
(2011) 03 P&H CK 0193

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. M-6169 of 2008

Sardul Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 21-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 406, 407

Citation : (2011) 03 P&H CK 0193

Hon'ble Judges : Nirmaljit Kaur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Nirmaljit Kaur, J.—This is a petition u/s 482 of the Code of Criminal Procedure for quashing of the complaint (Annexure P-7) dated 15.11.2006 and the summoning order (Annexure P-8) dated 06.10.2007 and also all subsequent proceedings.

2. The facts, in short, are that admittedly the Respondent No. 2 is the owner of the truck bearing No. RJ-13G-9628 bearing Engine No. 30-J-62286805 and chasis No. 426021JWZ 728257 and the year of make is 2003. The registration certificate of the truck bears the name of Niranjana Singh son of Darshan Singh, permanent residential address is House No. 16, Ainkot, Tehsil Batala, District Gurdaspur and the temporary address is Ward No. 15, Old Abadi Shri Ganga Nagar. He has also been issued a driving licence on 25.04.2000 from Varanasi and the number of driving licence is 8046/VMS/LMVITU/2000 dated 25.04.2000. Respondent No. 2-Niranjana Singh filed a complaint u/s 406 IPC against the Petitioners in the Court of Judicial Magistrate, Batala on 15.11.2006 and the allegations, therein, are as under:

He got truck financed from Citizen Finance India Limited near Panchwati, Ahmedabad. He himself is a truck driver and has paid 10 to 12 installments to the tune of Rs. 2,94,000/-. In the end of 2004, the truck met with an accident and he was injured and his left leg was amputated and thus he stopped driving

truck. In January, 2005, the Petitioners met him in his village and they have taken the truck in their transport company for plying it and they will keep on paying the installments and also the expenses. He gave the truck to them. They did not pay any installment nor did they settle the account. Sardul Singh etc. have misappropriated the truck worth Rs. 15,00,000/-by cheating him.

3. Learned Counsel for the Petitioners while praying for quashing of the complaint dated 15.11.2006 and the summoning order dated 06.10.2007 contended (a) that the story put forward in the present complaint is a counter blast to the FIR No. 317 dated 12.10.2005 u/s 407 IPC registered against Niranjana Singh by one Munish Khosla who alleged that Niranjana Singh has loaded 575 bags of basmati rice on 27.09.2005 for carriage to Kandla Port (Gujrat). He did not reach there. He sold the merchandise in Batala itself. FIR No. 317 dated 12.10.2005 was registered at Police Station City Batala. He was arrested on 20.10.2005. Challan has been filed in the case FIR No. 317 dated 12.10.2005 and Niranjana Singh is facing trial u/s 407 IPC. Therefore, the allegations in the present complaint are false as the truck was with the Petitioner and he personally loaded the truck. (b) The truck bearing No. RJ-13G-9628 with new number concealing the correct number was found abandoned within the jurisdiction of Police Station Chas, District Bokero, Jharkhand on 19.10.2005, nearly 21 days after the loading of the basmati rice. The correct number was concealed with a different number. The registration certificate and the driving license were also found in original in the truck. There is no dispute since the engine number and Chassis number are correct as per registration certificate. The truck is standing parked from 19.10.2005 till date as per the certificate given by the Incharge Police Station, Chas District Bokero, Jharkhand dated 26.12.2007.

4. Reliance has been placed on the judgment of Hon'ble the Apex Court rendered in the case titled as State of Haryana and Ors. v. Ch. Bhajan Lal and Ors. reported as 1991 (1) R.C.R.383, as well as, the judgments of this Court rendered in the cases titled as Sudershan Chemical Industries Ltd. v. The State of Punjab reported as 2003 (3) P.L.R. 89, as well as, Gurdeep Kaur v. Balbir Singh and others reported as 2005(2) R.C.R 205 to contend that where the allegations made in the complaint are patently absurd and inherently improbable to the extent that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused and further that the complaint is mala fide and a counter blast to the FIRs registered against him.

5. Learned Counsel for Respondent No. 2, on the other hand, vehemently opposed the prayer made by learned Counsel for the Petitioners and contended that the facts, as stated by the Petitioners, have been misstated. In fact, Respondent No. 2 had met with an accident only in the end of year 2004 and his left leg was got amputated. He was deprived of earning which he was earning through driving his own truck. He was forced to give his truck to the Petitioners on the understanding that they will ply the truck under the banner of their transport company i.e. "Singh Roadways" with a further understanding that they

shall pay the balance installments of the truck. Thus, it was not the Respondent No. 2 who had loaded 575 bags of basmati rice in his truck. It was further contended that the Petitioners are the best persons to answer the said allegations in the FIR No. 466 dated 19.10.2005 as the truck was in their custody. Further, there was no evidence that it was the Respondent No. 2 who was involved in loading of 575 bags of basmati rice. Moreover, the Respondent No. 2 with an amputated leg was not in a position to drive the truck. As such, the Petitioners may have got somebody to impersonate as Respondent No. 2 before Munish Khosla who is stated to have hired the truck so that Respondent No. 2 is implicated.

6. Heard.

7. From the above, the following facts emerge ;

(a) FIR No. 317 dated 12.10.2005 was registered against Respondent No. 2 with the allegation that 575 bags of basmati rice were loaded by him in the truck for transporting the same to Kandla Port (Gujrat) but the same did not reach at the place of destination.

(b) FIR No. 466 dated 10.10.2005 was registered as the said truck was found in abandoned condition in Jharkhand.

(c) A complaint has been filed against the present Petitioners that the present Petitioners had taken the truck in their transport company for plying it but they neither paid the installments nor settled the accounts and have even misappropriated the truck and thus cheated Respondent No. 2.

8. The questions that will have to be decided in the present case are as to whether the truck was in the custody of the present Petitioners or not ; and as to whether the same was handed over by Respondent No. 2 to the Petitioners to use it in their transport company in lieu of the installments to be paid by the Petitioners or not ; or whether the said truck was abandoned by the Petitioners or someone else. In any case, why will Respondent No. 2 not deliver 575 bags of basmati rice at the place of destination especially when the truck was in his name and he was the owner and can be easily identified and located. It is hard to believe that such a person will ruin his own transport/trucking business by indulging in this kind of practice. Further, it is not understood as to why the owner himself will change the number plate and leave the truck abandoned with all the original documents lying in the truck itself. Moreover, the fact that the Respondent No. 2 met with an accident and his left leg was amputated has not been disputed which makes the version of Respondent No. 2 quite probable that he entered into an agreement with the Petitioner for plying of his truck.

9. In view of these facts, it is not possible to come to the conclusion that the present complaint is absurd or improbable. Accordingly, the judgments as relied on by learned Counsel for the Petitioners titled as State of Haryana and Ors., M/s Sudershan Chemical Industries Ltd. and Gurdeep Kaur (supra) do not help the

Petitioners, in the facts of the present case.

10. On the other hand, in the judgment rendered by Hon"ble the Apex Court in the case of State of Orissa and Another Vs. Saroj Kumar Sahoo, , it was specifically held in para as under:

11. As noted above, the powers possessed by the High Court u/s 482 of the Code of Criminal Procedure are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings.

11. Hon"ble the Supreme Court in the case of State of Madhya Pradesh Vs. Awadh Kishore Gupta and Others, while relying on the judgment of R.P. Kapur Vs. The State of Punjab, , observed the category of cases, in which, the inherent power should be exercised to quash the proceedings. Para 9 of the same reads as under:

9. In R.P. Kapur v. State of Punjab this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings:

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence

adduced or the evidence adduced clearly or manifestly fails to prove the charge.

12. Thus, needless to say, that none of the three grounds are available in the facts of the present case.

13. Even as per the judgment rendered in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, , a note of caution was, however, added that the power should be exercised sparingly and that too in the rarest of rare cases.

14. In view of the above and as held by Hon"ble the Apex Court, the inherent powers should not be exercised to stifle a legitimate prosecution. In the facts of present case, a pre-mature assessment cannot be made as the prosecution will have to be given an opportunity to lead their evidence to ascertain the truth of the allegation.

15. Applying the test and the legal position as laid down in the above mentioned cases, no ground to quash the complaint, in question, as well as, the summoning order, is made out.

Dismissed accordingly.