
(2015) 01 P&H CK 0273

In the Punjab And Haryana At Chandigarh

Case No : Criminal Misc. Nos. M-34793 and M-37911 of 2011

Sonica Malhotra and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 06-01-2015

Acts Referred:

Companies Act, 1956 — Section 621, 628
Constitution of India, 1950 — Article 20(2)
Criminal Procedure Code, 1973 (CrPC) — Section 173(8), 300(1), 482
Penal Code, 1860 (IPC) — Section 120-B, 148, 149, 379, 420

Citation : (2015) 01 P&H CK 0273

Hon'ble Judges : Daya Chaudhary, J

Bench : Single Bench

Advocate : J.S. Bedi, Senior Advocate and Diya Sodhi, for the Appellant; Rita Kohli, A.A.G, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Daya Chaudhary, J.—By this judgment, both the petitions bearing Criminal Misc. No. M-34793 of 2011 and Criminal Misc. No. M-37911 of 2011 shall be disposed of as common question of law and facts are involved in both the cases. However, for the sake of convenience, the facts are being extracted from Criminal Misc. No. M-34793 of 2011.

2. The present petition has been filed under Section 482 Cr.P.C. for quashing of FIR No. 180 dated 04.11.2011 registered under Sections 420, 467, 468, 471 and 120-B I.P.C. at Police Station Division No. 4, Jullunder.

3. The FIR, in question, was registered at the instance of complainant/respondent No. 2-Gurcharan Singh Syal alleging therein that certain meetings, which took place on 01.09.2011, 02.09.2011, 05.09.2011, 26.09.2011, 29.09.2011 and 30.09.2011 at Delhi and Jalandhar, were against the interest of complainant-party. It is also the allegation in the FIR that in said meetings, the persons who participated and signed the Minutes of the Meeting by taking

various decisions were not even present at the place of meeting and decisions were taken on the basis of mobile phone records.

4. The FIR as well as other proceedings arising there from have been challenged by raising various grounds.

5. Learned senior counsel for the petitioners submits that as per allegations in the FIR, no offence is made out against the petitioners and keeping in view the provisions of Section 628 of the Companies Act (herein-after referred to as "the Act"), only the complaint is maintainable under Section 621 of the Act. Learned counsel also submits that no document has been forged and on the basis of filing of Minutes of Meeting before the Registrar of Companies or filing of document in pursuance of decision taken in the meeting, it cannot be said that any forgery has been committed. The allegations leveled against the petitioners are more or less identical, which have been alleged by the petitioners against the complainant party. It was alleged by the petitioners' party that non-service of advance notice of meetings and the consequential holding of meetings and decisions taken therein are invalid. Learned counsel also submits that no preliminary inquiry was conducted before lodging of the FIR, whereas, it was necessary in view of ratio of judgment of Hon"ble the Apex Court in case *Lalita Kumari Vs. Govt. of U.P. and Others*, (2013) 12 AD 209 : AIR 2014 SC 187 : (2014) CriLJ 470 : (2013) 6 CTC 353 : (2014) 1 JCC 1 : (2013) 14 JT 399 : (2013) 4 RCR(Criminal) 979 : (2013) 13 SCALE 559 : (2014) 2 SCC 1 : (2014) 1 SCJ 68 , as the allegations in the FIR are relating to commercial dispute and a pre-registration enquiry is necessary. There is also a delay of three months in reporting the matter and the same has not been explained. Learned counsel also submits that as per allegations in the FIR, the grievance raised by the complainant side relates to Section 628 of the Act, 1956 and the offences under the Act are to be cognizable only on a complaint made in writing. On the basis of allegations in the FIR, no offence is made out under any of the provisions of Indian Penal Code as no cognizable offence is made out and no investigation is permitted by the police officer without having any order of a Magistrate and the same is liable to be quashed only on this ground. At the end, learned counsel for the petitioners submits that lodging of FIR against the petitioners is not only an abuse of process of law but it does not even fall within a realm of criminal law being purely civil in nature.

6. Learned counsel for the petitioners while relying upon the judgments of Hon"ble the Apex Court in cases *R.P. Kapur Vs. The State of Punjab*, AIR 1960 SC 866 : (1960) CriLJ 1239 : (1960) 3 SCR 388 and *State of Haryana and others Vs. Ch. Bhajan Lal and others*, AIR 1992 SC 604 : (1992) CriLJ 527 : (1990) 4 JT 650 : (1990) 2 SCALE 1066 : (1992) 1 SCC 335 Supp : (1990) 3 SCR 259 Supp also submits that this Court has inherent powers to quash the FIR as well as other proceedings arising there from.

7. Learned counsel for the petitioners has also relied upon the judgments of Hon"ble the Apex Court in cases *Dilawar Singh Vs. Parvinder Singh @ Iqbal*

Singh and Another, AIR 2006 SC 389 : (2005) CriLJ 145 : (2005) 9 JT 476 : (2005) 9 SCALE 200 : (2005) 12 SCC 709 : (2005) AIRSCW 6021 : (2005) 7 Supreme 524 , Narcotics Control Bureau Vs. Kishan Lal and others, AIR 1991 SC 558 : (1991) CriLJ 654 : (1991) 1 Crimes 467 : (1991) 33 ECC 32 : (1991) 52 ELT 328 : (1991) 1 JT 258 : (1991) 1 SCALE 97 : (1991) 1 SCC 705 : (1991) 1 SCR 139 : (1991) 2 UJ 121 , A.K. Roy and Another Vs. State of Punjab and Others, AIR 1986 SC 2160 : (1986) CriLJ 2037 : (1986) JT 566 : (1986) 2 SCALE 566 : (1986) 4 SCC 326 : (1986) 3 SCR 961 and Md. Ibrahim and Others Vs. State of Bihar and Another, (2010) CriLJ 2223 : (2009) 11 JT 533 : (2009) 12 SCALE 250 : (2009) 8 SCC 751 : (2009) 9 UJ 4349 , judgments of this Court in cases Satish Chand vs. State of Haryana 2003 (4) RCR (Criminal) 851 , Rakesh Kumar Vs. State of Haryana, (2011) 3 RCR(Criminal) 629 as well as judgment of Kerala High Court in case Municipal Commissioner, Thalasserry Municipality Vs. B. Abdurahiman, (1996) CriLJ 1075 , in support of his contentions.

8. Learned Senior counsel for the State-Ms. Rita Kohli, Additional Advocate General, Haryana submits that the allegations in the FIR are matter of evidence and the same can be considered during trial. She further submits that the petitioner can raise all pleas, as raised herein, either at the time of framing of charge or thereafter.

9. Learned counsel for respondent No. 2 opposes the submissions made by learned counsel for the petitioners and has also raised a preliminary objection that petition under Section 482 Cr.P.C. is not maintainable as the validity of documents, which is under dispute, can be considered only by the trial Court during trial. The challan, in the case, was presented on 16.08.2013 and the matter is being delayed by the petitioners by addressing arguments on charge. Learned counsel also submits that in case, any document is not a part of challan, the same cannot be taken into consideration by the Court. The remedy under Section 628 of the Act is totally separate from the provisions of the Indian Penal Code. The petitioners have forged the valuable security documents just to cheat the complainant. Neither any notice of the meeting was given to the complainant party nor they were aware about holding of such meeting. Even some of the decisions were taken in the back date just to defraud the complainant party. He further submits that not only the documents were forged but there was forging with the accounts also. He also submits that it is a well settled proposition of law that the criminal proceedings can go simultaneously with the civil proceedings. He further submits that one more petition bearing Criminal Misc. No. M-18949 of 2014 was filed by the petitioners before this Court, which was dismissed vide order dated 28.05.2014 and the petitioners were given liberty to raise all the issues before the trial Court. Thereafter, the petitioners filed SLP before Hon''ble the Apex Court and the same was dismissed as withdrawn.

10. Learned counsel for respondent No. 2 has relied upon the judgment of Hon''ble the Apex Court in case State of Bihar and Another Vs. P.P. Sharma, IAS and Another, AIR 1991 SC 1260 : (1991) 2 CompLJ 197 : (1991) CriLJ 1438 :

(1991) 2 Crimes 113 : (1991) 2 JT 147 : (1992) 1 SCC 222 Supp : (1991) 2 SCR 1 , State of Orissa Vs. Debendra Nath Padhi, AIR 2005 SC 359 : (2005) 99 CLT 348 : (2005) 1 CTC 134 : (2004) 10 JT 303 : (2004) 10 SCALE 50 : (2005) 1 SCC 568 : (2004) AIRSCW 6813 : (2004) 8 Supreme 568 , Smt. Chand Dhawan Vs. Jawahar Lal and others, AIR 1992 SC 1379 : (1992) CriLJ 1956 : (1992) 2 Crimes 342 : (1992) 3 JT 618 : (1992) 102 PLR 114 : (1992) 1 SCALE 996 : (1992) 3 SCC 317 : (1992) 2 SCR 837 : (1992) 2 UJ 46 , A.A. Mulla and others Vs. State of Maharashtra and another, (1996) 7 AD 737 : AIR 1997 SC 1441 : (1997) CriLJ 353 : (1996) 4 Crimes 125 : (1996) 9 JT 551 : (1996) 7 SCALE 840 : (1996) 11 SCC 606 : (1997) AIRSCW 63 : (1996) 7 Supreme 697 , Sangeetaben Mahendrabhai Patel Vs. State of Gujarat and Another, AIR 2012 SC 2844 : (2012) CriLJ 2432 : (2012) 2 Crimes 203 : (2012) 4 SCALE 549 : (2012) 7 SCC 621 : (2012) AIRSCW 2664 : (2012) AIRSCW 4243 : (2012) 3 Supreme 185 , Trisuns Chemical Industry Vs. Rajesh Agarwal and others, AIR 1999 SC 3499 : (1999) CriLJ 4325 : (1999) 6 JT 618 : (1999) 5 SCALE 609 : (1999) 8 SCC 686 : (1999) 2 SCR 686 Supp : (2000) 1 UJ 392 : (1999) AIRSCW 3492 : (1999) 8 Supreme 53 , N. Devindrappa Vs. State of Karnataka, AIR 2007 SC 1741 : (2007) CriLJ 2949 : (2007) 7 JT 35 : (2007) 147 PLR 217 : (2007) 6 SCALE 553 : (2007) 5 SCC 228 : (2007) 6 SCR 36 : (2007) AIRSCW 2850 , Kamaladevi Agarwal Vs. State of West Bengal and Others, (2001) 9 AD 122 : AIR 2001 SC 3846 : (2001) CriLJ 4733 : (2001) 9 JT 162 : (2001) 7 SCALE 289 : (2002) 1 SCC 555 : (2001) AIRSCW 4292 : (2001) 7 Supreme 627 , Sh. Vishnu Dutt Sharma Vs. Smt. Daya Sapra, (2010) 2 ComplJ 79 : (2009) 13 JT 44 : (2009) 8 SCALE 698 : (2009) 13 SCC 729 : (2009) 8 SCR 977 : (2009) AIRSCW 5341 : (2009) 5 Supreme 258 , Vinay Tyagi Vs. Irshad Ali @ Deepak and Others, (2013) 2 ABR 36 : (2013) 1 AD 157 : (2013) CriLJ 754 : (2013) 1 JT 97 : (2013) 2 RCR(Criminal) 197 : (2012) 12 SCALE 343 : (2013) 5 SCC 762 , Sanghi Brothers (Indore) Pvt. Ltd. Vs. Sanjay Choudhary and Others, AIR 2009 SC 9 : (2009) CriLJ 338 : (2008) 11 JT 460 : (2008) 13 SCALE 133 : (2008) 10 SCC 681 , State of Maharashtra Vs. Priya Sharan Maharaj and Others, AIR 1997 SC 2041 : (1997) CriLJ 2248 : (1997) 1 Crimes 275 : (1997) 4 JT 84 : (1997) 2 SCALE 687 : (1997) 4 SCC 393 : (1997) 2 SCR 933 : (1997) AIRSCW 1833 : (1997) 3 Supreme 73 , State of Delhi Vs. Gyan Devi and Others, (2001) CriLJ 124 : (2000) 2 JT 635 Supp : (2000) 7 SCALE 192 : (2000) 8 SCC 239 : (2000) 4 SCR 270 Supp : (2000) AIRSCW 3844 : (2000) 7 Supreme 201 , State of Rajasthan Vs. Thakur Singh, (2014) AIRSCW 4479 : (2014) 8 JT 50 : (2014) 8 SCALE 82 , Sachida Nand Singh and Another Vs. State of Bihar and Another, (1998) 1 AD 534 : AIR 1998 SC 1121 : (1998) CriLJ 1565 : (1998) 1 Crimes 142 : (1998) 1 JT 370 : (1998) 1 SCALE 307 : (1998) 2 SCC 493(2) : (1998) 2 SCC 493 : (1998) 1 SCR 492 : (1998) AIRSCW 932 : (1998) 1 Supreme 419 as well as judgment of this Court in case Karnail Singh vs. The State of Punjab 1983 (1) RCR (Criminal) 38, in support of his contentions.

11. Heard the arguments of learned counsel for the parties and have also perused the allegations in the FIR as well as other documents on the file.

12. Briefly, the facts of the case are that Krishna Real Estate Enterprises Private Limited was established in the year 1997. Both the parties i.e. Malhotra Group from the accused side and Syal Group from the complainant side, were having equal shares and equal representation. Initially, Prem Singh Syal and Gurcharan Singh Syal were having 100 shares each and Ashok Kumar Malhotra and Satish Bala Malhotra were also having 100 shares each. Ashok Kumar Malhotra expired on 30.12.2009 and he was survived by his wife and two daughters. Said Ashok Kumar Malhotra bequeathed his shareholding and petitioners were allotted the shares by virtue of resolutions duly adopted by the Board of Directors of the Company.

13. As per allegations in the FIR, there were amendments in the Articles of Association. The decisions were taken by the petitioners without communicating the same to the complainant party. Those decisions were taken only on the basis of talks on mobile/telephone. As per case of the petitioners, no offence is made out under Sections 452/447/506/379/148/149 I.P.C. as no forgery was committed by the petitioners and before lodging of the FIR, no preliminary inquiry was conducted which was necessary in view of ratio of judgment of Hon'ble the Apex Court in Lalita Kumari's case (supra). In case, any grievance is there, that is, covered by Section 628 of the Act and no offence is made out under any provisions of Indian Penal Code.

14. Learned counsel for respondent No. 2 has brought to the notice of this Court that the petitioners also filed Criminal Misc. No. M-18949 of 2014 before this Court, which was dismissed vide order dated 28.05.2014. A specific observation has been made, while dismissing the petition filed by the petitioners, on 28.05.2014 that legality, validity and admissibility of the documents, attached with the report, is to be adjudged while appreciating that report for taking further action thereon, which can be seen by the trial Court at the appropriate state. However, the petitioners were given liberty to raise all the pleas, as raised in the petition, before the trial Court at the time of consideration of report under Section 173(8) Cr.P.C.

15. Learned counsel for the petitioners made all efforts to justify that the present petition has been filed after filing of supplementary challan and order passed by this Court in earlier petition is not relevant at this stage as the Court has power under Section 482 Cr.P.C. even after changed circumstances. The prayer in the earlier petition was for issuance of direction to the trial Court not to consider the investigation report dated 02.05.2014 under Section 173(8) Cr.P.C. and that petition was dismissed on 28.05.2014 with liberty to the petitioners to raise all issues before the trial Court as validity of documents can be seen only by the trial Court at the time of appreciation of final report. Similarly, while challenging the said order, even Hon'ble the Apex Court was not inclined to interfere with the order and ultimately, the counsel appearing for the petitioners opted to withdraw the petition, reserving liberty to redress their grievance before the trial Court. The matter is pending for consideration of charge before the trial Court and the

petitioners can raise all pleas, as raised before this Court, before the trial Court at the time of framing of charge.

16. It is also a well settled proposition of law that any material, which is not a part of challan, cannot be taken into consideration, as has been held by Hon''ble the Apex Court in State of Bihar's case (supra).

17. Similar view has been held in another judgment of Hon''ble the Apex Court in State of Orissa's case (supra). In the said judgment, it was held that any material, which is not attached with the challan by the police during the investigation, is not within the scope of petition under Section 482 Cr.P.C.

18. As far as contention of learned counsel for the petitioners that only the provisions of Section 628 of the Act are attracted and not the provisions of Indian Penal Code is concerned, Section 628 of the Act relates to only filing of reports, records, balance sheet, statements or documents, which are false material particulars or omit any material fact. That remedy is completely different and separate and it cannot be said that the provisions of Indian Penal Code are attracted.

19. Moreover, it is also a well settled proposition of law that separate and distinct offences can be tried separately and it would not overlap each other. There is no bar as per provisions of Section 300(1) Cr.P.C. or Article 20(2) of the Constitution of India. This view has been held in judgment of Hon''ble the Apex Court in A.A. Mulla's case (supra), wherein, it has been held that there may be some overlapping of facts in both the cases but ingredients of offences are entirely different. It has also been held in various judgments of Hon''ble the Apex Court as well as of this Court that civil proceedings and criminal proceedings can go on simultaneously. For the purpose of consideration of charge, it is not necessary that the evidence to be produced by the party is to be considered.

20. Learned counsel for the petitioners has raised argument that no document has been forged and filing of minutes of meeting before the Registrar of Companies or filing of documents in pursuance of decision taken in the meeting would not amount to forgery under any circumstances.

21. The judgments relied upon by learned counsel for the petitioners are not applicable, keeping in view the facts and circumstances as well as stage of case as it cannot be said at this stage as to whether the offence is made out or not as the petitioners are having liberty to raise all the pleas before the trial Court at the time of framing of charge. Moreover, the earlier petition i.e. Criminal Misc. No. M-18949 of 2014 has already been dismissed and SLP has also been dismissed as withdrawn.

22. There is no merit in the contentions raised by learned counsel for the petitioners and the petition, being devoid of any merit, is hereby dismissed at this stage.

23. However, the petitioners are at liberty to raise all pleas, as raised herein,

before the trial Court.