
(1991) 05 P&H CK 0067

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 1829-M of 1990

R.M.Yadav, Field Representative BASF India Ltd and ors.

APPELLANT

Vs

Vinod Kumar Bansal

RESPONDENT

Date of Decision : 29-05-1991

Acts Referred:

Citation : (1991) 3 RCR(Criminal) 238

Hon'ble Judges : Harphul Singh Brar, J

Advocate : Sh. M.P. Singh Gill, Sh. Bipin Ghai, Sh. R.S. Ghai, Advocates for appearing Parties

Judgement

Harphul Singh Brar, J.

1. Both Criminal Miscellaneous Applications Nos. 1829M of 1990 and 4128M of 1990 will be disposed of by a single order as they arise out of a single complaint filed by the complainant Vinod Kumar Bansal, under sections 420/406/120B, Indian Penal Code, against six persons including the four petitioners in these two applications.

2. The three petitioners in Criminal Miscellaneous Application No. 1829M of 1990 have stated that petitioner P. Kaushik is Assistant Manager (Marketing) BASF India Ltd. Petitioner R.N. Yadav is Field Representative of the said Company and both these petitioners have their headquarters at Delhi and do not deal with any distributor directly for their products. Petitioner Jagdish Kanniayan is partner of Firm Pavan and Company and is distributor of BASF India Ltd. at Kurukshetra. It is further stated that BASF India Ltd., at New Delhi cancelled the distributorship of their products given to Messrs V. K. Sales Corporation, Mandi Dabwali. Vinod Kumar Bansal complainant is the proprietor of the said Firm. The complainant felt that the same has been done at the instance of petitioner No. 3 by petitioner Nos. 1 and 2 and the same has resulted in the filing of complaint, Annexure P. 1 to the Petition.

3. It is further stated in the petition that in the complaint, there is no allegation

or evidence to connect the petitioners with any crime except allegations against Naresh Pal Singh and Punam Chand. It is averred that since there is no evidence against the petitioners, therefore, nothing has been mentioned in the order of summoning. Even the allegations in the complaint apparently show that there were business dealings and the dispute, regarding accounts was with Naresh Pal Singh and Punam Chand and the matter is exclusively of civil nature. In these circumstances, it is further stated that there is evidence against the petitioners and thus the continuation of proceedings in Court against them will amount to abuse of the process of the Court. A prayer for quashing the complaint as well as the summoning order has, therefore, been made.

4. In the other application (Criminal Miscellaneous No. 4128M of 1990), petitioner J.K. Soi has stated that he was working as Marketing Executive in BASF India Ltd. and left the Company in 1988 and he had his headquarters at New Delhi and was not dealing directly with the distributors for the products of the Company. Similar type of averments as were made in Criminal Miscellaneous Application No. 1829M of 1990, have been made in this application by petitioner J.K. Soi.

5. Mr. R.S. Ghai, learned counsel for the petitioner has argued that no case is made out against the petitioners because no allegations have been levelled in the complaint against the petitioners and there is no evidence of conspiracy against them at all. He further argues that nothing has been mentioned in the summoning order obviously because there is no evidence against the petitioners. In these circumstances, he urges that any proceedings against the petitioners on the basis of the complaint, Annexure P1, would amount to abuse of process of the Court.

6. Mr. M.P. Singh Gill, learned counsel for the complainantrespondent, on the other hand, argues that the complaint is not liable to be dismissed at this stage, as the factum of involvement of the accused petitioners in the conspiracy alleged against them will have to be gone into by the trial Court and also there is a limit to power of High Court under section 482 Code of Criminal Procedure, to interfere in these circumstances. He further submits that the petitioners should not have invoked the extraordinary jurisdiction of this Court under section 482 of the Code, particularly when a Revision Petition is provided under the Code to the Court of Session. Mr. Gill relies on the observations made in *Mrs. Dhanalakshmi v. R. Prasanna Kumar and others*, 1990(1) Recent C.R. 173, to the effect that when specific allegations are made against the accused in the complaint disclosing ingredients of the offence taken cognizance of, then the complaint should not be quashed. He has also cited *J.P. Sharma v. Vinod Kumar*, 1986(2) Recent C.R. 75, to the effect that there is limit to power of High Court under section 482 of the Code of Criminal Procedure. Mr. Gill has further gone to the extent of saying that when a Revision is provided before the Sessions Judge, powers under section 482 of the Code of Criminal Procedure cannot be invoked. In support of his arguments, he has cited *Bhagwati Singh v. Gopal Bhushan*,

1990(1) Recent C.R. 522.

7. It may be mentioned here that the reading of the complaint in this case clearly shows that it is specifically alleged against accused No. 1 Naresh Pal Singh that he made a wrong statement with dishonest intention to cause wrongful loss to the complainant and took 32 kgs. of Bavistan insecticide for sending the same to accused No. 6 Punam Chand, at Adampur, as the Company had no stocks of this insecticide at that time and that accused No. 6 was in dire need of the same. It was further stated by accused No. 1 to the complainant that either he will get the borrowed insecticide supplied by the Company or will get the price of the same paid by accused No. 6. A bill for 32 kgs. Bavistan insecticide was also got prepared in the name of accused No. 6. It is specifically stated. In para 2 of the complaint that this was got done by accused No. 1. Then again on December 20, 1986 this was accused No. 1 who asked the complainant to place more orders for supply of said insecticide and thereby secured an order for supply of insecticide and obtained Rs. 4,000/ as advance in cash against a kacha receipt and also gave him Draft No. 201193 for Rs. 5,000/ making a total of Rs. 9,000/. It is again specifically stated in the complaint that accused No. 1 had the dishonest intention of not depositing the said money with the Company in the accounts of the complainant and thus. misappropriated the same. The reading of the complaint as a whole does : not disclose any offence against the accused Nos. 2 to 5. A reference in the latter part of para 3 of the complaint to accused No. 2 is not relevant as it relates to some other incident of August, 1986. The observations, made in Mrs. Dhanalakshmi's case (supra) do not help the complainant at all. The ratio of that case rather is that the High Court has got the inherent powers to quash the complaint, if the complaint when read as a whole does not disclose any offence or is frivolous and when there are no specific allegations in the complaint disclosing the ingredients of the offence taken cognizance of.

8. As discussed above neither in the complaint in question nor in the statements of the witnesses read to me in Court by the complainant's counsel, are there any specific allegations against the accused Nos. 2 to 5 disclosing the ingredients of the offence under sections 420/406/120B. Indian Penal Code. As stated above, specific allegations are only against accused Nos. 1 and 6 and not against accused Nos. 2 to 5 in the complaint. Summoning of accused Nos. 2 to 5 was, thus, not legal in my view. A citizen cannot be dragged into unnecessary litigation to undergo the agony of trial just at the asking of anybody at his sweet will and personal whim.

9. The next contention of Mr. Gill is that the petitioners should have moved the Sessions Court for quashing the complaint and should not have approached the High Court under section 482, Code of Criminal Procedure in the first instance. No authority has been cited before me which debars the petitioners to move the High Court under section 482 of the Code of Criminal Procedure in the first instance when it can be shown that the continuance of proceedings against the

petitioners will cause a grave injustice and amount to abuse of process of the Court. In any case, this petition is pending in this Court for more than a year and I am not inclined to send the petitioners back to move the Sessions Court at this stage

10. in the light of the discussion made above, both the applications are allowed and the complaint as well as the summoning order, dated May 25, 1989 Annexure P2, are quashed qua the accused petitioners R. N. Yadav, P. Kaushik, Jagdish Kanniayan and J.K. Soil (in these two applications).

JUDGMENT accordingly.