

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

Case: Petition u/s 561-A Cr.P.C. No. 38/2007

Date of decision: 02.01.2009

Smt. Anju Vohra

Vs.

Ritin Nagpal

Coram:

Hon'ble Mr. Justice Virender Singh, Judge.

Appearing counsel:

For petitioner : Mr. Virender Bhat, Advocate.
For respondent : Mr. P. S. Chandel, Advocate.

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| i) | Whether approved for reporting
in Press/Journal/Media | Yes/No |
| ii) | Whether to be reported in
Digest/Journal | Yes/No |
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Through the instant petition, petitioner- Smt. Anju Vohra is seeking quashing of a complaint (Annexure-A) filed by the respondent/ complainant, Ritin Nagpal, under Sections 405, 406, 420, 504 & 506 Ranbir Penal Code, the order (Annexure-D) vide which a process has been issued against her to face the trial for the offences punishable under Sections 420, 504 & 506 RPC and all the consequential proceedings arisen therefrom.

Pursuant to notice, Mr. P. S. Chandel, Advocate, has appeared for the respondent. Trial Court record has also been received. However, Mr. Chandel does not intend to file any reply/objections to the main petition.

I have heard learned counsel for both the sides and perused the record.

Mr. Bhat submits that if one goes by the allegations as contained in the complaint (Annexure-A) no offence of Section 420

RPC is *prima facie* attracted as it is a case of pure and simple civil transaction between the parties. According to learned counsel, it is alleged in the complaint that the petitioner was short of funds in completing the construction of her Banquet Hall and for which she approached the respondent for financial help with a proposal that 'Khana Khazana' a firm being run by respondent would enjoy exclusive catering of the functions to be held in the said Hall after its completion and in this regard a settlement was arrived at between the parties in which the respondent had to pay an amount of Rs.7 lacs to the petitioner as refundable security. The learned counsel then contends that the respondent had paid an amount of Rs.7 lacs to the petitioner through a cheque. His grievance is that the petitioner did not allow him to do the catering exclusively for the functions and also did not give any share in the profits of the Banquet Hall operations as per the settled terms.

Mr. Bhat contends that all these facts reflect that the respondent had become the partner with the petitioner and, if at all, some dispute has arisen between them, it could be determined by the civil Court and not by the criminal Court. The extent of share of either side can be taken care of by the civil Court only. Therefore, *prima facie*, there cannot be any element of cheating at all in the present transaction. At the same time, even if the respondent was not given the right of catering exclusively as per terms and conditions, it again would attract a civil dispute and there is no tinge of criminality in it. On the basis of the aforesaid submissions, Mr. Bhat submits that issuance of process against the petitioner for the offence punishable under Section 420 RPC is, thus a sheer abuse of process of the Court.

With regard to Sections 504 & 506 RPC, the other two offences for which the process is also issued against the petitioner, contention of Mr. Bhat is that bare perusal of complaint does not make out a case falling within the mischief of these offences. What are the derogatory remarks are missing in the complaint and, therefore, nothing is insulting. Even otherwise, the complainant in his preliminary evidence does not say a word attracting these two Sections. Therefore, summoning order for these offences is again bad to that extent also.

Mr. Bhat lastly submits that no doubt the present complaint is filed for Sections 405 & 406 RPC also alongwith the aforesaid three offences and the petitioner can be summoned for the said offences, if *prima facie*, the present case attracts those offences, but from the complainant itself or from the preliminary evidence produced by the respondent, even these two offences are also not made out and, therefore, even by stretching the present complaint vis-à-vis these two offences, no process can be issued. Otherwise also, the learned trial Court itself did not find any material available for the same.

Mr. Bhat, thus, prays for quashing of the complaint, the summoning order and all other proceedings arisen therefrom by invoking the inherent jurisdiction of this Court.

Mr. Chandel, while refuting the submissions advanced by Mr. Bhat, submits that the respondent had not become the partner of the firm as yet and, therefore, there cannot be any question of civil dispute in this case. According to him, the petitioner had the bad intention in her bosom right from the very outset when she had asked for the money from the complainant for the purpose of

construction of Banquet Hall to which the respondent agreed, but on its completion she backed out. This all, *prima facie*, brings the present case within the mischief of cheating. Handing over of Rs.7 lacs by the respondent to the petitioner is an off shoot of that act only and therefore simply that the said amount was handed over to the petitioner by a cheque by the respondent does not go to say that the firm was established and a civil dispute has arisen between the parties. Therefore, the element of cheating, *prima facie*, is made out on record and the process has been rightly issued against her to face trial for the offence punishable under Section 420 RPC.

So far as the other two offences viz., 504 & 506 RPC are concerned, Mr. Chandel has half heartedly argued that these offences are, *prima facie*, attracted atleast for the purpose of issuing of process as it is not the stage to deeply appreciate the case of the complainant which he has yet to prove to the hilt by producing the entire evidence.

Mr. Chandel lastly submits that assuming for the sake of argument although not admitted, if this Court finds that the summoning order impugned herein is bad with regard to Sections 420, 505 & 506 RPC, the ingredients of Sections 405 & 406 RPC are, *prima facie*, complete and, therefore, the petitioner may be ordered to be summoned for these two offences atleast. To strengthen his arguments on this aspect, he relies upon two judgment of Apex Court rendered in case '**Velji Raghavbji Patel v. The State of Maharashtra' AIR 1965 Supreme Court 1433 (V 52 C 235).**

After giving my thoughtful consideration to the rival contentions advanced by learned counsel for either side and going through the entire record minutely, I am of the view that the petitioner has a cause to pray for the relief sought herein.

There is no doubt that at this stage meticulous examination of evidence of the complainant is not legally required, but at the same time, if the complaint and the preliminary evidence led by the complainant in support of his case, no offence as alleged is *prima facie* made out, the Court is left with no option but to quash the proceedings. After all issuance of process curtails the liberty of a person and this right is not to be infringed just in a casual manner. Facing a trial as an accused has its far reaching effect.

Entirety of the present case leaves no room of doubt in my mind to observe that *prima facie* no offence whatsoever as projected or alleged in the main complaint or even in the preliminary evidence is made out qua the petitioner. The grievance of the respondent is that he is not getting his due share after entering into an agreement with the petitioner even **after investing a good amount from his side for the construction of the Banquet Hall.** It is his categoric case that after the completion of the construction, the operation of the Banquet Hall was to be run by the respondent for the purpose of catering in that some share had to go to the petitioner. What was the share is not known to the Court. The said contract has not been acted upon by the petitioner. This simplicitor attracts a civil dispute and it appears that under the garb of present complaint, the respondent wants to settle his score, which cannot be legally allowed. Partnership can be oral or in writing and, therefore, I am not in agreement with Mr.

Chandel that the firm was yet to be formed. In the present case, as per the settlement arrived at, the domain was to be transferred for the purpose of running the business. It does not attract the offence of Section 420 RPC at all for which the petitioner stands summoned.

I have examined the present case vis-à-vis Sections 405 & 406 RPC also. It had become a joint property as is clear from the averments and in such a situation there could be any entrustment in this case so as to bring it even remotely for the purpose of attracting Sections 405 & 406 RPC. As stated above, it is, otherwise, a case of sharing of profit simply and this is the bone of contention. This controversy can be settled by way of filing a civil suit before the competent Court, if the respondent so chooses, but not through the medium of the instant criminal complaint. Therefore, in my considered view, neither Section 420 RPC nor Sections 405 & 406 RPC are, *prima facie*, attracted in this case.

So far as other offences viz., 504 & 506 are concerned, even Mr. Chandel has joined issue on this aspect half heartedly. I am also of the view that these offences are neither attracted from the allegations as contained in the complaint nor from the preliminary evidence led by the complainant.

To be fair to Mr. Chandel, I may observe here that the judgment cited and relied upon by him is entirely distinguishable on facts and does not advance his case at all. Rather the present case squarely falls within the fore corners of celebrated judgment of Apex Court rendered in case '**State of Haryana and others v. Ch. Bhajan Lal and others'** AIR 1992 SC 604, in which their Lordships have enumerated seven illustrations, in which the

complaint/ F.I.R., can be quashed. The present case falls within one of the illustrations, which reads thus:-

“1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.”

As a sequel to the aforesaid discussion, the net result is that the present case calls for invoking the inherent jurisdiction of this Court under Section 561-A of the Code of Criminal Procedure for the purpose of quashing of complaint (Annexure-A), summoning order (Annexure-D) and the consequential proceedings arisen therefrom. Ordered accordingly.

**(Virender Singh)
Judge**

02.01.2009
Jammu
‘Narinder’