
(2009) 03 RAJ CK 0035
In the Rajasthan High Court

Sarswati Exports and Others

APPELLANT

Vs

S.N. Kapoor

RESPONDENT

Date of Decision : 09-03-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 407, 408, 482

Citation : (2009) 3 RLW 2421

Hon'ble Judges : Raghuvendra S. Rathore, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Raghuvendra S. Rathore, J.—Challenge has been made in this Misc. Petition to the order dated 20.2.06 whereby the learned Sessions Judge, Jaipur City, Jaipur has dismissed the application u/s 408 Cr.P.C. Therefore, the petitioners have prayed that the aforesaid order passed by the learned court below be set aside and the case pending in various courts may be consolidated and tried in one court. The number of cases pending between the parties are said to be 38.

2. The brief facts of the case are that petitioner No. 1, which is a firm comprising of two partners, namely Mahesh Choudhary and Smt. Vasu Choudhary, petitioners No. 2 and 3 respectively, is engaged in the business of Export of Carpets. The non-petitioner No. 1 is also a firm in which non-petitioners No. 2 and 3 namely Surinder Nath Kapoor and Vikram Kapoor are the partners and the said firm is also engaged in the same business i.e. Export of Carpets, On 1.4.01, an agreement was entered into between petitioner No. 1 through its partners and non-petitioner No. 1 also through its partners whereby non-petitioner No. 1 agreed to serve the petitioners by assisting and supervising in the process of designing, wool selection, wool dying and finishing of Carpets at petitioner's place and also to export 50% of its products. The petitioners had, in return, agreed to pay 10% of invoice value as commission, to be payable after 3 months of the date of cheque. Since 1st April, 2003, it was agreed between the parties that instead of 10% of the invoice value, an amount of 17 lacs was to be paid.

The said amount was payable by two cheques of 6 lacs each and one cheque of Rs. 4,14,787/- after deducting TDS from the remuneration of Rs. 5 lacs to each partner, every month. Consequently, the non-petitioners had got 72 cheques in advance, as given in Annex. 1. The non-petitioner had refused to work from 21st Feb., 2004. The petitioners failed to pursue them to continue with their commitment. The respondents started presenting the cheques before the Bank. The payments of the said cheques were stopped, resulting in dishonour of the same. Consequently, the respondents had filed cases in different courts. Some of the cases have already been consolidated. Later on, an application was also moved before the Chief Judicial Magistrate for transferring of cases and vide order dated 10.2.05, 15 cases including those six consolidated cases were transferred to Additional Chief Judicial Magistrate No. 8 (Annex. 2).

3. Thereafter, in this respect, an application (No. 3798/05) was filed before the learned court below for consolidation of 38 cases. The said application was rejected by the learned Sessions Judge, Jaipur City, Jaipur by the impugned order dated 20.2.06. Hence, this Misc. petition has been filed before the High Court.

4. It has been contended by the learned Counsel for the petitioners that taking into consideration the peculiar facts and circumstances of the case, it would be in the interest of both the parties, and ends of justice would be served if all the cases are consolidated in one Court. Further, he has submitted that earlier also, the learned Chief Judicial Magistrate had transferred cases of the like nature, pending between the parties, to one Court. The learned Counsel for the petitioners has in support of his contention, placed reliance on the case of *Rajesh Chandra v. State of Raj.* and Ors. 1995(3) WLC (Raj.) 707.

5. On the other hand, the learned Counsel for the non-petitioners has raised objection to the filing of this Misc. Petition u/s 482 Cr.P.C. He has submitted that in the instant case, a petition u/s 482 Cr.P.C., does not lie. According to him, in cases of transfer; consolidation, it is the power u/s 407 Cr.P.C., which has to be invoked by the High Court. In support of his submission, the learned Counsel for the respondents has placed reliance on the cases of *Nathu Ram Vs. The State*, *Amba Prasad Vs. The State*, and *Suresh Kumar Vs. State and Others*,

6. I have given my anxious and thoughtful consideration to the rival submissions made by the counsel for the parties.

7. A look to the relief sought in this Misc. Petition would go to show that the petitioners have prayed that the Misc. Petition be allowed and the order passed by the learned court below dated 20.2.06 be set aside. In other words, the petitioners have not directly sought to invoke the inherent jurisdiction of this Court u/s 482 Cr.P.C., for transfer/consolidation of the cases. The petitioners have primarily challenged the order passed by the learned Sessions Judge, Jaipur City, Jaipur on 20.2.06.

8. A careful perusal of the order passed by the learned court below i shows that

the only reason given for rejecting the application u/s 408 Cr.P.C., is in Para 6 of the order. According to the court below, two fold reasons are given, namely that it is not possible to decide so many cases in one court and secondly, that there are detail cross examinations of each witnesses. In these circumstances, the learned court below has held that it cannot be said to be in the interest of justice that all the cases be transferred to one court.

9. The case law cited by the learned Counsel for the non-petitioners, referred to above, goes to show that the same are not applicable in the instant case for the simple reason that here the petitioners have not directly approached this Court by invoking the inherent powers u/s 482 Cr.P.C. But they have basically challenged the order passed by the learned Sessions Judge on 20.02.06. As far as the contention raised by the learned Counsel for the non-petitioners that in view of the specific provision u/s 407 Cr.P.C., for the High court to transfer cases, the provisions of Section 482 Cr.P.C. are not to be invoked, is not sustainable because in the instant case, the petitioners have invoked the inherent jurisdiction of the High Court for quashing of order passed by the learned Sessions Judge dated 20.2.2006 whereby he has dismissed the application u/s 408 Cr.P.C.

10. The matter can be looked into, yet from another angle. Section 407(2) Cr.P.C., reads as under:

(2) The High Court may act either on the report of the lower court, or on the application of a party interested, or on its own initiative:

Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

11. In other Words, the powers vested with the High Court under Sub-section (2) of Section 407 Cr.P.C., provides that the High Court may act either on the report of the lower court or on the application of the party interested or on its own initiation. In my considered opinion, an order of the Court below, passed u/s 408 Cr.P.C., can be challenged before the High Court by invoking its inherent powers u/s 482 Cr.P.C. As a matter of fact, mentioning of a different provision of law would hardly make any difference so far as exercise of powers of this Court is concerned. There cannot be any dispute that the High Court is vested with the powers for transfer of cases and appeals. The inherent powers can be exercised in appropriate cases, against the order passed by the Court below and to make such orders as may be necessary for giving effect to any order under the Code or to prevent abuse of the process of the Court or otherwise to secure ends of justice.

12. Taking into consideration the facts and circumstances of the case and on a careful perusal of the order dated 20.2.06, particularly the reasons given by it in Para-6 of the order, I am of the considered opinion that the order impugned deserves to be quashed and set aside. As noted above, keeping in view the fact

that between the same parties a number of cases of similar nature, arising out of the same agreement are pending, it would be in the interest of both the parties that they may be transferred to one Court and adjudicated in accordance with law.

Consequently, this Misc. Petition is allowed. The impugned order dated 20.2.06 passed by the learned Sessions Judge, Jaipur City, Jaipur is hereby quashed and set aside. The criminal cases referred to in the order impugned shall be transferred to one court.

As agreed between the parties, all these matters be transferred to ACJM No. 6, Jaipur City, Jaipur.