
(1983) 08 P&H CK 0097

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 37-M of 1983

Rahul Kumar Bajaj, Managing Director M/s Bajaj Auto
Ltd.Poona

APPELLANT

Vs

Gurdial Singh Grewal

RESPONDENT

Date of Decision : 05-08-1983

Acts Referred:

Citation : (1983) 08 P&H CK 0097

Hon'ble Judges : S.S.Dewan, J

Advocate : G.S. Soura, Lakhinder Singh, R.S. Bindra, M.P. Gupta, Harbans Singh, Advocates for appearing Parties

Judgement

S.S. Dewan, J.

1. This petition has been filed under S. 482 of the Code of Criminal Procedure, 1973 (for short, the Code) for quashing complaint dated March 12, 1981 (copy annexure P. 1) filed by Sh Gurdial Singh Grewal, Treasury Officer, Patiala under S. 420, Indian Penal Code, against the petitioners in the Court of Chief Judicial Magistrate, Patiala, and also the order dated May, 18, 1981 (copy Annexure P. 12) passed by the trial Magistrate by which he found a prima facie case against the petitioners for the said offence and accordingly summoned them for June 11, 1981.

2. It would be appropriate to have a brief resume of the complaint, copy annexure P.1 filed by the respondent against the two petitioners as the facts alleged in the same would go a long way to assess if the present is a fit case for quashing of the complaint and the proceedings taken thereon. It is stated in the complaint that petitioners Nos. 1 and 2 are stated to be the Managing Director and Sales Executive of the Bajaj Auto Ltd. Akhurdi, Poona. On 4.5.1978, the respondent applied for the allotment of Bajaj Chetak Scooter, to M/s. Bajaj Auto Ltd., against inward remittance of foreign exchange through the State Bank of Patiala, Faridkot Branch. M/S Bajaj Auto Ltd. informed the respondent vide their communication dated 11.6.1978 that his name had been registered against B.C.

No. 019327. The respondent, who was then posted as Treasury Officer, Faridkot was transferred to Patiala and he informed the said Company on 23.6.1978 regarding his transfer and requested that all communications in future be sent to him at his Patiala address. M/S Bajaj Auto Ltd., vide their letter dated 4.7.1978 asked the respondent to send a certificate to the effect that he had been transferred to Patiala and was residing there without disclosing that such a certificate would result in cancellation of his previous order booked at Faridkot. It is alleged that when the respondent sent the requisite certificate regarding the change of his address vide letter dated 21.4.1980, instead of maintaining the original registration of the respondent dated 11.6.1978 rebooked the scooter in his name in May, 1980, through Norton Motors, Ambala Cantt., as S.No. 4603, thereby postponing the registration of the respondent from 1978 to 1980 and thus the respondent had been defrauded by the petitioners' company.

3. The present petition has to fail as being incompetent. It is an admitted fact that the revision petition filed by the petitioners before the Additional Sessions Judge, Patiala, has been dismissed under S. 397(2) of the Code as the revision having been filed against an interlocutory order. The concurrent jurisdiction is vested under the law and the Court of Sessions Judge can exercise the powers of revision. It is provided in S. 397(3) of the Code that if an application for revision is made by any person either to the High Court or to the Sessions Judge, no further application by the same person, shall be entertained by the other of them. Obviously second revision petition could not have been filed in this case and that is why a recourse to S. 482 of the Code seems to have been made. However, such a course cannot be permitted in the garb of an application under some other provision of law. In case *Amar Nath and others v. State of Haryana and others*, A.I.R. 1977 S.C. 2185, it has been observed :

"Section 482 contains the inherent powers of the Court and does not confer any new powers but preserves the powers which the High Court already possessed. A harmonious construction of Ss. 397 and 482 would lead to the irresistible conclusion that where a particular order is expressly barred under S. 397(2) and cannot be the subject of revision by the High Court, then to such a case the provisions of Section 482 would not apply. It is well settled that the inherent powers of the Court can ordinarily be exercised when there is no provision on the subject matter. Where there is an express provision, barring a particular remedy, the Court cannot resort to the exercise of inherent powers."

4. The main contention of the learned counsel for the petitioners is that the petitioners being businessman and industrialists of international fame have no connection or concern in any capacity whatsoever with the allegations mentioned in the complaint nor the complaint makes out any criminal offence against them. On the other hand, the case of the respondent is that the petitioner No. 1 being the Managing Director of M/S Bajaj Auto Ltd., Akhundi, Poona, is fully responsible for all acts of his Company, done on its behalf including the action of petitioner No. 2, who allegedly sent a letter to the respondent regarding the registration of

the scooter. But this point, however, can hardly be looked into and considered in a petition under the provisions of S. 482 of the Code. That is the function of the trial Court and ordinarily it would not be open to any party to invoke the High Court's jurisdiction and contend that on a reasonable appreciation of the evidence, the accusation made against the accused would not be sustained. The High Court cannot assume the role of a Magistrate or a Sessions Judge. In any case, before invoking the inherent powers of this Court under S. 482 of the Code, the petitioners are called upon to show some abuse of the process of the Court or a case of gross injustice which is apparent on the record. No such thing is indicated in the present case. Be that as it may, the trial Magistrate has only summoned the petitioners and if eventually the Magistrate comes to the conclusion that no offence was made out against them, it will be open to him to discharge or acquit them as the case may be. But it is difficult to appreciate why the complaint and the order summoning the petitioners should be quashed. In this view, I am fortified by a decision in *Kacharu Singh v. State of U.P.*, A.I.R. 1982 S.C. 784.

5. In the circumstances, the present petition has no force and is accordingly dismissed. The parties, through counsel, are directed to appear before the trial Magistrate on 15.9.1983, who shall proceed in accordance with law.