(1986) 07 P&H CK 0036

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 3949-M of 1985

R.P.Mittal and others APPELLANT

Vs

State of Punjab RESPONDENT

Date of Decision : 10-07-1986

Acts Referred:

Citation : (1986) 2 AICLR 290 : (1986) 2 CurLJ 262

Hon'ble Judges : Surinder Singh, J

Advocate : Vinod Sharma, S.S. Nijjar, Kuldip Singh, Advocates for appearing Parties

Judgement

Surinder Singh, J.

1. This petition under section 482 of the Code of Criminal Procedure has been filed by R.P. Mittal, and Mahavir Parshad Tayal petitioners against the State of Punjab and Punjab Spinning and Weaving Mills Limited, Dabawali Road, Bhatinda (hereinafter referred to as the Mill) with a prayer for quashing of First Information Report No. 181 of 1984 pertaining to Police State, Bhatinda City for the alleged offences under sections 120B, 418, 420, 468 and 477A, Indian Penal Code.

2. The facts mentioned in the petitioner may be briefly, noticed. R.P. Mittal petitioner No. 1 is the DirectorcumChairman of the Managing Committee of respondent No. 2Mill. Petitioner No. 2 is the sole Proprietor of Messrs Shayam and Company, Bhatinda. The father of petitioner No. 1 i.e., Sh. D.M. Mittal entered into an agreement with respondent No. 1 to purchase 90 per cent shares of the respondentMill and as per this agreement, on the transfer of the first batch of shares or Rs. 85 lacs, the Mill was to nominated petitioner No. 1 as the DirectorcumChairman on April 25, 1982, after being appointed as such with the concurrence of respondent No. 1. It is further stated that the father of petitioner No. 1 spent a huge amount of money for the purpose of shares which where originally owned by the Punjab State Industrial Development Corporation (PSIDC), Chandigarh. Petitioner No. 1 continued to function as

DirectorcumChairman of the Managing Committee of the Mill. Subsequently, however, PSIDC tried to remove petitioner No. 1 from the abovesaid post. The petitioner, therefore, filed a suit for permanent injunction in which status qua was ordered by the Subordinate Judge First Class, Gurgaon, restraining respondent No. 2Mill from removing petitioner No. 1 from the abovesaid posts. The suit was ultimately decreed in favour of petitioner No. 1 on April 29, 1985 and appeal against the said judgment was filed by the PSIDC, which is said to be pending in the Court of District Judge, Chandigarh.

3. The crucial averment may now be noticed. On January 9, 1984, petitioner No. 1 in his capacity as DirectorcumChairman, signed a Cheque for Rs. 1,50,000/ in favour of Shayam and Company represented by respondent No. 2. The Cheque was encashed by petitioner No. 2 as partpayment for the material supplied by him to the respondentMill. It is stated that the material supplied to the Mill was of the value of Rs. 1,66,000/ and a sum of Rs. 16,000/ was still outstanding against the Mill in favour of petitioner No. 2, Petitioner No. 2 made several requests to the Mill to pay the said amount and also served a notice upon the Mill in this behalf. In reply to the notice the Mill took up the stand that the amount had been wrongly withdrawn by petitioner No. 2 and the same should be returned to the mill, failing which it would move the Court for its recovery.

4. Petitioner No. 2 then filed a petition under section 434, 435 and 439 of the Companies Act, 1956 for winding up of respondent No. 2Mill in this Court, in which notice was issued to the Mill for appearance on March 15, 1985. No written statement was filed by the said respondent on May 3, 1985 but after obtaining an adjournment on payment of costs, the written statement was filed in Court on May 31, 1985. In this written statement, the said respondent disclosed that a complaint had been filed by it in the Court of the Chief Judicial Magistrate, Bhathinda, on May 16, 1985 with various allegations against the petitioners. It transpires that on the complaint presented before the said Court, an order was issued to Station House Officer, Police Station City Kotwali, Bathinda, to investigate the case under section 156(3) of the Code of Criminal Procedure. On the basis of this direction, First Information Report dated June 25, 1985 was registered, which is the subjectmatter of attack in the present petition.

5. The two respondents filed separate replies in the shape of affidavits, to the petition. The reply on behalf of respondent No. 1 is constituted by an affidavit of Assistant SubInspector Manmohan Singh of Police Station Kotwali, Bhatinda, the Investigating Officer in the First Information Report in question. In the said reply, it is admitted that petitioner No. 1 was working as a DirectorcumChairman of the Mill up to April 30, 1984. The stand taken in regard to the Cheque referred to in the petition is that the same was issued by petitioner No. 1 in favour of petitioner No. 2 in order to grab the amount with the assistants of petitioner No. 2. It is also stated that no goods were supplied by petitioner No. 2. However, there is neither any indication in the reply or otherwise as to the basis on which it is alleged that no goods were supplied.

6. For all intents and purposes, it is respondent No. 2 who has contested the petition by making certain averments in the reply. In reply to para 1 of the petition, it is stated that petitioner No. 1 had filed a suit for declaration to the effect that his removal as DirectorcumChairman was bad. It was also admitted that a petitioner under section 633 of the Companies Act relating to the same dispute had also been filed in this Court. The appointment of petitioner No. 1 as DirectorcumChairman of the Managing Committee of the respondentMill in April, 1982 is specifically admitted. It is however, alleged that the said petitioner had committed `a number of defalcations and mismanagements''. As regards the agreement entered into between petitioner No. 1 and respondent No. 1 and respondent No. 2, a conflicting stand is apparent in the reply. In the earlier part of para 2, it is averred that there was no agreement between Sh. D.M. Mittal and respondent No. 1, as alleged. However in the reply to para 3 of the petition, it is stated that the father of petitioner No. 1 did not fulfil the commitment made to the PSIDC and hence the agreement was terminated and petitioner No. 1 was removed as a nominee Director of PSIDC on April 30, 1984. As regards the civil suit filed by petitioner No. 1, in the nutshell it was admitted that the said suit was decreed in favour of petitioner No. 1 and an appeal against the said decision was pending. The answering respondent was, however, not a party in that suit and in immunity is, therefore, claimed against the decision of the Court in the matter. Coming now to the Cheque for Rs. 1,50,000/, it is stated that no material was supplied by petitioner No. 2 to the Mill. In reply to para 7 of the petition, it is averred that by means of letter dated November 8, 1984, the petitioner were asked to refund the amount of Rs. 1,50,000/, but this was not done. The filing of the petition under the Companies Act was also admitted.

7. The law on the question, under consideration is by now wellsettled in more than one pronouncements of the Supreme Court. In Trilok Singh and others v. Satya Deo Tripathi, A.I.R. 1979 Supreme Court 850, the following observations were made by the Supreme Court:

"We are clearly of the view that it was not a case where any processes ought to have been directed to be issued against any of the accused. On the wellsettled principles of law it was a very suitable case where the criminal proceeding ought to have been quashed by the High Court in exercise of its inherent power. The dispute raised by the respondent was purely of a civil nature even as assuming the facts stated by him to be substantially correct. Money must have been advanced to him and his partner by the financier on the basis of some terms "settled between the parties. Even assuming that the agreement entered on 29th March, 1973 was duly filled up and the signature of the complainant was obtained on a blank form, it is to be noticed that the amount of the two monthly instalments admittedly paid by him was to the tune of Rs. 3,566 exactly Rs. 1,783 per month. The complainant does not say as to when these two monthly instalments were paid. In the First Information Report which he had lodged he had not stated that the third monthly instalment was payable on July 31, 1973. Rather, from the statement in the First Information Report it appears that the instalment had already become due on 28.7.1973, when the complainant went out of Kanpur according to his case. The question as to what were the terms of the settlement and whether they were duly incorporated in the printed agreement or not were all questions which could be properly and adequately decided in civil Court. Obtaining signature of a person on blank sheet of paper by itself is not an offence of forgery or the like. It becomes an offence when the paper is fabricated into a document of the kind which attracts the relevant provisions of the Penal Code making it an offence or when such a document is used as a genuine document. "Even assuming that the appellants either by themselves or in the company of some others went and seized the truck on 30.7.1973 from the house of the respondent they could and did claim to have done so in exercise of their bona fide right of seizing the truck on the respondent''s failure to pay the third monthly instalment in time. It was, therefore, a bona fide civil dispute which led to the seizure of the truck. On the face of the complaint petition itself the highly exaggerated version given by the respondents that the appellant when to his house with a mob armed with deadly weapons and committed the offence of dacoity in taking away the truck was so very unnatural and untrustworthy that it could not take the matter out of the realm of civil dispute. Nobody on the side of the respondent was hurt. Even a scratch was not given to anybody."

8. Considering the present matter in the light of the above observations, certain salient features emerge quite clearly and they are as follows:

(a) Petitioner No. 1 was duly appointed as DirectorcumChairman of the Managing Committee of respondent No. 2 and he continued to function as such till April 30, 1984;

(b) The petitioner in his capacity as DirectorcumChairman signed a Cheque for Rs. 1,50,000/ in favour of Shayam and Company on January 9, 1984. The Cheque was prepared by the Finance Department of respondent No. 2 and was signed by petitioner No. 1 in discharge of his official duty.

(c) The suit filed by petitioner No. 1, challenging his removal as DirectorcumChairman was decreed by the civil Court on April 29, 1985. During the course of arguments, it was stated at the bar by the learned counsel for the petitioners that the appeal filed by the PSIDS against the said decree was dismissed by the Additional District Judge, Chandigarh on April 16, 1986. In the regular Second Appeal filed against the aforesaid concurrent verdict, which is pending in this Court, the interim stay of operation of the decree granted to PSIDC, was vacated on May 13, 1986;

(d) A petition under the Companies Act in regard to this dispute was also filed in this Court which was pending;

(e) Entries has been made in the Cash Book and Ledger of the Company regarding the supply of material by petitioner No. 2 of the Mill. Similar entries regarding the material existed in the Stock Register and the Freight Register of the Company. However, when the Management of the Company changed hands during the civil litigation, the relevant entries in the Gate Register were secured off by the new management (See Para 4 of the complaint); and

(f) by means of some letters, the petitioners were asked to return the amount of Rs. 1,50,000/ to the Mill, but when this did not prove fruitful, a complaint was filed in the criminal Court on May 16, 1985, in respect of the occurrence which is of January 9, 1984, i.e. a year and four months earlier. On the directions of the trying Magistrate, the First Information Report was registered against the petitioners.

9. A cumulative consideration of all the circumstances enumerated above, makes it more than obvious that the dispute between the parties is purely of a civil nature and the utilisation of the criminal forum, during the pendency of civil litigation and the Company. Petition in this Court, is nothing but an abuse of the process of law. The result is that the complaint filed by respondent No. 2 and the impugned First Information Report based on the said complaint, are ordered to be quashed. However, it is clarified that nothing said in the present judgment shall be deemed to be an expression of opinion in regard to the merits of the civil dispute aforesaid.

JUDGMENT accordingly.

