

(2011) 08 GUJ CK 0018
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 10107 of 2006

Sanjaybhai Shah and Another

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 11-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 482
Penal Code, 1860 (IPC) — Section 114, 323, 406, 420, 504

Citation : (2011) 08 GUJ CK 0018

Hon'ble Judges : K.S. Jhaveri, J

Bench : Single Bench

Advocate : Dipak R. Dave, for the Appellant; Public Prosecutor, for Respondent 1 and Shakeel A. Qureshi, for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

K.S. Jhaveri, J.—By way of this petition, u/s 482 of the Code of Criminal Procedure, 1973, the Petitioners have prayed to quash and set aside the summons issued against them by the learned Judicial Magistrate, Rajkot in Criminal Inquiry Case No. 23/2006.

2. The facts in brief are that the applicant No. 1 is engaged in the business of manufacturing PET stretch blow moulded bottle / jars and mineral water. Applicant No. 1 entered into a Licence Agreement with a company named United Breweries Ltd. having the Trade Mark of ?Kingfisher?. On 26.06.2004, Respondent No. 2 ? original complainant entered into the agreement with the applicants wherein in the minutes of meeting it was recorded that M/s. Shivam Marketing shall sell Kingfisher Brand pouches and 20 ltrs. Jars in the city of Rajkot, Morbi and Jamnagar with effect from 01.05.2004 to 30.04.2005. In view of this agreement, Respondent No. 2 paid Rs. 5 lac towards Royalty to the company by DD No. 527200 dated 23.06.2004. On expiry of the said period of one year, the applicant informed Respondent No. 2 about the expiry of the agreement. It is the case of the applicant that even after expiry of the said

period, Respondent No. 2 continued the said business without paying Royalty charges. It is the case of the applicants that Respondent No. 2 issued notice to the applicants demanding a sum of Rs. 5 lac. The applicants replied to the said notice vide reply dated 26.11.2005.

In the meantime, Respondent No. 2 had filed a private criminal complaint against the applicants being Criminal Inquiry Case No. 23/2006 for the offences punishable u/s 323, 406, 420, 504, 506(2) & 114 Indian Penal Code. The said complaint came to be registered as Criminal Case No. 5493 of 2006. Thereafter, the learned Judicial Magistrate passed an order for issuance of summons against the applicants. Being aggrieved by the same, the applicants have preferred this application.

3. Heard learned Counsel for the respective parties and perused the documents on record. Having gone through the complaint, I find that in spite of the expiry of the period of agreement, Respondent No. 2 continued the said business without payment of royalty charges for the further period. Hence, I am of the opinion that the complaint against the applicants deserves to be quashed.

4. Considering the facts of the case, it would be relevant to refer to a decision of the Apex Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, wherein, the Apex Court has broadly set out the circumstances in which the High Court can exercise the power u/s 482 of Criminal Procedure Court. Paragraphs 102 and 103 thereof read as under:

The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers u/s 482 Code of Criminal Procedure can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formula and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, No. investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent persons can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

5. Keeping in mind the principle laid down by the Apex Court in the aforesaid decision, I am of the opinion that the impugned complaint cannot be sustained in the eyes of law and deserves to be quashed and set aside. So far as Section 323 of Indian Penal Code is concerned the appropriate remedy is to file a police complaint.

6. Consequently, the petition is allowed. The criminal complaint being numbered as Criminal Inquiry Case No. 23/ 2006 and the proceedings initiated in consequence thereof, are quashed and set aside. Rule is made absolute.