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Court : Delhi

Decided On : Mar-16-1995

Reported in : 1995CriLJ3550; 58(1995)DLT125

Judge : J.K. Mehra, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 201, 380, 403 and 409; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 156(3), 190, 200, 202 and 409

Appeal No. : Crl. M. No. 3 of 1994 in C.P. No. 98 of 1990

Appellant : Pradeep Jaiswal and Others

Respondent : Jaiswal Packaging Private Limited and Others

Advocate for Def. : Mrs. Shyamla Pappu, Sr. Adv. and ; M.R. Krishnamurthy, Adv.

Advocate for Pet/Ap. : P.C. Khanna, Sr. Adv. and; Ms. Ruchi Sindhwani, Adv

Judgement :

ORDER

1. The petitioner in the present case is the accused in criminal case, pending before Metropolitan Magistrate. Briefly stating, the facts of the case are as under :-

That the accused and the complainant are related to each other as son and father respectively. The complainant, Shri Hans Raj Jaiswal, acting for and on behalf of Jaiswal Packaging Private Limited, had filed a complaint against Mr. Pradeep Jaiswal under Sections 380, 403 and 409 IPC read with Section 201 of Indian Penal Code in the Court of Shri M. L. Sahni, Metropolitan Magistrate (as he then was). It is alleged in the complaint that the accused had removed important parts of the machinery from the factory such as Feeder of Dominical (0715) Offset Printing, Gauge of Polar Automatic Paper Cutting Machine, Belt and other parts of heidelberg machines etc. apart from books of account misappropriated funds. The complaint after being marked by the ACMM to Shri Akshay Kumar, Metropolitan Magistrate, who in turn referred the complaint to SHO, Okhla Industrial Area. While the matter was being investigated by the SHO., Shri Pradeep Jaiswal filed a Company Petition under Sections 397 and 398 of the Companies Act, being C : P. No. 98 of 1990. In that matter, Shri Pradeep Jaiswal got a Commissioner appointed and got certain proceedings recorded on commission, such as possession of account books of the company and certain important parts of the machinery without which the machines cannot operate. The SHO, in the course of his investigations, took note of what was produced before the Commissioner, appointed by the High Court in the said Company Petition and also recorded statements of certain individuals including watchman. On the basis of this material, he returned a finding that no offence is made out. As such, no action was taken by the Metropolitan Magistrate until the complainant moved again by means of an application, which was described as Protest Application. The Metropolitan Magistrate heard the parties in response to the said Protest Application and looked into the material brought on record by the SHO, appraised the material independently and came to the conclusion that prima facie a case was made out under Section 409 and issued the summons.

2. The accused, feeling aggrieved from the said order of summoning, moved the present petition, challenging the order of summoning on various grounds such as :-

(1) On the plea that books of accounts are not property as these have no value and they are movable or retention by the accused, who was at one time Director in

charge of the Company, did not commit any offence;

(2) The dispute complained of is of civil nature and parallel proceedings relating to the same property are already pending before the Company Judge of this High Court. thereforee, also no summons should have been issued :

(3) The Magistrate has committed serious error of jurisdiction in issuing process without complying with the mandatory requirement of Section 200 of Criminal Procedure Code in as much as no statements of the witnesses were recorded by the Magistrate and the Magistrate proceeded merely on the material placed on record by the SHO;

(4) If any action had to be taken, then Section 630 of the Companies Act read with Schedule 11 was the specific provision, which should have been invoked and not the general criminal law provision; and

(5) It was highly improper on the part of the Magistrate to rely upon the record of this Court even though it was forming part of the Magistrate's file along with SHO's report and that order summoning the accused is an abuse of the process of Court.

3. For these reasons, it was submitted that the order summoning the accused as the complaint be quashed.

4. At the hearing before me, Mr. Khanna conceded that the accused did remove the books of account and machinery parts, but further stated that the parts of the machinery and the books brought back by the accused are the same, which were removed by Mr. Pradeep Jaiswal from the factory of 27th and 29th April, 1990. He stated that he had done so to prevent sale of machinery and to account himself with acquaints and there was no means read to commit any crime. At present, I need not pronounce on the first and second contention of Mr. Khanna.

5. Coming to the third contention along with the third plea, Mr. Khanna has laid a lot of stress on the non-observance of mandatory condition of Section 200 and has relied upon the following authorities :-

(1) Pramatha Nath Talukdar v. Saroj Ranjan Sarkar, reported as : AIR 1962 SC876

(2) Emperor v. Heman Gope, reported as AIR 1920 Pat 232 : 1920 (21) Cri LJ 779

(3) Jeomal Tikamdas v. Emperor, reported as AIR 1939 Sind 208 : 1939 (40) Cri LJ 807

(4) Braja Lall Dutta v. Kenaram Pal, reported as AIR 1919 Pat 202

(5) Abhoy Charan v. Bangshadhar Mitra, reported as AIR 1949 Cal 58 : 1948 (49) Cri LJ 647

(6) State of Bihar v. Deodar Jha, reported as : AIR1958 Pat51

6. Mr. Khanna also relied upon Niranjn Singh Karan Singh Punjabi v. Jitendra Bhimraj Bijja, reported as : 1990 CriLJ1869 . Mr. Khanna further argued that in any event expediency demands that the proceedings before Magistrate should be stayed to await the outcome of the Company Petition since both the matters relate to the same Company and its properties. It will be appropriate to notice that the complaint was filed on 28th April, 1990 and the Company Petition was filed towards the end of May, 1990. Each side has accused the other of initiating action to prevent the other side from invoking law appropriately. The complainant's case was that son came to know that complaint had been filed and only to dilute its effect, he initiated the proceedings under Sections 397 and 398, which are alleged to be a counter blast only. While Mr. P. C. Khanna states that when the Company Petition was filed, his client did not even know of the complaint having been filed and that it was only after the Protest Petition was filed on 5th July, 1990 that the accused became aware of filing of the complaint.

7. Mr. Khanna has referred to Section 190 of Cr. P.C. and argued that cognizance of the complaint was taken by the Chief Metropolitan Magistrate when he marked the complaint to Mr. Akshay Kumar, Metropolitan Magistrate. I find from the record that no such application of mind on the merits of the complaint had taken place and it was a mere administrative act of marking the complaint to another Magistrate to deal with the complaint.

8. The above arguments of Mr. Khanna have been met by Mrs. Pappu, who has contended that the Magistrate instead of himself conducting the preliminary inquiry and recording statements, had the full authority to refer the matter for investigation to police authorities under Section 156(3) of Criminal Procedure Code, which he did, and when such procedure is adopted, it is not necessary to repeal the exercise of recording evidence and the Magistrate can without following the procedure laid down in Section 200 appreciate or appraise the material brought on record by the police and can draw his own inference and take appropriate action, which in the present case was done by the Magistrate. According to her, this was not a case, which fell under Sections 200 and 202 of the Criminal Procedure Code. In support of her arguments, she has relied upon the following authorities :-

(1) Hareram Satpathy v. Tika Ram Agarwal, reported as : 1978 CriLJ1687

(2) T. K. Kodandaram v. State of Andhra Pradesh, reported as

(3) M/s. India Carat Pvt. Ltd. v. State of Karnataka, reported as : [1989]1SCR718

9. While arguing on the question as to when the cognizance should be deemed to have been taken by the Magistrate, she contended and I think rightly, that it is only at the stage when the Magistrate after conscious application of mind issues the process summoning the accused. That it can be said that the Magistrate has taken cognizance of the offence and not when Chief Metropolitan Magistrate merely marks the case to a Metropolitan Magistrate. In support of her contention, she referred to the decision in the case of Darshan Singh Ram Kishan v. State of Maharashtra, reported as : 1971 CriLJ1697 . She also cited the cases of State of Bihar v. Shri P. P. Sharma, reported as : 1991 CriLJ1438 and State of Haryana v. Ch. Bhajan Lal, reported as : 1992 CriLJ527 to support her arguments. It has also been stated by Mrs. Pappu that the accused in the circumstances of the case should not be shown any indulgence by this Court and he should face the trial.

10. After giving careful thought to the arguments of the parties and the case law cited at the Bar, I am of the considered opinion that no irregularity of procedure is committed by the Metropolitan Magistrate in not recording statements of the witnesses under Section 200 of Cr.P.C. when that exercise had already been done

by the police authorities under Section 156(3) of Cr.P.C. on being entrusted with the job by the Metropolitan Magistrate. The Metropolitan Magistrate was entitled to either record the statements himself on receipt of the complaint, as provided under Section 200 of Cr.P.C. or send it to police for investigation as provided in Section 156(3) of Cr.P.C. which did in the present case.

11. On receipt of the report, the Metropolitan Magistrate is fully empowered to either accept the report or on his own to appraise the material brought on record by the police authorities and on the basis thereof reach his own conclusion. In case, on appraising the material on record, the Metropolitan Magistrate comes to the conclusion that prima facie an offence is made out, he would not be bound by the opinion of police authorities and would be free to summon the accused on his own appraisal of the material and opinion that the Metropolitan Magistrate forms on the basis thereof. In case the police officer had taken on record the report of the Commissioner and the statements recorded by her, the adverting to such material got placed on record by the accused himself would not be fatal to the complaint or order summoning the accused. As such. I find no force in contentions Nos. 3 and 5.

12. Coming to contention No. 4, I am prima facie of the view that the penalty provided under Section 630 read with Section 11 does not in any manner prejudice or affect or dilute the right of the complainant to prosecute the accused of any offence which an accused may be alleged to have committed and which is punishable under IPC. But at this stage, I do not consider that it is necessary to decide this question which can be gone into in detail at the time of trial.

In the peculiar facts of the present case, I find that the allegations and counter-allegations in the Company Petition also relate to the conduct of the accused and covers the questions of fact, some of which are common in the complaint and the Company Petition and to that extent, it could be said that if the complaint proceeds further, it would amount to parallel proceedings relating to the same facts and possibility of conflict of decision cannot be overruled. For that reason, I consider it to be in the interest of justice to stay the proceedings before the Metropolitan Magistrate during the pendency of this Company Petition. Ordered accordingly.

Cr. M.(M) is disposed of in the above terms with no order as to costs.

13. Order accordingly.

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