

(2008) 05 SHI CK 0024
In the High Court Of Himachal Pradesh

Pritam Singh

APPELLANT

Vs

National Buildings Constructions Corporation Ltd.

RESPONDENT

Date of Decision : 09-05-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 204, 482
Penal Code, 1860 (IPC) — Section 406

Citation : (2008) 2 ShimLC 252

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Ahuja, J.—This is a petition filed by the petitioner u/s 482 Cr.P.C. for quashing the orders passed by the learned Additional Chief Judicial Magistrate, Amb, on 7.11.2001 and 21.1.2003 as well as the order passed by the learned Additional Sessions Judge, Una (Fast Track Court) on 22.6.2005.

2. The brief facts of the case are that the respondent filed a complaint under Sections 405 and 406 I.P.C. as against the petitioner who was impleaded as an accused. The learned trial Court recorded the preliminary evidence of the complainant and thereafter, passed an order on 7.11.2001 summoning the petitioner as an accused u/s 406 I.P.C. During the trial of the case, an application under Sections 202 and 204 Cr.P.C. was made by the petitioner seeking dropping of the proceedings as against him. The learned trial Court after hearing the parties passed an order on 21.1.2003 holding that no case is made out for dropping of the proceedings and the application was dismissed. The petitioner preferred a revision before the learned Additional Sessions Judge, Una, who vide his order dated 22.6.2005 dismissed the revision filed against the order passed by the learned trial Court on 21.1.2003 i.e. dismissing the application filed by the petitioner.

3. Being aggrieved, the petitioner has filed the present revision petition.

4. I have heard the learned Counsel for the parties and have also gone through the record.

5. The submissions made by the learned Counsel for the petitioner were that the petitioner is a contractor by profession and the respondent had awarded a contract of constructing/erecting the transmission line for which required material was to be supplied by respondent No. 1. There arose a dispute in between the parties and according to the agreement, the matter was to be referred to arbitration which was also subsequently referred to the Arbitrator and the dispute in question is only civil in nature and no criminal case was made out and as such, the proceedings initiated against the petitioner are liable to be quashed.

6. To substantiate his case, the learned Counsel for the petitioner has relied upon the decision in *Minu Kumari and Another Vs. The State of Bihar and Others*, wherein it was observed that High Court should refrain from giving a prima facie decision where entire facts are incomplete and hazy, more so when evidence not collected and produced before the Court and the issues involved, whether the factual or legal, cannot be seen in their true perspective without sufficient material.

7. Reliance was placed on the decision in *Popular Muthiah Vs. State represented by Inspector of Police, ,* wherein dealing with the powers of the High Court u/s 482 Cr.P.C., it was held that the High Court acts *ex debito jnstitiae* to do real and substantial justice. Apart from inherent jurisdiction, High Court can also exercise supervisory jurisdiction.

8. The decision in *U. Dhar and Another Vs. The State of Jharkhand and Another, ,* shows that there were two contracts i.e. one between principal and contractor and another between contractor and sub-contractor. On completion of work, sub-contractor demanding payment and on non-payment filing criminal complaint alleging that contractor having received payment from principal has misappropriated his money. It was held that plea of misappropriation is unsustainable because said two contracts between the parties are altogether different and money paid by the principal to contractor is not money or movable property of complainant, sub-contractor. It was held that there cannot be any misappropriation the dispute being purely of civil nature. The facts of this case are quite different from the present facts as shall be referred below and this decision does not help the petitioner.

9. On the other hand, the learned Counsel for the respondent had submitted that the facts of the case clearly show that some material was given to the petitioner and once there was a dispute he should have returned the whole unused material to the respondent which was never returned and as such, there has been criminal breach of trust by the petitioner who has been rightly summoned by the learned trial Court. In regard to the Arbitrator it was submitted that this dispute is not within the scope of the Arbitrator and the petitioner cannot retain the

material until and unless the dispute is settled in between the parties. It was submitted that once a process has been issued as against the petitioner, the Magistrate cannot call back the order and the matter can be agitated at the time of framing of charge as an when the occasion arises.

10. The decision in Adalat Prasad Vs. Rooplal Jindal and Others, , was relied upon by the learned Counsel for the respondent, in which the power of Court to recall process issued against an accused was discussed. It was held that in absence of such power being conferred by the Code, Court has no power to recall the process issued. Observation in K.M. Mathew Vs. State of Kerala and another, , that for recalling an erroneous order, no specific provision of law is required held, runs counter to the scheme of the Code which has not provided for review and prohibits interference at interlocutory stages.

11. Coming to the facts of the case, the complainant in the original complaint has alleged that the material detailed in Annexure -"B" was given to the petitioner worth Rs. 9,34,979/- which has not been accounted for by the accused/petitioner. A question arises as to whether the petitioner can hold back the material on the plea that the dispute has been referred to the Arbitrator and has not been decided or that the dispute is of civil nature and till his payment is made, he can retain the material worth this amount. The learned trial Court has recorded the statement of the complainant and accordingly summoned the petitioner u/s 406 I.P.C. The pre-charge evidence is yet to be recorded by the learned trial Court and as such, this is not a stage to hold that the ingredients of Section 406 I.P.C. are made out or not. Once prima facie there is some evidence to attract the provisions of Section 406 I.P.C. which evidence was considered by the learned trial Court who found the same sufficient to issue summons to the petitioner, no findings can be given at this stage before this plea is raised by the petitioner at the time of framing of charge as to whether the evidence is sufficient or not, framing of the charge or that the proceedings deserves to be quashed at this stage.

12. Therefore, in view of the above discussion, it is clear that the impugned order passed by the learned trial Court summoning the petitioner or dismissing the application for dropping of the proceedings which were upheld by the learned Additional Sessions Judge do not call for an interference at this stage. The powers u/s 482 Cr.P.C. are to be sparingly used and the present case is not such that these powers should be used by the Court in the present case.

13. In view of the above discussion, I accordingly hold that there is no merit in the petition filed by the petitioner and the same is dismissed. Parties to appear before the learned trial Court on 9th June, 2008 and the Court shall proceed with the trial of the case in accordance with law. A copy of the judgment alongwith the record of the case be returned to the Court concerned.

The observations made above are relevant only for disposal of the present petition and the learned trial Court shall decide the case unaffected by the

observations made in this case.