 Houston, Texas 77057-3009, U.S.A. It is contended that the applicants were merely liaisioning without consideration. It is further contended that, in any case, the matter is of civil liability.

A civil suit was filed against the American Company M/s. Itochu International Inc. by the respondent No. 2 vide Civil Suit No. 8-A/98 in the Court of 9th ADJ, Gwalior.

Shri Sanjay Gupta, learned Advocate representing for the respondent No. 2 contended that the applicants applied for grant of anticipatory bail that was rejected by the learned Sessions Court on 24-9-1998 vide bail application No. 2400/98. Applicant Makoto Muratsu had filed an application vide Misc. Cr. Case No. 3751/98 before this Court for grant of anticipatory bail u/s 438, Cr.P.C. and it was contended that no offence was committed by the applicant and there is a breach of agreement. The applicant Makoto is an employee of the company. The company was required to supply some goods. The goods were not found upto the mark and the packing was found to be defective. This Court, however, at that stage, did not express any opinion on the merit of the case but granted bail for a limited period of 30 days only. The applicant No. 2, Makoto Muratsu did not avail the said bail. It was also contended that an application was also filed by the applicant No. 1 Nirmal Suryaji More and in similar terms an order was also passed on 1-12-1998 by this Court in Misc. Cr. Case No. 3719/98. Applicant No. 2 Makoto Muratsu did not furnish bail and applied for extension of time. This Court vide order in Misc. Cr. Case No. 3782/98, has rejected the prayer for extension of time on 2-12-98. Applicant Makoto Muratsu thereafter filed SLP (Criminal) before the Apex Court being No. 1063/1999 (from the judgment and order dated 2-12-1998 in M.Cr.C 3782/98). The SLP came up for hearing before the Apex Court on 19-4-1999. On 19-4-99, the following order was passed :

"Four weeks" further time is granted to file proof of surrender, failing which this SLP would stand dismissed, without reference to the Court."

Counsel for the applicants was pointedly asked as to whether the applicants have surrendered till today. He stated that they have not surrendered.

Shri Chaturvedi learned Government Advocate appearing for the State and Shri Sanjay Gupta appearing for the respondent No. 2 submit that in exercising the supervisory powers envisaged u/s 482, Cr.P.C. this Court should also keep in mind the conduct of the applicant that in spite of securing the bail order, the applicants did not furnish bail, nor they applied for regular bail. He also did not surrender in spite of the directions passed by the Supreme Court on 19-4-1999 and more than six months have elapsed. It is further submitted that the matter is at the investigating stage. Reliance has been placed on a decision of the Apex Court reported in M/s. Jayant Vitamins Ltd. Vs. Chaitanyakumar and another, wherein the Apex Court held that :

"The investigation into an offence is a statutory function of the Police and the superintendence thereof is vested in the State Government and the Court is not justified without any compelling and justifiable reason to interfere with the investigation. Thus, where the investigation which is still on its way and the further investigation in the offence is legally permissible as contemplated by

Section 173(3) of Cr.P.C., the quashing of investigation by the High Court would not be permissible."

In this case it is the first investigation. Shri Saxena, Advocate representing the applicants was pointedly asked as to whether the defences which are available to the applicants were submitted before the Investigation Agency ? Learned counsel states that the applicants are required to appear and if they appear, they are liable to be arrested and as such the learned counsel prayed that investigation and FIR be quashed so that they may not be required to appear.

Learned counsel for the applicants places reliance on the decision reported in State of West Bengal and Others Vs. Swapan Kumar Guha and Others, and 1996 SCC (Cri.) 891 (P.S. Rajya v. State of Bihar). The main contention is that the FIR is malafide. In 1992 SCC (Cri) 426 (State of Haryana v. Bhajan Lal) Challan had been filed and thereafter the proceedings were quashed.

In a case there may be civil liability as well as criminal liability, the Apex Court has considered this question in a decision reported in Rajesh Bajaj Vs. State NCT of Delhi and Others, wherein it was held that :

If averments in complaint prima facie make out a case for investigation the High Court can not quash the complaint merely because one or two ingredients of the offence have not been stated in detail -Quashing of complaint on ground that the complaint disclosed a commercial or money transaction not justified - Many a cheating is committed in the course of commercial or money transaction.

The Apex Court thus considered this in a decision reported in Trisuns Chemical Industry Vs. Rajesh Agarwal and others, in which it was held :

"Quashing of complaint or FIR - Cheating alleged - Criminal prosecution, held, can not be thwarted merely because civil proceedings are also maintainable - Existence of an arbitration clause in the contract for supply of goods between appellant company and another company, held not a sufficient ground for quashing the complaint filed by the appellant against the supplier company alleging cheating by supplying inferior goods.

Magistrate taking cognizance of offence need not have territorial jurisdiction to try the case as well-- Any judicial Magistrate of First Class has power to take cognizance of any offence, whether committed within his jurisdiction or not. Quashment by High Court of complaint on the ground that Magistrate who took cognizance had no territorial jurisdiction to try that case, held, was improper and premature-- Power of Judicial Magistrate of the First Class to take cognizance is not impaired by territorial restrictions."

Having thus considered the decision of Apex Court quoted hereinabove, special facts and circumstances of this case, the material available on record and in view of the order passed by the Apex Court dated 19-4-99 in SLP and the conduct of the applicants that thereafter they did not surrender and further that the investigation into the offence is a statutory function of the police and the

superintendence thereof is vested in the State Government which has to deal the matter in accordance with law. No compelling and justifiable reasons have been shown or pointed out to interfere with the investigation legally permissible as contemplated under the Code of Criminal Procedure. The contention of the applicants is that the action is malafide has to be enquired. No malafide as such has been pointed out against any officer of the State functionary or the police in this case. Without commenting further in the matter which may affect the investigation and even defence in the opinion of this Court, no case is made out in exercise of extra-ordinary supervisory jurisdiction vested u/s 482, Cr.P.C. The application fails and is dismissed. The investigation shall however be conducted strictly in accordance with law, under the supervision of City Superintendent of Police and report shall be submitted to the concerned C.J.M.