

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

561-A Cr.P.C. No.29/2011
Cr.M.P. No.29/2011

Date of Decision: 31.03.2011

Surya Pharmaceuticals Ltd. and ors.
Vs
M/S GTB Project Fabricators Pvt. Ltd.

Coram:

Mr. Justice J. P. Singh.

Appearing counsel:

For Petitioner(s) : Mr. Vishal Sharma, Advocate.

For Respondent(s) : Mr. Pranav Kohli, Advocate.

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|-----|--|---|------------|
| i) | Whether approved for reporting
in Press/Media | : | Yes |
| ii) | Whether to be reported
in Digest/Journal | : | Yes |

M/S GTB Project Fabricators Pvt. Ltd. filed a Complaint through Mr. Sandeep Singh Maini, its Managing Director, under Sections 420, 406 and 120-B of the Ranbir Penal Code Svt. 1989 against M/S Surya Pharmaceuticals Limited and its twelve functionaries, which included its President, CMD, Managing Director, Directors, Additional Directors, Secretary and General Manager, besides M/s Engineers Associate Fabricators and Erectors through its Partners and Energy Avenues Pvt. Ltd., through its Managing Director.

It was, *inter alia*, alleged in the Complaint that after the acceptance of its tenders, the petitioners-Surya

Pharmaceuticals Limited, induced it to execute *Mechanical and Fabrication Work at Surya Pharmaceuticals Limited, Samba Phase-II*, on the clear understanding that the payment for the works executed by it, would be made by the accused, within ten days of the submission of bills.

It is stated in the Complaint that though substantial part of the work was completed by the complainant yet the payment therefor was illegally withheld, and later, refusing entry to its workmen in the project and retaining its machinery kept in the project for the execution of work, the work was allotted to M/S Engineers Associate Fabricator and Erectors and Energy Avenues Pvt. Ltd.

Taking cognizance of the Complaint, and on the basis of the preliminary statements of Mr. Sandeep Singh Maini and Tarjinder Singh Foreman of the Company, process was issued against twelve (12) functionaries of the Surya Pharmaceuticals Limited and one each of M/S Engineers Associate Fabricators and Erectors and Energy Avenues Pvt. Ltd., for offences punishable under Sections 406, 420 and 120-B RPC.

The petitioners-Surya Pharmaceuticals Limited and its twelve (12) functionaries have filed this Petition seeking quashing of the proceedings initiated by learned Judicial

Magistrate First Class (Munsiff) Samba on the respondent's Complaint.

According to the petitioners, the respondent-Complainant has abused the process of the Court in putting the Criminal Law into motion with malafide intention to force the petitioners to succumb to its illegal demands, on the basis of the Complaint, which did not disclose the commission of any penal offence.

Referring to *Roshan Lal Asrani and others v. Kashmir Commercial Agency and others*, reported as 2006 (2) JKJ 142[HC], it was forcefully contended by the learned counsel for the petitioners that the respondent had misled the Court to seek issuance of process against the petitioners suppressing, with malafide intentions, the material fact of the pendency of civil litigation between the parties in respect of the Contract, in connection with the execution of work whereunder the petitioners were alleged to have committed offences, on the basis of the Complaint and material accompanying therewith, which when considered, in right perspective and according to law, would not indicate the commission of any offence by the petitioners. Learned counsel, therefore, prayed for quashing the proceedings imposing exemplary costs on the respondent-

Complainant for abusing the process of the Court, which had resulted in harassment and severe inconvenience to the petitioners.

Per contra, referring to Romi Dhar v. State of West Bengal and another, reported as (2009) 6 Supreme Court Cases 364, learned counsel for the respondent submitted that the process issued by the learned Magistrate against the petitioners may not warrant interference by this Court in exercise of its inherent jurisdiction, in that, the Complaint and the material accompanying therewith amply demonstrates the commission of offences by the petitioners for which they are liable to be proceeded against.

I have considered the submissions of learned counsel for the parties and perused the records of the learned Magistrate besides the documents placed on records by the petitioners. The case law cited at the Bar too has been taken note of.

Before dealing with the contentions raised at the Bar, reference needs to be made to the documents placed on records by the petitioners.

Besides a copy of the Contract Agreement, the petitioners have placed on records, copies of the Plaint filed by the respondent in the Court of District Judge,

Samba and orders dated 21.11.2009 and 27.03.2010 of the learned District Judge on the respondent's Application seeking injunctive directions against the petitioners, besides a copy of the respondent's Civil First Miscellaneous Appeal against order dated 27.03.2010 filed in this Court.

The documents referred to hereinabove reveal that the respondent-complainant had filed a Suit for Mandatory injunction seeking Court's Command against the petitioners to supply it requisite material as per the work order for completion of the Mechanical work allotted to it at Industrial Growth Centre Phase-II, Samba, besides a permanent prohibitory injunction restraining the petitioners from carrying out any kind of fabrication or other work which they had allotted to Engineers Associate Fabricators and Erectors, 351/7 Railon Road, Granthi Bagh, Gandhi Nagar, Ropar, Punjab.

The statement of Sandeep Singh Maini, Managing Director of the respondent, recorded by the learned Judicial Magistrate, First Class, Samba on 28.12.2010 too needs to be noticed at this stage.

It is stated by Mr. Maini that pursuant to the Contract allotted to GTB Project Fabricators Private Limited, the

Company had executed works for about 1½ Crores of Rupees but only Rs. 50 Lac were paid by M/s Surya Pharmaceuticals Ltd. whereas they were required to pay 60% of the amount within seven (07) days of the submission of the Bills for the work done by them. Rather than paying the amount for the work done by the respondent, the Company and its functionaries, pursuant to a conspiracy, allotted the respondent's remaining work to Engineers Associate Fabricators and Erectors retaining the machinery and equipment that the complainant had kept at site.

Although the complainant did not spell out in its Complaint, about the receipt of Rs.50 lac from the respondents as part payment for the work done by it for the accused, yet perusal of the copies of the Bills raised and the statement of accounts annexed with the Complaint, do indicate receipt of Rs.84,58,834.19 by the complainant from the petitioners-accused up to March 31, 2010.

It would be advantageous to refer to the interim orders of the learned District Judge, passed on the complainant-respondent's Application seeking injunctive directions. These read thus:-

M/s G.T.B Project Pvt. Ltd.
 Head Office-1621, Sector 70,
 SAS Nagar, Mohali (Punjab),
 Branch Office at Ex-UNO House,
 UNO Lane, Talab Tillo,
 Jammu (J&K)
 Through its Managing Director,
 Sandeep Singh Maini,
 S/o Shri Birinder Singh Maini,
 R/o 44 BC, Gandhi Nagar, Jammu.

VERSUS

Surya Pharmaceuticals Ltd. and others.

SUIT FOR MANDATORY INJUNCTION

Application under O 39 R 1 & 2 read with
 Section 151 CPC.

ORDER
 21.11.2009

Plaintiff has filed a suit for mandatory injunction directing the defendants 1 to 4 to supply the requisite material for completion of the mechanical work allotted to the plaintiff by the said defendants and also restraining the defendants from terminating the contract.

Plaintiff is a private limited Company and are assigned the work of construction and fabrication of the plant at SIDCO Phase II, Samba after the tender of the plaintiff was accepted by the defendants 1 to 4 and letter of intent dated 25.12.2008 was issued in favour of the plaintiff for the fabrication and construction of the said plant, where upon, the plaintiff made all the arrangements for fabrication and construction of the said plant. However, the material as to be supplied by the defendant which was not supplied in time and defendant did not furnish the drawings which caused delay in complete work. Plaintiff has completed 70 to 80 percent of the assigned work. However, the delay in completion of the work has been caused by the defendants. In not furnishing the material and the drawing of the plant in time as stated earlier. Now the defendants are threatening to terminate the contract and assign the same to the defendant No. 5 contrary to the terms and conditions arrived at between the parties and the letter of intent issued to the plaintiff.

Along with the suit, the plaintiff has also filed an application for temporary injunction which was supported by an affidavit.

I have heard the learned counsel for the plaintiff and have perused the material of the file.

The letter of intent stands issued in favour of the applicant/plaintiff for completion of the work at SIDCO phase II, Samba, Jammu for the fabrication of the factory of the defendants 1 to 4 which though was to be completed within a period of six months. However from the perusal of the photo copy of work chart, it appeared that the same was provided on 22.5.2009.

Plaintiff has asserted that the work could not be completed as work sheet itself was issued as late as on 22.5.2009. Applicant/plaintiff has asserted that the defendants 1 to 4 are going to terminate the contract and allot the same to defendant No.1 and in case the non-applicants/defendants are not restrained at this stage, the applicant shall be put to irreparable loss and injury.

From the material on record, the matter seems to be of an emergent nature, in case prior notice as envisaged under law is not dispensed with, the applicant will be put to great loss which cannot be compensated in terms of money. As such, prior notice at this stage is dispensed with.

The applicant has already made all the arrangements for one fabrication and construction of the plant on spot and the already completed 70 to 80% of the construction and the delay caused in execution of the work appears prima facie due to defendants 1 to 4, thus, the applicant has been able to show a prima facie case in his favour and in case, the contract is

germinated by the defendants 1 to 4 it will cause irreparable loss and injury to the plaintiff, since the applicant has already made all the arrangements for the fabrication and construction of the plant allotted to him, balance of convenience lies in his favour.

Issue notice to the other side and put up on 27th November, 2009. In the meanwhile, defendants 1 to 4 are restrained from terminating the contract allotted to the plaintiff in respect of the concerned work in case the contract is still subsisting and defendant No.5 is also restrained from carrying on the construction work of the plaintiff. Thus, however, is subject to the objection of the other side.

Put up on 27th of November, 2009.

Announced
21.11.2009

Principal

Sd/-
District Judge,
Samba"

"In the Court of District Judge, Samba.

GTB V/s Surya Pharmaceuticals.

27.03.2010 :-

Counsel for parties are present. Plaintiff Sandeep Singh Maini, Managing Director of M/s G.T.B Project Fabricators is also present. Sarvesh Sachan, G.M. of Surya Pharmaceuticals Ltd., i.e defendant No.4 is also present. Counsels for parties have agreed at the Bar, that joint measurement of work (mechanical) already executed by plaintiff shall be measured, assessed by Monday 29th March 2010. Plaintiff shall be entitled to remove his machinery and equipment lying inside the Unit. Counsels for defendants has also agreed to consider and expedite the payment due to plaintiff for works, he has executed at the plant. Plaintiff shall not cause any obstruction in the execution of work (mechanical) by defendant No.5, till the joint final assessment report is filed. Put up on 30.03.2010.

Sd/-
(Judge)"

Perusal of the learned District Judge's Order of 27.03.2010 indicates about the settlement which the parties had agreed to in respect of the dispute regarding the execution of the Contract in question. In terms of the orders, the respondent-M/s GTB Project Fabricators Private Ltd. had undertaken before the Court that it would not cause any obstruction in the execution of work by **Engineers Associate Fabricators and Erectors till the final assessment report was filed.**

It further comes out from the order that joint measurement of the work already executed by the

respondent had to be taken and assessed and the machinery and equipment lying inside the Unit were to be removed by it.

The respondent-complainant neither referred to the pendency of its Civil Suit against the petitioners in the Court of District Judge, Samba nor did it mention about the interim orders passed on its application seeking issuance of injunctive directions, in its Complaint before the learned Judicial Magistrate. Pendency of its Appeal against the orders of learned District Judge, in this Court, too was not indicated in the Complaint.

The respondent's act of moving the Criminal Court by its Complaint, without indicating the pendency of Civil Litigation between the parties on the subject matter of the Complaint and the fact of subsisting interim directions of the Court in respect of the subject matter, appears to be a deliberate attempt of the respondent to pressurize and harass the petitioners by putting the criminal law into motion against them, and, that too, suppressing the material facts, which, if disclosed, would not have led to the initiation of process against the petitioners.

This apart, the statement of the respondent's Managing Director in the Criminal Court, eloquently speaks

of the respondent's latent intention of recovering the amount allegedly payable to it by the petitioner, through the medium of the Complaint.

The allegations made by the respondent-complainant in its Complaint against the petitioners that the petitioners had induced it to work for them without having any intention of paying them therefor and retaining their machinery and equipment, which according to them amounted to their committing offences punishable under Sections 406 and 420 RPC, are not supported by the material placed by the complainant with its Complaint and the statement which its Managing Director had made on oath before the learned Judicial Magistrate, in that, the documents annexed with the Complaint clearly demonstrate receipt of part payment by the respondent for the work it had done for the petitioners.

The very basis of the Complaint that the petitioners had induced the respondent to work for them and had from the very beginning, absolutely no intention to pay for the work, therefore, stands demolished by the material, which the respondent had itself placed on the records of the learned Magistrate.

There was, therefore, no material with the learned Magistrate, on the basis whereof process for commission of offences punishable under the Ranbir Penal Code could be issued against the petitioners additionally because the dispute projected appears to be a pure civil dispute between the parties.

It further comes out from the material placed on records of the learned Magistrate that without there being any specific allegation by the complainant against the functionaries of petitioner No.1, the process was issued against them by the learned Magistrate, in a routine manner, without appreciating that the process issued by a Criminal Court for trial of the persons so summoned, takes away their fundamental right to personal liberty, which course could be adopted, only if specific allegations were there in the Complaint and that too supported by the sworn testimony of the Complainant and his witnesses before the Magistrate and any other material in support thereof, but not otherwise.

The facts and circumstances of the case, therefore, demonstrate that the learned Magistrate has acted illegally and in haste in proceeding to summon fourteen persons of two concerns when there were no specific allegations

against them either in the Complaint or in the statements recorded on oath about their role leading to the commission of alleged offences.

The contents of the Complaint, when read with the material placed on the records of the learned Magistrate by the respondent-Complainant itself, do not reveal the existence of such facts and circumstances, on the basis whereof, it be said that the ingredients of the Sections for which the petitioners were summoned had been made out, in that, dishonest intention attributed to the petitioners in only extracting work from the respondent without any intention of making payment therefor, is not at all made out.

Respondent's learned counsel's contention that the respondent's Complaint did, *prima facie*, indicate commission of offences by the petitioners is, therefore, found without merit and the Complaint is, on the other hand, found vexatious and frivolous, designed to settle the civil dispute between the parties by putting the Criminal Law into motion.

The Criminal Courts have been time and again cautioned to be vigilant in not entertaining such type of Complaints but the learned Magistrate has faulted in not

observing the Caution and her omission so to do has resulted in the abuse of the process of the Court.

Romi Dhar vs. State of West Bengal and others referred to by the respondent's learned counsel, may not be of any help to the complainant for the dispute, which has arisen in the present case does not pertain to the effect of compromise in civil proceedings on the maintainability of the criminal action, dealing therewith it was ruled by the Hon'ble Supreme Court that civil and criminal proceedings could, in the circumstances of the case, proceed simultaneously, as the criminal offences, in that case, were stated to have been committed by the persons in obtaining loan.

The law laid down by the Hon'ble Supreme Court, is, therefore, not applicable to the facts of the present case, where the complainant is found to have misused the process of the criminal Court to seek redressal of its alleged grievance against the petitioners for recovering the amount, which is stated to have remained unpaid by the petitioners.

For all what has been said above, the process issued by the learned Judicial Magistrate (Munsiff), Samba against

the petitioners on the respondent's Complaint deserves to be quashed.

This Petition, therefore, succeeds and is, accordingly, allowed quashing the proceedings initiated by the learned Judicial Magistrate First Class (Munsiff), Samba on respondent's Complaint, with compensatory costs assessed at Rs.25,000/- to be paid by the respondent to the petitioners within eight weeks.

(J. P. Singh)
Judge

Jammu:
31.03.2011
Pawan Chopra