

Odebrecht Perfuracoes Ltd. and anr. Vs. State and anr.

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Court : Delhi

Decided On : Feb-12-1993

Reported in : 50(1993)DLT353

Judge : Sat Pal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; [Constitution of India](#) - Article 227

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 164 of 1993

Appellant : Odebrecht Perfuracoes Ltd. and anr.

Respondent : State and anr.

Advocate for Pet/Ap. : P. Chidamabaram,; Hemant Sahai,; H.P. Sharma,;

Judgement :

Sat Pal, J.

(1) In the present case a complaint was filed by Shri Sardar Singh, respondent No. 2 herein, under Section 500 read with Section 34 of the Indian Penal Code (IPC) against M/s. Odebrecht Perfuracoes Ltd., (hereinafter referred to as 'the company') and Mr. J.A. Bernardi, Director of Operations in India of the said company, the allegations made in the complaint are based on a news item published in the Financial Express dated 20/11/1992. In this news item it has been, inter alia,

stated 'thatM/s. Jagson International Limited,(JIL), an oil drilling company, has already been dragged to the Court by Opl over what they claim to be unethical business practices by the Indian company. According to Opl, of these conditions were fulfilled. Jagson undertook contracts for the two rigs under the name of Jil instead. Terming this as unethical OPL decided to withdraw from the agreement.'

(2) The said complaint was listed for hearing before Shri R.S. Mahla,Metropolitan Magistrate, Delhi on 19/12/1992 and the complainant examined himself in support of the allegations made in the complaint.In his statement, inter alia, he stated that as a shareholder of the company known as Jil he was an interested and affected party when its reputation was damaged. After hearing the arguments advanced by the learned orderedthatCounsel for the complainant, the learned Metropolitan Magistrate ordered that all the accused be summoned.) In terms of the order passed by the learned Metropolitan Magistrate both the accused were further restrained from leaving the country without prior permission of the Court It may be pointed out here that as per the complaint, the company has been shown being represented through it Managing Director Mr. Luiz Villar.

(3) In the present petition the petitioners have challenged the orderdated 19/12/1992 passed by the learned Metropolitan Magistrate.

(4) Mr. Chidambaram, learned Senior Advocate, appearing on behalf of the petitioners submitted that the complainant without even verifying from the newspaper concerned as to whether the news item published in the newspaper was on the basis of any statement given by the petitioner, has filed this complaint which was false and frivolous. He further submitted that even in the same news item it has been stated that Jil of which the complainant claims to be one of the shareholders has alleged that OPL siphoned off millions of Dollars through the sale of the rigs to two papercompanies. Hi', thereforee, submitted that the complainant before rushing to the Court atleast should have contacted the newspaper concerned to verify the facts mentioned in the news item. He, further submitted that in any case the complaint could have been filed by Jil and not by the complainant who has not even stated in the complaint or in his statement as to now many shares he owns. Learned Counsel for the petitioners further submitted

that the learned Metropolitan Magistrate exceeded the jurisdiction in passing the restraint order against the Managing Director of the petitioner company as under the law, the company could be represented by any of its authorised representative. He also submitted that there was no justification even in passing any restraint order against petitioner No. 2. He further submitted that in the absence of confirmation of facts from the newspaper concerned no offence is made out in terms of the allegations made in the complaint.

(5) Mr. Mathur, learned Senior Advocate, appearing on behalf of respondent No. 2, submitted that from the allegations made in the complaint read with the statement of the complainant made before the learned Metropolitan Magistrate, prima facie, a case is made out against the petitioners under Section 500 IPC. He further submitted that even if there were no allegations in the complaint involving the petitioners in the commission of crime, it was open to the petitioners to plead before the learned Magistrate concerned that the process against them ought not have been issued and the learned Magistrate may drop the proceedings after he is satisfied on reconsideration of the complaint that there was no evidence for which the petitioners could be tried. For this, there was no justification to approach this Court under Section 482 Cr. P.C. and under Article 227 of the [Constitution of India](#). In support of his contention the learned Counsel placed reliance on two Supreme Court decisions in *Khachru v. State of U.P.*, : 1982 CriLJ629a and *KM. Mathew v. State of Kerala*, : 1992 CriLJ3779 .

(6) I have perused the record and after hearing the learned Counsel for the parties I am of the view that the petitioners after entering appearance in response to the summons should approach the learned Magistrate for dropping the proceedings.

(7) I, however, do not find any justification for passing the order by the learned Metropolitan Magistrate restraining the Managing Director of the petitioner company from leaving the country without prior permission of the Court. It is well settled law that a company accused of any offence may be represented by any person duly authorised by the company and not necessarily by the Managing Director. I, therefore, set aside the direction given by the learned Metropolitan Magistrate placing restraint on the Managing Director of the petitioner company

from leaving the country without prior permission of the Court. As regards petitioner No. 2 I direct that he shall enter his appearance before the learned Metropolitan Magistrate on the date fixed for hearing and he shall be released on bail in terms and conditions of the bail to be imposed by the learned Metropolitan Magistrate and thereafter on the subsequent dates of hearing he will not be required to appear in person and may appear through his Counsel till the learned Magistrate finds his personal presence necessary at any stage of the proceedings of the case. The impugned order passed by the learned Metropolitan Magistrate is modified to the extent indicated hereinabove.

(8) With this order the petition stands disposed of.

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