
(2005) 01 MP CK 0105

In the Madhya Pradesh High Court

Case No : Miscellaneous Cri. Case No. 3430 of 2004

Set Discovery Pvt. Ltd and others

APPELLANT

Vs

Shashikant Kudroli

RESPONDENT

Date of Decision : 04-01-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 420, 468

Citation : (2005) 4 MPLJ 251

Hon'ble Judges : S.L. Kochar, J

Bench : Single Bench

Advocate : S.C. Bagadia and Saboo, for the Appellant; R.D. Goyal, for the Respondent

Final Decision : Allowed

Judgement

S.L. Kochar, J.

The applicants have filed this petition u/s 482 of the Code of Criminal Procedure for quashing the criminal complaint case No. 518/04 pending before the learned Judicial Magistrate First Class, Indore. The complaint has been filed by the non-applicant/complainant under sections 406, 418, 420, 467, 468 and 120-B of the Indian Penal Code. The learned Trial Magistrate after recording the statements of the complainant and his witnesses u/s 200 of the Criminal Procedure Code registered the complaint only under sections 406 and 420 read with section 120-B of the Indian Penal Code and issued process against the applicants u/s 204 of the Criminal Procedure Code.

Learned counsel for the applicants has submitted that a bare reading of the complaint would show that even the allegations stated in the complaint even if are taken at their face value, no offence whatsoever is made out against the applicants. According to the applicants, the dispute appears to be of a civil nature and the non-applicant has maliciously attempted to cloak the said dispute into a criminal case only to browbeat, pressurize and coerce the applicants. It

has also been submitted that the Non-applicant/complainant has suppressed the material facts from the Court below. The non-applicant, on 29-8-2002, filed a suit against M/s Star India Pvt. Ltd. and the applicant No. 6 (Distributor of applicant No. 1-Company) for a declaration on the same cause of action. In the said suit, M/s Star India Pvt. Ltd. filed an application u/s 8 of the Arbitration and Conciliation Act, 1996, stating the fact that there is an arbitration agreement between the parties and as such, the suit could not be continued. The said application was allowed by the lower Court on 11-2-2004. Against the said order, the non-applicant has preferred an appeal and the said appeal (No. 1/2004) is still pending before the Second Addl. District Judge, Indore. The learned counsel has filed a copy of the complaint (Annexure A/1), copies of proceedings as Annexure-A/2 copy of the statements of the Non-applicant and his witnesses recorded u/s 200, Criminal Procedure Code (Annexure-A/3) and the copy of the appeal memo and the order passed by the trial Court collectively marked as Annexure-A/4. It is contended that the applicant No. 1 M/s Set Discovery Pvt. Ltd. is a Private Ltd. Company and is carrying on the business, inter alia collection of subscription of revenue through distributing Satellite Television Channels in India and the applicants No. 2 to 5 and 7 are senior employees of the applicant No. 1-Company and the applicant No. 6 is a Distributor and the applicant No. 8 is an employee of the applicant No. 6-Distributor. The main thrust of the argument of learned counsel for the applicants is that the dispute between the applicant-company and the non-applicant is of civil nature and to resolve the same, in the agreement arbitration clause is provided. For that purpose, learned Civil Judge Class I Indore has also passed the order directing the Non-applicant to lodge his grievance before the Arbitrator as per Arbitration Clause in the agreement, but the complainant has maliciously filed this complaint with an ulterior motive just to harass the applicants though no criminal case is made out against the applicants. Learned counsel placed reliance on the Supreme Court Judgments passed in the case of Punjab National Bank and others Vs. Surendra Prasad Sinha, and State of West Bengal and Others Vs. Swapan Kumar Guha and Others, .

3-4. According to complaint filed by the Non-applicant, the non-applicant is the partner of partnership firm M/s Savera and is dealing in the business of Cable T.V. by providing connections to its subscribers for viewing the programmes on Television. The applicant No. 1 Set Discovery Pvt. Ltd. is a company dealing in the name and style of Sony Package, Sony Channels etc. and distributing satellites Channels in India and other countries. The applicant No. 6 is the Distributor of applicant No. 1 in Indore Town and the applicant No. 8 is the Regional Manager thereof, whereas applicants No. 2, 3, 4 and 5 are the responsible officials of the company and the applicant No. 7 is serving under applicant No. 6. It is alleged in the complaint that the applicant No. 6 Mr. Jay Wadhwani contacted with the Non-applicant and had a talk with him on 20-3-2003 and made a proposal before him on behalf of applicant No. 1-Company for exhibition of programmes of Sony Packages through the firm of the

Non-applicant, after payment of subscription for one year amounting to Rs. 1,44,000/-. After completion of the year, the Channel programmes-service would not be closed and the non-applicant will be required to deposit further subscription. The applicant No. 6 told him about the prominent and excellent reputation of the applicant-company and that they will not commit any kind of cheating and fraud. He also assured the non-applicant that whenever the non-applicant will have any complaint about the channel-programmes, the same would be solved immediately by him after sending information to the President, Chairman, Managing Director and other officials of the company, and whenever, if there is any kind of hindrance in the distribution of Satellite T.V. Channels, the same would be removed then and there and the contract will continue upon depositing the subscription and renewal of fees by the Non-applicant. The applicant No. 6 induced the Non-applicant to have a contract to take channel programmes of the applicant No. 1-company by which the Non-applicant will also be earning profit. Because of the assurances and promises made by the applicant No. 6 Distributor of applicant No. 1-company, the complainant paid Rs. 1,44,000/- vide Demand Draft No. 200338 dated 30-3-2002 drawn on the Saraswat Co-operative Bank. On payment of this amount, the applicant No. 6 issued a temporary receipt No. 544080 and told him that the permanent receipt will be given to him later on. The Non-applicant raised objection on issuance of temporary receipt on which the applicant No. 6 assured him that after depositing the amount with the company the channel-service would not be stopped, but the distribution of Satellite Television Channels by the company was stopped on the ground that the Court has dismissed the case of the non-applicant. He was also informed that the company was being paid more subscription and renewal fees by Bhaskar Multi Net. Therefore, the applicant No. 1-company will not distribute satellite T.V. Channels to the Non-applicant. The Non-applicant has also averred in the complaint that there was no such order passed by any Court in favour of the applicants and against the Non-applicant for stopping the supply of channel services and to forfeit the renewal fees deposited by the Non-applicant with the applicants.

The Non-applicant-complainant has also stated in the complaint that the applicants have deliberately with dishonest-intention hatched conspiracy against the non-applicant along with other businessmen, for causing wrongful loss to the non-applicant and to secure wrongful gain to themselves and stopped the channel services though with the applicant No. 1-Company the Non-applicant had already deposited more amount than the required subscription and renewal fees for the coming year. Because of this dishonest action of the company, and stopping the services of distribution of Satellite Television Channels, the Non-applicant has become unemployed and is put to immense financial crisis. Because of illegal action of the applicants, the Non-applicant was put to suffer serious mental shock, pain and agony and also to suffer mental stress and financial crisis. The Non-applicant and his partners have become indebted and their firm has lost its prestige and reputation in the market. Its partners have

also been made to suffer mental and financial loss and also the loss of their reputation and business. It is also averred in the complaint that right from the beginning even after entering into contract and receiving the requisite amount, the applicants were not fulfilling their words and putting obstructions in the distribution of satellite television channels thereby causing wrongful loss to the Non-applicant and securing wrongful gain to themselves. All this they have done after hatching conspiracy deliberately to satisfy their lust and financial desire. The complainant has also stated in the complaint that the applicants jointly with dishonest intention, after extending promises to supply channel-services of Sony Package for the year 2002, 2003, received requisite amount and for the said amount, they did not issue any permanent receipt. They have also obtained more than the required amount of renewal subscription for the year 2003-2004 through Demand Draft and did not issue permanent receipt and also did not return the excess amount in spite of repeated demands being made by the Non-applicant/complainant. They have also made manipulation in the accounts and thereby caused wrongful loss to the Non-applicant and its partners and secured wrongful gain to themselves. More or less the same allegations have been levelled by the complainant in his statement u/s 200 of the Code of Criminal Procedure.

In support of the case of the Non-applicant/complainant, he has examined two witnesses i.e. Nandkishore and Monil. Nandkishore is the landlord of the non-applicant in whose house the non-applicant started his channel distribution and cable connection business and the witness Monil is a witness, regarding the transaction between the non-applicant and the applicant No. 6 is a distributor of applicant No. 1-company.

Learned counsel for the non-applicant has strenuously submitted that at the stage of taking cognizance and issuance of processes, on a complaint lodged by the Non-applicant, the learned trial Court is required to consider only the allegations and averments made in the complaint, documents filed therewith and the statements of the complainant and his witnesses and the learned Trial Court has rightly registered the case against the applicants for the offences under sections 406, 420 read with section 120-B of the Indian Penal Code. There is sufficient material and evidence led by the non-applicant to make out a prima facie case and merely because the Non-applicant also has a civil remedy for the purpose of getting back the amount paid by him to the applicants, the forum for lodging the criminal complaint against the applicants who have committed cheating and fraud by inducing the Non-applicant to enter into contract by payment of huge amount for which right from beginning they had a dishonest intention and only because of that they did not issue permanent receipt and in spite of all payment of subscription as well as renewal fees all of a sudden the applicants stopped distribution and supply of satellite television channel-programmes to the Non-applicant and entered into an agreement with other persons thereby causing wrongful loss to the Non-applicant and his firm and its partners and secured wrongful gain to themselves. The learned counsel has also

submitted that the Civil Remedy or the remedy through Arbitrator would not absolve the applicants from their criminal action and complainant has a right to resort to the criminal and civil proceedings against the applicants before the Court of law. Learned counsel had placed reliance on the following judgments of the Supreme Court:-

(1) Smt. Lalmuni Devi v. State of Bihar and Ors., 2001 SAR Cri 127 (SC) , (2) M/s Medchl Chemicals and Pharma Pvt. Ltd. v. M/s Biological E. Ltd. and Ors., 2000 SAR Cri 409 (SC) (3) M/s Krishnan v. Vijay Singh and Anr., 2001 SAR Cri 842 (SC) (4) Kamladevi Agarwal v. State of W.B. and Ors., 2001 SAR (Criminal) 914 (SC) (5) State of Bihar and Anr. v. Md. Khalique Anr., 2002 SAR Cri 91 (SC) (6) State of Karnataka v. M. Devendrappa and Anr., 2002 SAR Cri 119 (SC) (7) Trisuns Chemicals Industry v. Rajesh Agarwal Ors. 1999 SAR Cri 677 (SC) (8) K.M. Mathew v. K.A. Abraham and Ors., 2002 SAR Cri 793 (SC) and (9) State of M.P. v. Awadh Kishore Gupta and Ors., 2004 SAR Cri 119 (SC).

Having heard learned counsel for the parties and after perusing the entire record, this Court is of the opinion that no interference is called for by invoking inherent powers of this Court for quashing the criminal proceedings at the initial stage on the ground that the Non-applicant has a remedy to sue the applicants by filing civil suit or initiate proceedings before the arbitrator. The law of invoking powers u/s 482, Criminal Procedure Code is well settled by the catena of judgments rendered by the Apex Court of the Country. The Supreme Court had ruled in the decisions cited by learned counsel for the Parties (supra) that the settled law is that the civil and/or criminal matter both can be carried on, when the Magistrate finds the criminal allegations prima facie and issued the process the High Court should sparingly exercise its inherent powers with circumspection and that too in rarest of rare cases. In the proceedings initiated on complaint, exercise of inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. Merely because an act has a civil profile, is not sufficient to denude it of its criminal outfit. Many a cheatings were committed in the course of commercial and also money transactions. Arbitration is not a remedy for criminal prosecution. In such cases, Investigating Agency or in a complaint case, the learned Magistrate should have had the freedom to go into the whole gamut of allegations and reach a conclusion of its own.

On a careful perusal of the allegations made in the complaint and the statements of the complainant and his witnesses and applying the abovementioned test laid down by the Highest Court of the land for quashing the criminal complaint, this Court is of the view that there is sufficient material to make out a prima facie case for taking cognizance by the Magistrate and issue process against the applicant No. 1-Company, its president, applicant No. 2, Distributor/applicant No. 6. The applicant No. 6 being a distributor of applicant No. 1-company made a proposal before the Non-applicant and obtained money for the company. He had issued temporary receipt and also made all possible

promises to induce the Non-applicant to take the services of the applicant No. 1-company for distribution of satellite television channels. For that purpose, requisite subscription and renewal fees were also paid by the Non-applicant, but all of a sudden without any rhyme and reason, the supply has been stopped and no permanent receipt of money was issued and exhibition of programmes on T.V. to the subscribers of Non-applicant has been given to some other person. It is a settled legal position that at the time of taking cognizance and issuing processes, the learned Magistrate is required to consider the allegations mentioned in the complaint and the statements of the witnesses recorded u/s 200 and 202, Criminal Procedure Code. Therefore, the prayer of the applicants cannot be acceded for quashing the entire proceedings against all the applicants pending before the learned Magistrate in Criminal Complaint No. 518/04. This Court is of the opinion that there is prima facie material available to proceed against the applicant No. 1-Company and applicant No. 2, its president, as well as the applicant No. 6-distributor of the company in Indore. Against rest of the applicant Nos. 3, 4, 5, 7 and 8 (Mr. Gurjiv Kapoor, Mr. Anuj Gandhi, Mr. Kunal Das, Mr. Alok Kataria there is no prima facie material available to proceed with the criminal complaint.

Consequently, this petition stands allowed in part in terms indicated hereinabove. The learned trial Court, while passing final order shall not in any manner, be influenced by any observation made by this Court in this order.