



THE HIGH COURT OF SIKKIM : GANGTOK
(Criminal Jurisdiction)

S.B. : HON'BLE MR. JUSTICE S. P. WANGDI , JUDGE

Crl.M.C. No.11 of 2014

Petitioner : Shri Vijay Kumar Ghai,
Managing Director,
M/s. Priknit Retails Limited
having its registered Office at
B-XXV/539/A/10,
Jalandhar Bye Pass Road,
Karabara,
Ludhiana,
Punjab.

versus

Respondent : Shri Ashwin Oberoi,
S/o Shri Tirath Ram Oberoi,
Proprietor,
M/s. Oberois,
R/o Oberoi Building,
M. G. Marg,
P.O. & P.S. Gangtok,
East Sikkim.

Petition under Section 482 of the
Code of Criminal Procedure, 1973

Appearance

Mr. Aseem Mehrotra, Advocate with Mrs. Gita Bista,
Advocate for the Petitioner.

Mr. K. T. Bhutia, Senior Advocate with Mr. Dinesh
Agarwal, Advocate for the Respondent.



Crl.M.C. No.11 of 2014

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O R D E R


(12th March, 2015)

Wangdi, J.

1. This is to consider an application under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C."), filed by the Petitioner seeking to quash complaint filed by the Respondent against the Petitioner under Sections 406/420 of the Indian Penal Code (for short "IPC") registered as P.R. No. 1 of 2012 in the Court of the Learned Judicial Magistrate, East and North Sikkim at Gangtok.

2. The Petitioner is the Managing Director of a Company, M/s. Priknit Retails Limited, having its registered Office at B-XXV/539/A/10, Jalandhar Bye Pass Road, Karabara, Ludhiana, Punjab, which is engaged in manufacturing and marketing readymade garment products 'Priknit' and other brands.

3(i). A franchise agreement dated 22-12-2007, Annexure P-1, was entered into between the Petitioner-Company and the Respondent as the sole proprietor of



M/s. Oberois, for sale of all readymade Priknit and other brand and products.

(ii) Under Clause 14 of the franchise agreement the Respondent was to provide ` 7 lakhs (Rupees seven lakhs) as security deposit to the Petitioner-Company against stocks which could be refundable after the termination of the agreement. Clause 15 of the franchise agreement provided that the Respondent shall keep 3 (three) undated cheques of ` 5 lakhs (Rupees five lakhs) each, aggregating to ` 15 lakhs (Rupees fifteen lakhs), as security which the Petitioner-Company would be entitled to encash in case of default of payment of its liabilities by the Respondent-Firm. As agreed, three undated cheques for ` 5 lakhs (Rupees five lakhs) each issued by the Respondent in favour of the Petitioner and drawn on the Union Bank of India were handed over to the Petitioner.

(iii) It is alleged that the Respondent failed to comply with the condition in the agreement that it

would remit the sale amounts on daily basis or on alternate days, making itself liable to forfeit the security deposit of ` 7 lakhs (Rupees seven lakhs) and, the three cheques for ` 5 lakhs (Rupees five lakhs) each which were then to be presented for the amount due. All the three cheques presented by the Company in the Axis Bank Limited, Ludhiana were returned unpaid on 06-05-2010 with the remarks "insufficient funds".

(iv) The Petitioner-Company then served a legal notice calling upon the Respondent to make payment of ` 15 lakhs (Rupees fifteen lakhs) being the value of the three cheques. When the Respondent failed to make the payment, the Petitioner filed a criminal complaint for dishonour of cheques against him in the Court of JMJC, Ludhiana which registered C.C. No.699/2 dated 02-07-2010 and summoned the Respondent.

(v) The Respondent then approached the Hon'ble High Court of Punjab and Haryana at Chandigarh for quashing the criminal complaint filed by the Petitioner. However, the Respondent chose to withdraw the

petition and the Hon'ble High Court while permitting the withdrawal, exempted him from his personal appearance before the Trial Court except as and when required.

(vi) It is stated that the Respondent filed a complaint in the Court of the Judicial Magistrate, East and North Sikkim at Gangtok under Sections 406/420 IPC wherein while, admitting having entered into a franchise agreement with the Petitioner and of having issued the three cheques to the Company which could be utilised for the dues, the Respondent had deliberately and intentionally not disclosed that the cheques were dishonoured when presented for encashment and of the consequential criminal complaint pending before the Court of the JMJC in CC No.699/2 dated 02-07-2010.

(vii) In this petition, the Petitioner has primarily raised the following grounds: -

- (a) The allegation made in the complaint even if they are taken to be at their face and accepted in their entirety do not *prima*

facie disclose any offence against the Petitioner;

- (b) The allegation contained in the complaint would at best amount to a breach of contract remedy for which has been provided for in the form an arbitration clause in the agreement entered between the Petitioner and the Respondent and, therefore, the criminal case instituted against the Petitioner is an abuse of the process of the Court.
- (c) The proceedings instituted against the Petitioner is also liable to be quashed for having suppressed material facts as regards the proceedings against the Respondent at Ludhiana under Section 138 of the Negotiable Instruments Act, 1881 instituted by the Petitioner.

4(i). Mr. Aseem Mehrotra, Learned Counsel, appearing with Mrs. Gita Bista, on behalf of the Petitioner, submits that the basis of the complaint lodged against the Respondent under Sections 406/420 IPC is the presentation of the three cheques for ` 5 lakhs (Rupees five lakhs) each by the Petitioner which were dishonoured. As per him, this was an allegation of pure breach of contract and no offence as alleged

had been made out. In support of this contention, the following decisions were cited: -

- (a) ***Dalip Kaur and Others vs. Jagnar Singh and Another : (2009) 14 SCC 696;***
- (b) ***Thermax Limited and Others vs. K. M. Johny and Others : (2011) 13 SCC 412;***
and
- (c) ***Chandran Ratnaswami and Others vs. K. C. Palanisamy and Others : (2013) 6 SCC 740.***

(ii) It is then submitted that the complaint had been lodged against the Managing Director of the Company, M/s. Priknit, when the entire action was taken by the said Company. Relying upon ***Sharad Kumar Sanghi vs. Sangita Rane : 2015 SCC OnLine SC 151***, it was submitted that since the Magistrate failed to consider as to whether the complaint, even if is taken to be correct in its entirety, would lead to the conclusion that the Petitioner was not personally liable for any offence. It is submitted that no vicarious liability could be charged on the Petitioner as such liability is neither provided for in the Statute nor in the franchise agreement. The complaint thus being not maintainable deserved to be quashed.

(iii) Relying upon *Hridaya Ranjan Prasad Verma and Others* vs. *State of Bihar and Another* : (2000) 4 SCC 168, it was submitted that mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the very beginning of the transaction. As per him, it was necessary for the Respondent to have demonstrated the intention on the part of the Petitioner to cheat the Respondent right at the time when the agreement was entered into and the three cheques issued by the Respondent in favour of the Petitioner. No such intention has been demonstrated and that the cheques were issued only in performance of the terms of the contract. The case of *Thermax Limited (supra)* was also cited in support of this contention.


5(i). Mr. K. T. Bhutia, Learned Senior Advocate, appearing on behalf of the Respondent, on the other hand, would submit that the material facts set out in the complaint clearly discloses the ingredients of the offence under Sections 406/420 IPC against the Petitioner-Company. He drew the attention of this

Court to the contents of the complaint filed as Annexure P-5 to the present petition, particularly paragraphs 21, 22 and 23, which pertain to Clauses 14 and 15 read with Clause 29 of the franchise agreement entered between the Petitioner and the Respondent by which the Respondent had invested/subscribed for 7000 (seven thousand) shares of ` 10/- (Rupees ten) each at the premium of ` 90/- (Rupees ninety) aggregating to sum of ` 7 lakhs (Rupees seven lakhs) and the issue of three undated cheques of ` 5 lakhs (Rupees five lakhs) each as security as per Clause 15 of the franchise agreement.

(ii) It is stated that the Petitioner refused to send copies of the share certificates clearly implying thereby that the Petitioner did not invest the money in purchasing the shares of the Company. As regards the three cheques it is submitted that those had been drawn and handed over to the Petitioner as security who was entitled to encash them only in case of default on the part of the Respondent in payment of its

liability. As there was no liability at all on the Respondent and, anticipating dishonest and *mala fide* intentions of the Petitioner, a stop payment notice was issued to its Banker, i.e., Union Bank of India, Gangtok, Sikkim, by their letter dated 29-12-2009.

(iii) The Respondent had also informed the Petitioner by letter dated 30-12-2009 asking him not to present those undated cheques for encashment as "stop payment" letter had been issued to its Bank against those. The letter which was sent by Courier Service was, however, refused by the Petitioner clearly revealing that the Petitioner was evading its receipt. That the Petitioner had presented the cheques with the intention to cheat the Respondent by filling up the dates on the cheques as '19-04-2010' without any intimation to the Respondent which the Petitioner ought to have done when it had already been informed that stop payment notice had been issued in respect of those cheques, accounts having not been settled between the parties. It is thus submitted that the act of the Petitioner-Company in dishonestly using those undated cheques lying in trust with the Petitioner in



violation of the legal contract and the express direction in the contract, clearly attracted the offence under Sections 405/420 IPC.

(iv) It is submitted that the non-issue of the copies of the share certificates worth ` 7 lakhs (Rupees seven lakhs) to the Respondent in terms of Clause 14 of the franchise agreement in spite of repeated requests and reminders, reveal the dishonest intention of the Petitioner not to refund the ` 7 lakhs (Rupees seven lakhs) invested by him towards the subscription of the shares right at the time when the franchise agreement was entered into on being induced by the Petitioner.

(v) Relying upon ***Indian Oil Corporation*** vs. ***NEPC India Limited and Others*** : (2006) 6 SCC 736, it was submitted that even if a contractual dispute furnishes cause of action for both civil as well as criminal laws, the nature and scope of these proceedings being different, the mere fact that the complaint relates to a commercial transaction or breach of contract, is not a ground to quash the criminal proceedings. It has to be

seen as to whether the allegations in the complaint disclose a criminal offence or not. It was submitted that the grounds taken in the petition seeking to quash criminal proceedings are those which the complainant can put forth during the trial and are certainly not grounds for quashing the complaint at the threshold.

(vi) Adverting to the grounds raised on behalf of the Petitioner on the existence of an arbitration clause, Mr. K. T. Bhutia relying upon *Trisuns Chemical Industry* vs. *Rajesh Agarwal and Others* : 2000 SCC (Cri) 47, submitted that in the first place, exercise of inherent powers of the High Court should be limited to very extreme cases and secondly, referring the present dispute to arbitration when the dispute attracts a criminal offence, is not a ground to quash the complaint at the threshold having regard to the fact that the arbitrator cannot conduct a trial of an act which amounts to an offence although it may be connected with the discharge of any of the terms of the agreement.

(vii) It is pertinent to note that on 29-05-2014, the Respondent sought leave of this Court to file an affidavit placing on record certain documents amongst which was a franchise agreement which as per them is the one giving rise to the complaint with particular reference to Clause 14 thereof. It is stated that the copy of the agreement filed by the Petitioner as Annexure P-1 to the petition differ in as much as Clause 14 is differently worded and does not contain the requirement of investing on purchase of shares of the value of ` 7 lakhs (Rupees seven lakhs). It is the one containing such clause which is the subject-matter of the complaint in the Court of the Judicial Magistrate at Gangtok, Sikkim.

(viii) Mr. K. T. Bhutia re-emphasised that the clause had been inserted as an inducement by the Petitioner to lure the Respondent in parting with ` 7 lakhs (Rupees seven lakhs) with the dishonest intention not to refund the amount as can be made out from the fact that the Petitioner has neither furnished the copies

of the share certificates nor has it reimbursed the amount to the Respondent so far.

6. Mr. Mehrotra on the other hand would rebut this submission in submitting that the Respondent was now attempting to create a new case as the entire basis of the criminal complaint filed against the Petitioner was the three undated cheques.

7. Mr. K. T. Bhutia, however, points out that this fact has been categorically mentioned in paragraphs 20 and 21 of the complaint and are to be read together with the rest of its contents. Placing reliance upon ***Zandu Pharmaceutical Works Limited and Others vs. Mohd. Sharaful Haque and Another : 2005 SCC Criminal 283***, he would submit that the complaint has to be read as a whole and that at this stage it is not necessary that there should be meticulous analysis of the case which is required at the stage of the trial.

8(i). I have considered the rival contentions made by the Learned Counsel for the parties and also have examined the records of the case.

(ii) The decisions cited at the bar no doubt re-emphasises the settled position of law as regards the exercise of the powers by the High Courts under Section 482 Cr.P.C. However, the application of those laws would depend upon the facts and circumstances of each case as there cannot possibly be a straight-jacket formula. In ***Indian Oil Corporation (supra)*** the Hon'ble Supreme Court after analysing a large number of its earlier decisions has laid down the following principles: -

"12.

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with *mala fides*/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.



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(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

(iii) In the later decision of *Dalip Kaur (supra)* also

it has been held as follows: -

"11. There cannot furthermore be any doubt that the High Court would exercise its inherent jurisdiction only when one or the other propositions of law, as laid down in *R.*

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Kalyani v. Janak C. Mehta [(2009)1 SCC 516] is attracted, which are as under: (SCC p.523, para 15)

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue."

(iv) The first thing that is required of this Court, is to pose the question as to whether the allegations made in 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 the case alleged against the accused. In order to do this it

necessitates examination of the complaint as a whole without going into the merits of the allegations by making a detailed inquiry or a meticulous analysis of the material nor an assessment of the reliability or the genuineness of the allegations in the complaint.

(v) In the backdrop of the above, let us now examine the facts of the present case.

(vi) For better appreciation, it would be necessary to reproduce the relevant contents of the complaint, Annexure P-5, which reads as under:-

“20. That as per the clause (14) of the said agreement, the complainant had invested/subscribed for 7000 equity shares of Rs. 10 each at the premium of Rs. 90/- aggregating to the sum of Rs. 7, 00, 000/- (Rupees Seven Lakhs only)

21. That it is pertinent to mention here that despite of several reminders, the accused had not sent the copy of the Share Certificate to the Complainant despite of the payment of Rs. 7, 00, 000/- (Rupees Seven Lakhs) only to the accused, which again shows that the accused had not invested the money given by the Complainant to the accused in purchasing the shares of the company. **(The copy of the said mails are annexed herewith and marked as Annexure-9)**

22. That at the time of appointing as a brand franchise the accused persons had taken three without dated cheques of Rs. 5 Lakhs each aggregating to Rs. 15 Lakhs as security as per the clause (15)

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of the said agreement. The accused was entitled to get the same cashed in case of default in payment of the liabilities by the complainant.

23. That the complainant had never made in default of the payment in any manner as such the respondent is entitled to return the said cheques to the complainant but all goes in vain.
24. That in the month of December 2009 the accused without giving any notice or opportunity to the complainant suspended the franchises of the complainant vide their letter PRL 2009-2010 dated NIL leveling false and baseless allegations. **(The copy of the suspension letter of the franchise agreement is annexed herewith and marked as Annexure-10)**
25. That the complainant through his advocate, Mr. Dinesh Agarwal sent a reply to the suspension of the franchise of the Complainant Vide Ref. No. LN/MS/DA/135/10, Dated 02-02-2010. **(The office copy of the said reply in 7 pages is annexed herewith and marked as Annexure-11 and the postal receipt and A/D card are annexed herewith and marked as Annexure-12 and 13 respectively)**
26. That the complainant when came to know regarding the dishonest and malafide intentions of the accused persons. The complainant informed his bankers i.e. Union Bank of India, Gangtok, Sikkim dated 29.12.2009 regarding the payment stopped of three without date cheques issued in favour of the accused persons at the time of taking their franchisee. **(The copy of the said Letter is annexed herewith and marked as Annexure-14)**
27. The on 30th December 1990, the complainant informed the accused persons in writing not to present those cheques in the bankers of the complainant for their encashment as the



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complainant has stopped the payment of the undated cheques issued by the Complainant to the accused as security vide Cheque Nos. 021627, 021628 and 021629 of Union Bank of India, Gangtok Branch, Gangtok, East Sikkim and further to return the said cheques to the Complainant. **(The copy of the said Letter is annexed herewith and marked as Annexure-15).**

28. That to the utter surprise of the complainant, the Letter issued by the Complainant to the accused was refused by the accused and the same was returned back by the Courier to the Complainant with the reason **"Not received, Returned by the Courier of Ludhiana"** which shows that the Respondent evaded purposely to receive the said notice by refusing the same, despite of the fact that the address of the respondent was correct. So the presumption of deemed service can be drawn. **(The envelopes in which the said letter (Annexure-15) was sent to the Respondent and Courier Slip attached thereto are marked as Annexure-16 and 17 respectively).**

29. That the accused, by way of misrepresentation, deceived the present petitioner thereby causing the Complainant to part with his property and thereby the Respondent cheated the present Complainant.

30. That the accused party without settling their accounts with the complainant with their dishonest intention to cheat the complainant presented those cheques of the complainant after filling the dates as 19.4.2010 in all the three cheques for their encashment to the bankers of the complainant without intimating the complainant whereas the complainant already informed the accused not to present those cheques for their encashment before settling the accounts and further requested the accused party to return those cheques.

31. That the accused persons whose intention was dishonest and malafide had misused without dated advance cheques which were lying as a security with the accused persons of the complainant party. The accused persons without assigning any reasons has also got cancelled the franchise of the complainant and after that with their dishonest and malafide intention to cheat the complainant presented those cheques for its encashment without taking the consent of the complainant thus have committed an offence under section 406/420 I.P.C."

(vii) The gravamen of the case of the Respondent in the complaint is first of all the three undated cheques for ` 5 lakhs (Rupees five lakhs) each drawn on the Union Bank of India, Gangtok Branch, Sikkim issued in favour of the Petitioner-Company in compliance to Clause 15 of the agreement dated 27-12-2007 entered between them. Clause 15 of the agreement which was referred to by both the parties is reproduced below: -

"15. That the party of the second part agrees and undertakes to keep three without dated cheques of Rs.500000/- each aggregating to Rs.15.00 lac as security with the party of the first part during the tenure of this agreement. The party of the first part shall be entitled to cash the said cheques in case of default in payment of its liabilities by the party of the second part in accordance with the law."

[underlining mine]

(viii) On a bare reading of the Clause, it is quite apparent that three undated cheques of ₹ 5 lakhs (Rupees five lakhs) each were kept as security with the Petitioner who would be entitled to encash them in case of default in payment of its liabilities by the Respondent in accordance with law. In other words, the undated cheques were to be encashed by the Petitioner-Company only in the event of default by the Respondent in payment of its liabilities. The Respondent states in the complaint that there was no default on his part to make any payment. Some disputes appear to have erupted between the parties in the performance of the agreement leading the Petitioner to suspend the franchise in December, 2009. The Respondent in anticipation of misuse of the three undated cheques by the Petitioner, issued notice to his Banker, Union Bank of India, Gangtok Branch, Sikkim, by letter dated 29-12-2009 asking them to stop payment of the three undated cheques issued in favour of the Petitioner if presented for payment duly informing the Petitioner of such notice by letter dated

30-12-2009 sent by courier service which, as noted earlier, was refused by the Petitioner. Undisputedly, the Petitioner presented the three cheques by filling the dates as '19-04-2010' in all those for encashment to their Banker without information to the Respondent.

(ix) Shorn of the other facts with which we are not concerned for the moment, it is now to be seen as to whether the act of the Petitioner in presenting the cheques for payment in the manner it was done, would attract the ingredients of Section 405 IPC. Section 405 IPC being relevant is reproduced below: -

"405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

(x) As would appear from the provision, the necessary ingredients in order to fall within its mischief is whoever, being in any manner entrusted with property, or with any dominion over property,

dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust.

(xi) In the present case, the Petitioner admittedly had been issued with the three undated cheques in terms of Clause 15 of the agreement to be kept in trust with him as security during the tenure of the agreement and the mode in which the trust was to be discharged as per the contract was that there should be default in payment of its liabilities by the Respondent.

(xii) Thus the legal contract between the parties expressly provided that there should be default on the part of the Respondent in payment of its liabilities. Therefore, the Petitioner would not be entitled to encash the cheques without first ascertaining as to whether or not there was any liability on the Respondent. The fact that the Petitioner went ahead in presenting those three cheques for payment by entering '19-04-2010' as dates even before

ascertainment of Respondent's liability reveals *prima facie* dishonest intention on its part which gets reinforced by the fact that it was done after the Respondent had issued the stop payment notice and after the Petitioner having refused the letter informing of such notice.

(xiii) As held in *Indian Oil Corporation (supra)*, a commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. Since the scope of two proceedings are different, the mere fact that the complaint relates to a commercial transaction for which a civil remedy is available, is not by itself a ground to quash the criminal proceedings. In the present case, the dispute no doubt emanates from a commercial transaction but from the facts and circumstances alluded to earlier, it also attracts the offence under Section 405 IPC.

(xiv) So far as contention of Mr. Mehrotra on the existence of an arbitration clause in the agreement is concerned, I am not convinced that such a clause in the agreement by itself is an effective substitute for a

criminal prosecution when the disputed act is an offence. We may refer to *Trisuns Chemical Industry (supra)* more particularly the following: -

"9. We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases as indicated in *State of Haryana v. Bhajan Lal* [1992 SCC (cri) 426]."

(xv) The contention raised as regards the non-disclosure by the Respondent in the complaint of the criminal proceedings instituted against the Respondent in Ludhiana for dishonour of the cheques also does not appear to be of substance since that proceeding and the complaint under consideration are independent of each other. Ideally, it would have been appropriate for the Respondent to have disclosed such fact but, the result of the case at Ludhiana would be no consequence

on the proceedings in the Court of the Learned Judicial Magistrate at Gangtok, Sikkim.

(xvi) The cases of ***S. P. Chengalvaraya Naidu (Dead) by Lrs. vs. Jagannath (Dead) by Lrs. and Others : (1994) 1 SCC 1; M.C.D. vs. State of Delhi and Another : AIR 2005 SC 2658*** and ***Chandran Rantnaswami (supra)*** cited by Mr. Mehrotra are distinguishable from the facts in the present case.

(xvii) The decision in ***S. P. Chengalvaraya (supra)*** was rendered in a civil suit where the plaintiff had obtained a preliminary decree by playing fraud on the Court. It was found that one Jaganath who was employed as a clerk with one Chunilal Sowkar, had purchased the property in question belonging to the appellant, S. P. Chengalvaraya Naidu, in a court auction on behalf of Chunilal Sowkar, the decree-holder. By a registered deed Jaganath relinquished all his rights in the property in favour of Chunilal Sowkar. In the meanwhile, appellant Judgment-Debtors paid the entire decretal amounts to Chunilal Sowkar who having received decretal dues lost entitlement to the property

which he had purchased through Jaganath. Withholding these facts, Jaganath filed a suit for the partition of the property claiming that he had purchased the property on his own behalf and not on behalf of Chunilal Sowkar. Under these circumstances, it was held that non-production and even non-mentioning of the release deed at the trial tantamounted to playing fraud on the Court.

(xviii) M.C.D. (supra) was a case where a convict had obtained the benefit under the Probation of Offenders Act, 1958, by suppressing the fact that he was a previous convict which, if disclosed would not have led the Hon'ble High Court of Delhi to pass the order as, under Section 4 of the Act, consideration of the report of the Probation Officer was mandatory and a condition precedent to the release of an accused. The order thus obtained was set aside.

(xix) Chandan Ratnaswamy (supra) was a case where the complainant had defrauded the Petitioner by inflicting multiple proceedings including lodging an FIR when the disputes were purely civil in nature which had



been finally adjudicated by the competent authority, i.e., Company Law Board and the High Court in appeal. It was, therefore, held that allowing the criminal proceedings arising out of the FIR to continue would be an abuse of the process of the Court.

(xx) In the present case, the complaint is the commission of a criminal offence *simpliciter* though arising out of a commercial transaction as has already observed earlier.

(xxi) Lastly, the contention that the complaint had been lodged against the Managing Director when the allegations are against the Company also do not appear to have substance. Quite to the contrary, the allegations in the complaint are directed against the Company with no specific allegation against the Managing Director. The Managing Director being the principal officer of the Company has been mentioned quite obviously to represent the Company. The very case of ***Sharad Kumar Sange (supra)*** lays down the proposition that when the allegations are against the

Company, it is the Company which is to be made a party.

(xxii) The contention as regards the vicarious liability also have no application having regard to the facts in the present case where no such liability is sought to be fixed.

9(i). The allegations contained in the complaint *prima facie* make out the ingredients of the offence under Section 405 IPC.

(ii) For the aforesaid reasons, I am of the view that this is not a case where the extra-ordinary powers under Section 482 Cr.P.C. should be exercised to quash the complaint at this stage.

10. It is noticed with much consternation that the Petitioner had been avoiding the processes issued by the Learned Judicial Magistrate, East Sikkim at Gangtok, compelling him ultimately to issue a non-bailable warrant of arrest. Even this being evaded would be apparent from the fact that the present petition has been filed although an order was obtained from this Court on 15-09-2014 directing not to arrest

the Petitioner in pursuance of the order of the Judicial Magistrate, East Sikkim. It would have been appropriate for the Petitioner to have responded to the processes by appearing in the Court of the Learned Judicial Magistrate, East Sikkim at Gangtok and to have taken the defences raised in the present petition.

11. In the facts and circumstances, the Petitioner is directed to appear before the Learned Judicial Magistrate, East Sikkim at Gangtok within 2 (two) weeks from the date of this order and the Judicial Magistrate shall grant bail to him, if applied for, under such conditions as may be deemed proper.

12. With the above directions, the CrI.M.C. stands dismissed.

13. It is, however, made clear that remarks and observations made above shall not be construed as expressions of this Court on the merits of the case.

(S. P. Wangdi)
Judge

12-03-2015



Crl.M.C. No.11 of 2014

Vijay Kumar Ghai vs. Ashwin Oberoi

Approved for reporting : Yes

Internet : Yes

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