

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

561-A Cr.P.C No. 16/2006
Cr.M.P No. 16/2006

Date of decision: 17.08.2009

Raman Mattoo

Vs.

Parvez Shera

Coram:

MR. JUSTICE J. P. SINGH, JUDGE.

Appearing Counsel:

For the Petitioner(s) : Mr. Virender Bhat, Advocate.
For the Respondent(s) : Mr. P.N.Goja, Advocate.

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| i) | Whether approved for reporting
in Press/Journal/Media | : Yes |
| ii) | Whether to be reported
in Digest/Journal | : Yes |
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The petitioner, Raman Mattoo, has filed this Petition seeking quashing of proceedings initiated by the Judicial Magistrate, First Class, 1st Additional Munsiff (Forest Cases), Jammu vide his order of September 30, 2005, finding, prima facie, the commission of an offence punishable under Section 420 RPC by the petitioner, on the respondent's Complaint.

According to the respondent's complaint, the petitioner had offered him a full time Directorship of his Company floated under the name and style of Protection Plus Pharmaceuticals Private Limited, on a monthly salary of Rs.55,000/-, inclusive of all allowances. The

petitioner could not, however, liquidate the amount payable to the respondent which, accordingly, accumulated to Rs.33.00 lakh.

In order to discharge the liability, the petitioner is stated to have issued a post-dated cheque for Rs.33.00 lakh on February 18, 2004, in favour of the respondent. The cheque, when presented, however, bounced resulting in respondent's filing a Complaint under Section 138 of the Negotiable Instruments Act, with the Judicial Magistrate, First Class, 3rd Additional Munsiff, Jammu, when despite notice, the petitioner did not pay the amount covered by the cheque to the respondent.

Finding a prima facie case against the petitioner, the petitioner was summoned for his trial for commission of offence aforementioned, by the learned Magistrate.

An agreement appears to have been executed by the petitioner with the respondent on March 28, 2005, in terms whereof, the respondent had agreed to withdraw the Complaint on petitioner's assurance and agreement to pay him Rs. 2.00 lakh in cash besides conveying four kanals of land situated at Jammu. The agreement further indicates the petitioner to have agreed to withdraw FIR no. 223/04 filed against the respondent for commission of the offences punishable under Sections 379/420 RPC.

Acting on the agreement, the respondent withdrew his Complaint which was accordingly dismissed by the Judicial Magistrate, First Class, 3rd Additional Munsiff, Jammu on 12.04.2005.

Respondent's Complaint against the petitioner is that neither did the petitioner pay him Rs. 2.00 lakh as agreed to nor would he transfer four kanals of the land to the respondent, in terms of the Agreement, and that the Complaint filed by the respondent resulted in its dismissal because of the petitioner's inducement to him to pay him the amount agreed to and convey the ownership rights in four kanals of land. The petitioner was, accordingly, stated to have cheated the respondent depriving of his right to pursue the Complaint which he would not have withdrawn but for the petitioner's inducement.

Petitioner's learned counsel says that the respondent's complaint was infact a dispute of civil nature requiring its adjudication only in a Civil Court and that the respondent's moving the Criminal Court was an abuse of the process of Court.

Referring to clause (1) of the Agreement, learned counsel submitted that the Agreement could not have been acted upon unless the petitioner had paid Rs. 2.00 lakh and delivered the possession of the land to the respondent, and in such view of the matter, respondent's withdrawal of the Complaint was a one sided affair, which would not give him any right to put the Criminal Law into motion against the petitioner.

Respondent's learned counsel, on the other hand, justified the process issued by the learned Magistrate saying that the statement made in the Complaint, read with the preliminary evidence produced by the complainant, in support thereof, proves the commission of offence by the petitioner for which he was summoned by the learned Magistrate and which process may not, as such, warrant interference, additionally because, the Inherent Jurisdiction of the Court cannot be invoked by the petitioner to seek adjudication of the issues, which for their sustainability or otherwise, depend on the proof or otherwise of the facts, on the basis whereof, the petitioner seeks the quashing of criminal proceedings initiated against him.

During pendency of the proceedings in the Court, the parties were afforded sufficient time to come to a mutually accepted settlement which, however, could not happen because the land offered by the petitioner to the respondent was not acceptable to him being far away from Jammu City and was not the one which the petitioner had agreed to convey to the respondent.

Parties having failed to reach to any settlement, this petition needs to be considered on merits.

I have gone through the Complaint, the statements made by the respondent-complainant, and his witness, besides the orders passed by learned Judicial Magistrate, First Class, 3rd Additional Munsiff, Jammu whereby the respondent's Complaint was dismissed on his

application, suggesting Compromise between the parties, and the one passed by learned Judicial Magistrate, First Class, 1st Additional Munsiff (Forest Cases) Jammu issuing process against the petitioner for his trial under Section 420 RPC, on the respondent's Complaint.

Perusal of the Agreement, statement of the respondent and the other material on the records, indicates that the respondent has succeeded in proving, prima facie, that he had been induced by the petitioner to withdraw from his Complaint filed under Section 138 of the Negotiable Instruments Act, pursuant to the dishonour of the cheque which the petitioner had issued in his favour for an amount of Rs.33.00 lakh to discharge the existing liability of clearing the arrears of his salary, which Complaint he would not have otherwise so withdrawn, but for the petitioner's inducement.

Merely because the party may have the civil remedy too, to pursue against his opponent, would not debar the Criminal Court to proceed against the opposite party when it finds, on the basis of the facts placed before it, that an offence was prima facie found to have been committed by the opposite party.

Petitioner's plea that the Agreement having not come into operation and the respondent's act of withdrawal of the complaint was a one sided affair, is a factual plea, which cannot be considered for its adjudication by this Court, in exercise of its Inherent Jurisdiction, for

the plea needs consideration, by the trial Court, at appropriate stage of the trial.

The respondent had withdrawn his earlier complaint specifically mentioning in the application filed by him in this behalf that he was withdrawing the Complaint pursuant to the Agreement reached at with the petitioner. He is specific in his Complaint as also in the statement made in support thereof that right from the beginning, the petitioner had no intention to honour the Agreement and pay the respondent his due, in terms of the Agreement, and had induced him to withdraw the Complaint which he would not have otherwise so done, but for the petitioner's inducement.

The petitioner is, therefore, stated to have deprived the respondent of his right to prosecute the petitioner for having failed to discharge his liability to pay the dues of the respondent by ensuring that the cheque issued by him to discharge his existing liability was honoured.

There is no material on the records and that too of the conclusive nature, to disbelieve the statement on oath of the respondent and his Complaint which do make out a prima facie case for proceedings against the petitioner under Section 420 RPC.

No case for interference, in the process issued by the learned Magistrate, against the petitioner on respondent's Complaint, has thus been made out in this petition.

Found without any merit, this petition is, accordingly,
dismissed.

(J. P. Singh)
Judge

Jammu
August 17, 2009
Pawan Chopra