
(1998) 09 P&H CK 0069

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 17023/M of 1998 and CrI. M. No. 17024, 21306, 23314, 24315 of 1996

Punjab Anand Lamp Industries Limited

APPELLANT

Vs

Asahi Video Pvt.Ltd.

RESPONDENT

Date of Decision : 15-09-1998

Acts Referred:

Citation : (1999) 1 RCR(Criminal) 601

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

Advocate : R.S. Cheema, Naveen Mahajan, Pankaj Bhardwaj, Advocates for appearing Parties

Judgement

S.C. Malte, J. (Oral)

1. Both these petitions are being disposed of by this common order as the same have arisen out of proceedings in a complaint case.
2. The petitioners have sought quashing of the complaint and the summoning order issued by the SubDivisional Judicial Magistrate, Kharar, for the offences under Sections 403, 406, 418, 427 read with 120B of the Indian Penal Code.
3. The complainant/respondents are the Companies incorporated under the Companies Act. The petitioners, who are 37 in number, consist of M/s. Philips Electronics and their Chairman and Directors, in all 16, who all are shown to be residents of Netherlands. Accused 18, is a Company having office at Mohali, District Ropar, Punjab. Accused 19 is the Chairman of accused 18. Accused 20 to 23 are also the officebearers of accused 18 M/s. Punjab Anand Lamp Industries Ltd. Accused 24 is Philips India Limited, which was known as Peico Electronics & Electricals Limited. Accused 25 is said to be the Chairman, without clarifying of what concern or institution he is the Chairman of. Accused 26 to 37 are the Directors of M/s. Philips India Limited (accused 24).
4. The contention raised by the complaints is that by a joint venture agreement dated 17.4.1991 between N.V. Philips as the first part, Peico Electronics as the

second part, Mr. C.L. Anand as the third part and M/s. Punjab Anand Video Limited as the fourth party, it was agreed that 10% of the lamps manufactured by M/s Pali shall be supplied to M/s. Anand and they are entitled to sell it under the trade name owned by and licensed to M/s Anand. At this juncture, it would be necessary to clarify the two terms, namely the terms "Mr. C.L. Anand" which is referred as "Mr. Anand" in his personal capacity, and the term "Anand" which in terms of the agreement referred above, means M/s. Anand as defined in the agreement. A detailed reference to scope of the two terms as referred is not necessary for the disposal of this matter. Suffice it to clarify that the term "Mr. Anand" refers to person; whereas the term "Anand" refers to certain trade name. It appears that this aspect has given rise to some controversy between the parties that ultimately led the complainants to file the complaint in the trial Court.

5. The grievance by the complainants is that 10% products which the accused had agreed to supply to the complainants has been denied by the accused with an intention to cause them loss and thereby offences as mentioned above have been spelt out. It also appears that prior to the filing of the complaint, there was some exchange of notice also between the parties. The counsel for the complainants brought my attention to para 40 of the complaint in which it is alleged that with mala fide and dishonest intention, the accused by their letter dated July 21, 1997, denied the rights of the complainants to buy lamps to the extent of their entitlement, by alleging that the said agreement was personal to Mr. C.L. Anand and upon his death, the said agreement came to an end. It is contended by the complainants that as per terms of the agreement, the right to purchase 10% products of the lamps was not only personal to Mr. C.L. Anand, but the complainants also are entitled to take the benefit of that clause. In the context of that, the counsel from both the sides brought my attention to certain exchange of letters between two sides. One of the letters that pertains to the controversy is Annexure P13 dated July 21, 1997. It has been informed by Punjab Anand Lamp Industries Ltd. (Accused 18) to the complainants side that the terms of the agreement referred above was personal right available to Mr. C.L. Anand and did not survive upon his death. However, in the concluding para of the said letter, it is clarified that without prejudice to the contentions referred above, M/s. Punjab Anand Lamps Industries Ltd. may consider the supply of goods to the complainants provided the complainants undertake not to sell these lamps under any trade mark of the competitor of Punjab Anand Lamps Industries Ltd. It is clarified further that it would not be legal or proper to affix competitor's trademark in respect of the products manufactured strictly according to Philips's knowhow and technology. In the context of that, my attention was invited to Annexure P6 which pertains to the Lamp Sales Agreement. It appears that agreement Annexure P6 was pursuant to the earlier agreement referred to above. In clause 4 of the said agreement, it is stated that the lamps shall be supplied to the buyer (to the complainants) under a trademark to be indicated by the buyer at the sole and exclusive risk of the buyer. In other words, it was contended on behalf of the complainants that this clause does not limit the rights

of the complainants to sell the product under any trade name which is said to be competitor of M/s. Philips India Limited. While disposing of this criminal matter, it would not be necessary for me to give interpretation and clarify the scope of the various terms of agreement which has given rise to the controversy between the parties. The terms of the agreement have been referred by me to indicate what difference between the two parties has given rise to the present litigation, and whether in the set of circumstances ingredients of the offences alleged above have been spelt out or not.

6. The contention by the complainants is that by thus denying the benefit of 10% of the product available to them under the agreement, the accused petitioners have committed offences under Sections 418, 406, 427 IPC. Initially in the complaint offence under Section 500 IPC was also alleged. However the trial Court did not issue process under that section. Therefore, that aspect does not remain for consideration.

7. Before coming to the question whether the complaint satisfies the ingredients of the offences alleged, I would like to state that in all 37 accused are shown in the complaint. Out of which 17 accused are from abroad. The other accused reside at far distance at Bombay and some of the accused are companies under the Companies Act. Quote a large number of accused residing at various distant places have been thus impleaded to face trial at Kharar in the State of Punjab. In the set of circumstances, it becomes necessary to properly appreciate the averments in the complaint in order to ascertain whether the complaint and the evidence before the court led by the complainants is enough to warrant criminal action. Such an exercise becomes necessary for two reasons. The first reason is that admittedly the grievance raised by the complainants is based on certain terms of the agreement, the interpretation of which is different by both the parties. Basically, it would, therefore, appear to be a dispute giving rise to civil right. In a given case, the person aggrieved, may have two fold remedy, namely, civil as well as criminal. But when the dispute between the parties has basis of the civil litigation, extra care should be taken to ascertain whether the civil controversy also the necessary ingredients to spell out the offences.

8. The first allegation pertains to offence under Section 403 IPC which is a penal section for dishonest misappropriation of property. The term "dishonestly" has been defined in Section 24 of the Penal Code which states that one is said to have done an act dishonestly if it was done with the intention of causing wrongful gain to one person or wrongful loss to another person. It may be noted that in order to spell out offence under Section 403 IPC, therefore, it should be shown by the complainant that there was dishonest intention, meaning thereby the accused has done an act with intention of caused has done an act with intention of causing wrongful gain or wrongful loss. The terms "wrongful gain and wrongful loss" have also been defined in Section 23 of the Penal Code. The term "wrongful gain" means gain by unlawful means of property to which the person gaining is not legally entitled. The term "wrongful loss" means loss by unlawful means of

property to which the person losing it is legally entitled. Such a wrongful loss or wrongful gain should be shown to have been committed with an intention to cause such gain or loss. Coming back to the definition in Section 403, I find that the offence could be spelt out only if one dishonestly misappropriates or converts to his own use any moveable property. I find that the controversy between the two sides rests on the interpretation of certain clauses of the agreement. In the context of that, it may further be noted that as per the letter Annexure P13 dated 21.7.1997, it has been informed by the Punjab Anand Lamp Industries Ltd. that it would be willing to supply goods, provided it is not sold under the trademark of the competitor. The complainants, on the other hand, rely on certain terms of the agreement Annexure P6 which, according to them, entitle them to sell such product under trademark indicated by them. Obviously the root cause is the controversial interpretation of the terms of the agreement. Hardly it can be said that there was a dishonest intention. The intention, if at all any, is an anxiety of the manufacturer of the lamps to see that the articles manufactured by knowhow of the wellknown manufacturer, should not be sold in the trade name of competitor so as to give benefit to the competitor at the cost of the manufacturer. The learned trial Court did not dilate on the aspect as to whether the ingredients of the offence have been spelt out or not. The trial Court has simply concluded by referring to certain contentions raised by the parties and by observing that the accused have knowledge of the existence and subsistence of the agreement between the parties, and in view of that accused have committed offence under Sections 403 and 406 IPC. The Magistrate has also held that offence under Section 118 IPC was also spelt out. For the same reasons, she finds that offence under Section 427 IPC was also spelt out. There is total absence of exercise on the part of the Magistrate to properly appreciate and apply facts to ascertain whether the ingredients of the offence were spelt out.

9. This brings me to consider the allegations under Section 406 IPC. It is the penal section for punishment for criminal breach of trust. The terms "criminal breach of trust" has been defined under Section 405 IPC. It states that a person is said to have committed criminal breach of trust if he having been in any manner entrusted with property or dominion over property, dishonestly misappropriates or converts to his use that property etc. in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do. The basic ingredient is an entrustment of the property by the complainant, in the form of physical entrustment or in the form of dominion over such property. In this case the accused/manufacturers were already in custody of the manufactured goods, as its owner, until it is sold. It cannot be said by any stretch of imagination that the property was entrusted by the complainants to the accused. This basic ingredient lacks in this case, and, therefore, the offence under Section 406 IPC also not spelt out.

10. This brings me to consider the offence under Section 418 IPC which is penal

section in respect of cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect. It provides that whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished. Now again the important term used in the section is "wrongful loss" and that again takes me to the definition of the term "wrongful loss" as given in Section 23 of the Penal Code. Wrongful loss is said to have been committed by a person if loss is caused by unlawful means of property. Here the loss which is said to have been caused to the complainants is a matter solely dependent on the interpretation of the clauses on which the complainants rely, and which is yet to be adjudicated by a competent Court. Until the controversy regarding the interpretation of the terms of the agreement is resolved by a competent Court or Tribunal or arbitrator in some case, it could not be said that such a loss has been caused. Further, it cannot be said that such a loss was caused with the knowledge that they were thereby likely to cause wrongful loss. If the parties to the agreement have a serious dispute about the interpretation of the terms of the agreement, that hardly can be interpreted to be an act by which one person wanted to cause wrongful loss by unlawful means. The offence under Section 118 IPC was also not spelt out. In the context of that, it may be mentioned that the offence of cheating would be spelt out only if such an act of the accused fulfils the ingredients of Section 415 IPC which defines the terms "cheating". To spell out offence of cheating, there should be fraudulent or dishonest inducement from one person to another for delivery of a property or to do or not to do an act as indicated in Section 415. In this case, the grievance rests on the interpretation of certain terms of the agreement. It may be noted that a competent Court or Tribunal or other authority has not set at rest that controversy regarding interpretation and scope of agreement. Hardly, therefore, there can be an element of deception. The element of deception requires inducement by fraudulent or dishonest act. This again takes me to the definition clause as given in Section 25 of the Penal Code which states that a person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise. The term "dishonest" has already been discussed by me above. Therefore, there should be an element to do something fraudulently and dishonestly and thereby inducing a person to deliver property, etc. In the absence of such element of intention, the offence of cheating shall not be spelt out. Hardly there is such an element in this case.

11. This brings me to the allegations under Section 427 IPC which is a penal section for causing damage by mischief. The term "mischief" has been defined under Section 425 IPC. It contemplates wrongful loss or damage to a person by causing destruction of property or change of the property or situation thereof etc. Neither there is destruction of property nor change in the property nor there is any change in the situation at all.

12. The trial Court, without properly applying its mind has issued process against

a large number of persons residing at different places. It is expected that when a complaint having its roots in a deed of commercial agreement, involves a large number of accused, most out of whom are at a distant place and even away from India, the trial Court should have undertaken exercise to find out whether any of the offences have been spelt out or not. The minimum requirement was to apply mind to find whether the complaint and the material on the record spell out ingredients of offence. I, therefore, allow both these petitions and quash the summoning order and the complaint, against the respondents/accused who are petitioners before me and also against those accused who are not petitioners before me.

13. A contention was also raised as regards the grant of exemption under Section 205 Cr.P.C. It was contended that since the accused did not respond to the service of summons, bailable warrants were issued against them and, therefore, personal exemption under Section 205 Cr.P.C. depends on where the Court sees reasons to dispense with the personal attendance of the accused. It also depends on the necessity of appearance of the accused for the progress of the case. Though a list of occasions when the presence of the accused is necessary, cannot be supplied, what is to be seen is to find out whether progress of the case can be achieved without insisting on the personal presence of the accused. One of the factors governing the discretion is the plight of the accused and the distance from which he is required to attend. I therefore, find that the grant of exemption from personal appearance was quite justified and need no interference.

14. All the same, since the complaint and the summoning order itself stand quashed, the question regarding grant of exemption from personal appearance is rendered to academic interest.