(1996) 05 P&H CK 0105

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 19575-M of 1994

Sardar Associates (P) Ltd. APPELLANT

Vs

C.B.I.through the Joint Director (N) New Delhi RESPONDENT

Date of Decision : 24-05-1996

Acts Referred:

Citation : (1996) 3 RCR(Criminal) 217

Hon'ble Judges : Iqbal Singh, J

Advocate : M.S. Rakkar, R.K. Handa, Advocates for appearing Parties

Judgement

Iqbal Singh, J.

1. The petitioner is a private limited company and deals in the purchase, manufacture and sale of iron and steel and had been purchasing iron and steel from M/s Indian Iron and Steel Company (for short ''IISCO''). A case was registered by C.B.I. against M/s Natraj Industries and the petitioner company vide FIR dated 23.8.1994 under section 120B, read with section 420, IPC and sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act. The allegations in the FIR qua the petitionercompany are that D.P. Deshmukh when posted and functioning as Deputy General Manager, Marketing (NHR), IISCO, Chandigarh during the period 199293 entered to a criminal conspiracy with the petitionercompany with an object to cheat the IISCO and thus extended unsecured credit facilities to the tune of Rs. 2 crores approximately against a security deposit of Rs. 50 lakhs only, whereas as per the guidelines of IISCO, a maximum 30 days interest free secured credit was offered to the Government customers only for pig iron, but above said Sh. D.P. Deshmukh advanced unsecured extended credit facilities to Messrs Sardar Associatespetitioner company with dishonest intention to the extent of Rs. 4 crores approximately, which is still outstanding and is unlikely to be recovered as the firm is no longer doing any business with IISCO. On the basis of these allegations, the case is being investigated.

2. The petitionercompany has sought quashing of the FIR by filing petition under

section 482, Cr.P.C. and the proceedings thereunder.

3. Heard the counsel for the petitionercompany and the Standing Counsel appearing for C.B.I. at length.

4. The contention of Mr. Rakkar, counsel for the petitioner is that the dispute between the parties is of a civil nature as the petitionercompany had made payment to the tune of Rs. 82 lacs to the IISCO. However, the officials of IISCO had adjusted this amount of Rs. 82 lacs in favour of its two defaulting customers namely Messrs Natraj Industries and Messrs A.P.S. Associates Private Limited; and that vague and contradictory allegations have been levelled. It was contended that no criminal liability is made out against the petitioner company and if there is any, at the most, it is a civil liability and in that regard a civil suit is pending between the parties before the Senior Sub Judge, at Ludhiana and the amount in question could only be recovered by way of filing a civil suit, if any.

5. The learned counsel for the petitioner company has relied upon M/s Bengal Sales Corporation and another v. Poddar Tyres Ltd., 1995(2) Recent C.R. 570 , Rattan Kumar Jindal v. Bhagwan Dass, 1995(1) Recent C.R. 396 and M/s. Karamchand Ganga Parshad and another v. Union of India and others, AIR 1971 Supreme Court 1244 in support of his arguments.

6. The case of M/s Bengal Sales Corporation (supra) is distinguishable from the facts of the present case inasmuch as in that case the complainantcompany appointed the accused No. 1 firm as agent to sell goods for and on behalf of the company and hold the sale proceeds in trust for the company. Accused No. 1 firm was appointed as consignee agent under a consignee agreement for indefinite period and under the agreement entered into between the parties, the complainantcompany despatched the goods to the accused No. 1firm and in accordance with the consignee agreement the goods were sold by accused No. 1 firm for and on behalf of the complainantcompany. The accusedfirm received the sale proceeds out of which amount of Rs. 4,97,110.05 were withheld by the accused. It is withholding of the above amount which was alleged to fall within the mischief of sections 403, 405, 406 and 409, I.P.C. It was held by the Court that the allegations contained in the complaint at the most result into breach of a contract for which there is an alternative remedy provided to the complainantrespondent. In the facts of that case nonrefund of money was adequately dealt with by burdening the defaulting party with interest of 18%, whereas in the present case, as already mentioned above, allegations in the FIR prima facie make out a case for dishonest or fraudulent intention. Therefore, this authority is not helpful to the complainant in the peculiar circumstances of the case.

7. The case of Rattan Kumar Jindal (supra) is also not helpful to the petitionercompany as in that case it was not shown that the petitioners had dishonest or fraudulent intention at the time when the goods were supplied for they had induced the respondent to part with the goods and it was found that

the allegations mentioned in the complaint read in the light of the notice, they merely amount to breach of contract, but in the instant case the allegations relate to the entering into criminal conspiracy with the petitionercompany with an object to cheat and the goods were supplied against the guidelines with dishonest or fraudulent intention.

8. The case of M/s Karamchand Ganga Parshad (supra) again is not applicable to the petitioner as that case related to the movement of transportation of surplus maize from the State of Haryana to Howrah in West Bengal and the case of the petitioner was that the restrictions imposed by the provisions of Essential Commodities Act, 1955, read with Northern InterZonal Maize (Movement Control) JUDGMENT 1967 were removed in October, 1967. However, the railway authorities refused to deliver the exported maize on the ground that the export in question was illegal. In the civil writ petition filed by the petitioners the principal question that arose for decision before the High Court was with regard to the ban of export lifted by the State and if it did lift the ban, then was it competent to do so and if the ban had been validity lifted. The High Court rejected the writ petition on the sole ground that in view of the pendency of some criminal proceedings in the State of West Bengal, it would not be appropriate for the High Court to give decision in the writ petition. The Hon''ble Supreme Court remitted the case to the High Court for disposal on merits. Therefore in view of the above facts, it has no relevancy to the facts of the present case.

9. Criminal proceedings can be quashed in a case where the allegations made in the first information report/or complaint, even if, they are taken at their face value and accepted in its entirety, do not prima facie constitute an offence or make out a case against the accused; secondly where the material in regard to the FIR does not disclose a cognizable offence; thirdly where the allegations in the first information report do not disclose the commission of any offence and make out the case against the accused or where the allegations are absurd and vehemently improbable on the basis of which it can be concluded that there is an express legal bar to the institution of proceedings or where the criminal proceedings have been launched with a mala fide intention and 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.

10. In case of State of Tamil Nadu v. Thirukkural Perumal, 1995 SCC (Cri.) 387, it was held by the Hon''ble Supreme Court as under:

"The power of quashing an FIR and criminal proceeding should be exercised sparingly by the Courts. Indeed, the High Court has the extra ordinary or inherent power to reach out injustice and quashing the first information report and criminal proceedings, keeping in view the guidelines laid down by this Court in various judgments (reference in this connection may be made with advantage of State of Haryana v. Bhajan Lal, 1992 SCC (Cri) 426 but the same has to be done with circumspection. The normal process of the criminal trial cannot be cut short in a rather casual manner. The Court is not justified in embarking upon an enquiry as to the reliability or genuineness of the allegations made in the FIR or the complaint on the basis of the evidence collected during investigation only while dealing with a petition under Section 482 Cr.P.C. seeking the quashing of the FIR and the criminal proceedings."

The power under section 482, Cr.P.C. has to be exercised in rarest of the rare cases.

11. In view of the discussions above, I find that in the present case none of the above grounds is made out for quashing the first information report particularly when the investigation is in progress. It may be added here that it is not shown that the FIR (Annexure P10) does not prima facie disclose a case for investigation of the offence mentioned therein. The civil liability does not bar the filing of a criminal case if prima facie any criminal offence is made out.

12. For the reasons enumerated above, I find no merit in this petition and the same is dismissed.