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Court : Madhya Pradesh

Decided On : Aug-06-2002

Reported in : I(2003)BC333

Judge : S.L. Kochar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 200 and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 120B and 420

Appeal No. : Misc. Cr. Case No. 4071 of 2001

Appellant : Mirc Electronics Ltd. and anr.

Respondent : Amit Electronics and anr.

Advocate for Def. : B.L. Pavecha, Sr. Adv. and ;Mittal, Adv.

Advocate for Pet/Ap. : Piyush Mathur, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

S.L. Kochar, J.

1. This petition has been filed by the petitioners under Section 482 of the Code of Criminal Procedure for quashing the order dated 17.08.2001 passed by the

learned Second Addl. Chief Judicial Magistrate, Indore in an un-numbered Cr. Case No. 0/01.

2. Briefly stated, the facts of the case are that the respondent No. 1 M/s Amit Electronics filed a complaint against the petitioners and respondent No. 2 (Ashok Batra) before the Court below for the offence punishable under Sections 420/120B of the Indian Penal Code. Their case in the complaint (Ex. P/I 3) is that the petitioner No. 1 is a manufacturer of electronics and electrical goods. The complainant-respondent No. 1 M/s Amit Electronics was their Distributor. The petitioners through their local officials obtained cheque of Rs. 13,76,000/ dated 12.07.2000. This cheque was given as a security. This amount was never payable to the petitioner by the respondent No. 1. The respondent No. 1 was owing and took amount from the petitioner because of which, the respondent issued direction to the Bank for not honouring the said cheque. The petitioner No. 2 personally and on behalf of petitioner No. 1 made a promise to respondent No. 1 on telephone for payment of the balance amount upto 31st July and 30th August, 2000. On the basis of this assurance and promise by the petitioners and the respondent No. 2 Ashok Batra, the complainant-respondent No. 1 allowed encashment of the cheque by issuing pay-order No. 108939 dated 17.07.2000 to the tune of Rs. 13,60,478/ from Bank of India, Sanyogitaganj Branch, Indore. For this purpose, on behalf of petitioner No. 1, petitioner No. 2 gave a letter dated 17.07.2000 to the complainant-respondent No. 1. The petitioner No. 2 and respondent No. 2 are the Executive Officers of petitioner No. 1.

3. It has also been alleged in the complainant that in the letter dated 17.07.2000, the petitioner No. 1 has admitted the claim of the amount mentioned therein, but in spite of repeated demands, the same has not been paid till date of filing of the complaint. The petitioner and respondent No. 2 after making false promise with dishonest intention for paying the amount of Rs. 2,32,688/- after inducing the complainant-respondent No. 1 got the pay-order dated 17.07.2000 for Rs. 13,60,478/- and when he asked for fulfilment of their promise and assurance, the petitioners and respondent No. 2 had replied that they had recovered their amount and not they are not going to pay any balance amount in favour of respondent No. 1 and he can take any action he likes.

4. In paras 6 and 7 of the complaint, the complainant has alleged that the past behaviour of the petitioners and the respondent No. 2 clearly shows that on 17.07.2000, they were having dishonest intention and at the very inception of transaction they hatched conspiracy for cheating the respondent No. 1, made false assurance and promise and induced him to pay Rs. 13,60,478/-. If on that date, they would have not issued letter dated 17.07.2000, admitting the balance on them and promised to pay the same, the complainant-respondent No. 1 would have not issued the pay order, and therefore, the petitioner and respondent No. 1 have caused wrongful loss to respondent No. 1 and wrongful gain to themselves.

5. Alongwith the complaint, the complainant filed several documents. The Trial Court has also called the police report and according to the Police Report, it was a business-transaction between the parties. The learned Trial Court, after perusing the complaint, documents and the statements under Section 200 of the Code of Criminal Procedure of the complainant, took the cognizance for the offence under Sections 420 and 120B of the Indian Penal Code and issued summons for the appearance of the petitioners and respondent No. 2.

6. This is the order under challenge before this Court. The petitioner did not prefer to appear before the Trial Court and filed this petition directly for issuance of process and quashing the proceedings.

7. I have heard that Mr. Piyush Mathur, learned Counsel for the petitioners and Mr. B .L. Pavecha, learned Sr. Counsel with Mr. Yogesh Mittal, appearing for the respondents, and perused the record.

8. The contention of the learned Counsel for the petitioners is that the transactions between the petitioners and the respondent No. 1 were a pure business transactions of civil nature and no case is made out for proceeding under Section 420 read with Section 120B of the Indian Penal Code. To project their submission, they have filed the documents Ex. P/ 1 to Ex. P/12 showing that these documents are indicating that the petitioner and the respondent No. 1 were having old business-transactions and in pursuance thereof the payment was made. If any amount is due against the petitioners the respondent No. 1 may proceed in Civil Court. In total, the submission of the learned Counsel for the petitioners is that it is

a pure case of civil nature and the learned Trial Court has committed error in taking cognizance for the offence under Sections 420 read with Section 120B of the Indian Penal Code.

9. In support of his contention, learned Counsel has relied on Ashok Chaturvedi and Ors. v. Shitul H. Chandnani and Anr., VI (1998) SLT 668=III (1998) CCR 192 (SC)=(1998) 7 SCC 698, S.N. Palanitkar and Ors. v. State of Bihar and Anr. as well as the order passed by this Court in Misc. Cri. Case No. 4193/98 (Kunstecom Electronics v. State of M.P. and Anr.) dated 05.07.2002.

10. As against this, learned Counsel for the respondent No. 1-complainant submitted that at the stage of taking cognizance, the Trial Court is required to consider the allegations in the complaint, documents filed and the statement under Section 200 of the Code of Criminal Procedure and on the basis of all these, the learned Trial Court has rightly took cognizance and issued process. He further submitted that in the petition under Section 482 of the Code of Criminal Procedure, the petitioners have filed so many extraneous material foreign to the case and the same at this stage, cannot be looked into for quashing the complaint. In support, he placed reliance on the judgment reported in I (2000) CCR 288 (SC)=II (2000) SLT 414=AIR 2000 SC 1869, Medchl Chemicals and Pharma Pvt. Ltd. v. Biological E. Ltd. and Ors. and II (1999) SLT 523=II (1999) CCR 4 (SC)=AIR 1999 SC 1216, Rajesh Bajaj v. State NCT of Delhi and Ors.

11. Having heard learned Counsel for the parties and after perusing the record, especially the complaint and the documents filed therewith as also the statement under Section 200 of the Cr. P.C. this Court is of the opinion that the learned Trial Court has not committed any error in taking cognizance for the offence under Section 420 read with Section 120B of the Indian Penal Code.

12. The facts are very clear that the respondent No. 1 was not willing to pay amount of Rs. 13,60,478/- and he estopped payment by issuing direction to the Bank, but after promise and assurance as well as written-letter dated 17.07.2000 for which, the petitioners have accepted his claim of Rs. 8,32,688/- and also promised for payment and issued pay order in their favour. It is not a simple case of promise to pay in future as the facts reveal in the case of S.N. Palanitkar and

Others (supra). In the present case, according to the complainant, he was induced to issue the pay-order with a dishonest intention to get the amount by issuing letter of promise to pay the amount of Rs. 13,60,478/- which on due date, they did not honour. The basic ingredients of cheating are duly mentioned in the complaint. In the order passed by this Court in the case of Kunstecom Electronics v. State (supra), the facts are altogether different. In this case, the petitioner was mediator/agent between the two companies and the company who failed to fulfil the promise to supply the goods in future, has not been arrayed as accused, and the said company had supplied the part of material. Therefore, it has been held in this case that it was not in the hands of the petitioner/agent to supply the goods in future and for that he cannot be held responsible, So, the facts of both these cases are not applicable in favour of the petitioners to dismiss the complaint at the threshold.

13. The Supreme Court in M/s. Medchl Chemicals (supra) has held that quashing of complaint at the initial stage is an exception rather a rule and exercise of power under Section 482 of the Code of Criminal Procedure for quashing the complaint should be used with great caution and care. Availability of civil remedy is not a bar for pursuing the criminal remedy. In this case, as well as the case of Rajesh Bajaj (supra), the Supreme Court has set aside the order of quashing the complaint passed by the High Court. In the case of Rajesh Bajaj (supra), the Supreme Court has held that-- 'The complaint in the instant case has stated in the body of the complaint that he was induced to believe that respondent would honour payment on receipt of invoices and that the complaint realised.' In the instant case also, in the body of the complaint, the complainant has averred that he was induced to believe that after issuing pay order by him in favour of the petitioners and after receiving letter of promise dated 17.07.2000 for payment of dues in his favour, he made to believe that the petitioners would honour the promise, but later on they declined to do so and the intentions of the petitioners were not clear and they cheated him dishonestly.

14. Supreme Court again reiterated the law in case of M.L. Bhatt v. M.K. Pandita, 2002(11) M.P. Weekly Note 30 as under :

'.... we have no manner of doubt that the High Court exceeded its jurisdiction and the parameters prescribed in a catena of decisions where a Court could be justified in quashing the FIR. At this stage, the High Court would be entitled to only examine the allegations made in the FIR and would not be entitled to appreciate by way of sifting the materials collected in course of investigation including the statement recorded under Section 161 of the Code of Criminal Procedure. We are told that in the meantime, the investigation is complete and challan has been filed. The accused has always the remedy at the time of framing of charge to pray for discharge if the materials on the basis of which the challan has been filed can be said to be insufficient to frame a charge.'

15. Having considered the allegations made in the complaint and the documents filed by the complaint as well as his statement, this Court is of the view that the Trial Court has not committed any mistake in ordering issuance of process to the petitioners and respondent No. 2. Therefore, this petition under Section 482 of the Code of Criminal Procedure, having no merits, is liable to be dismissed and it is accordingly dismissed.

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