

Shikha Singla and ors. Vs. State and ors.

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Court : Delhi

Decided On : Apr-15-2003

Reported in : 2003VIIIAD(Delhi)319; 106(2003)DLT452

Judge : K.S. Gupta, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 420, 463, 464, 467 and 471

Appeal No. : Crl. M. (M). No. 4493 of 2000

Appellant : Shikha Singla and ors.

Respondent : State and ors.

Advocate for Def. : Sanjeev Khanna and ; B. Mahapatra, Advs.

Advocate for Pet/Ap. : A.K. Singla and; Pankaj Gupta, Advs

Disposition : Petition dismissed

Judgement :

K.S. Gupta, J.

1. In this petition filed under Section 482, Cr.P.C., petitioners/ accused seek quashment of complaint Case No. 568/98 pending before a Metropolitan Magistrate, New Delhi.

2. Copy of complaint is placed at pages 22 to 38 on the file. M/s. Jindal Menthol India Ltd./respondent No. 2 herein is the complainant while Ms. Shikha Singla, Rishab Singla and Sadhu Ram Singla, petitioners 1 to 3 are accused Nos. 4, 3 and 2 respectively. M/s. Rom Industries Ltd., respondent No. 3 has been arrayed as accused No. 1. It is alleged in the complaint that complainant is a body corporate incorporated under the Companies Act, 1956 and is engaged in the business, amongst others, of financing and leasing. At the request of accused Nos. 1 to 4 and on M/s. Ishank Credit and Finance Ltd. and Dheeraj Kumar, agreeing to stand as guarantors for accused No. 1, the complainant-company sanctioned Bill discounting facility of Rs. 51,25,683/- to accused No. 1 for a period of 90 days at the interest of 28.5% per annum under an agreement dated 8th March, 1996. Accused No. 2 pledged 80600 shares bearing distinctive Nos. 6100698 to 6225097 while accused No. 3 57900 shares bearing distinctive Nos. 6380698 to 6440697 of accused No. 1-company with the complainant to secure the loan facility. Accused No. 4 also pledged 17300 shares bearing distinctive Nos. 6465698 to 6482997 of accused No. 1 with complainant-company to secure said loan facility. M/s. Datta Singla and Co., Chartered Accountants/accused No. 5 issued a certificate dated 22nd December, 1995 certifying that necessary enforcement had been made on share certificates of the shares pledged by accused Nos. 2 to 4 regarding restricting condition as 'these shares shall not be sold/hypothecated/transferred before 25th December, 1999'. It is alleged that accused 2 to 4, amongst others, further executed irrevocable power of attorneys dated 8th February, 1996 authorising the complainant-company to transfer, sell, dispose of or otherwise realise or encash the pledged shares and apply net proceeds thereof towards the outstanding accused No. 1 in case of default by accused No. 1 in making payment to complainant-company. Vide letter dated 8th February, 1996, accused No. 1, amongst others, confirmed that it would transfer the pledged shares in the event of default in repayment obligation arising under Bill discounting facility sanctioned by complainant-company. In pursuance of said facility, a Hundi/Bill of Exchange being No. 542 for a sum of Rs. 51,25,682.73 executed by M/s. Jumbo Agro Products Pvt. Ltd. as drawer on accused No. 1 as drawee, was discounted by complainant-company. This Hundi/Bill of Exchange was duly accepted by accused No. 1 who was paid a sum of Rs. 47,65,481 /- after

deducting interest and draft charges vide a demand draft by complainant-company. Accused No. 1 towards discharge of liability under above Hindi-Bill of Exchange handed over post-dated cheque bearing No. 755383 dated 6th June, 1996 for a sum of Rs. 51,25,683/- drawn on State Bank of Patiala, Model Basti, New Delhi to complainant-company. This cheque on presentation was returned unpaid due to insufficiency of funds. It is also alleged that later on it came to the knowledge of complainant-company that said shares pledged by accused Nos. 2 to 4 could not have been hypothecated /sold/transferred before 25th December, 1999 as the same were in lock-in period. Accused 1 to 4 had, thus, fraudulently represented to complainant-company that the pledged shares were valuable securities. Aforesaid certificate dated 22nd December, 1995 issued by accused No. 5 with the knowledge and consent of accused 1 to 4 as also letter dated 8th February, 1996 confirming, amongst others, that accused No. 1 would transfer the said shares upon lodgment with it in the event of default in repayment obligation arising under Bill discounting finance facility, were false and forged by the accused. It is also stated that as on 25th October, 1997, a sum of Rs. 26,44,837.84 was due and payable by accused No. 1 to the complainant-company for recovery whereof it has filed a civil suit. It was prayed that accused be summoned and prosecuted for the offences committed by them. To be only noted that the Metropolitan Magistrate seized of the complaint by the order dated 28th January, 2000 summoned the accused to face trial for the offences under Sections 420/463/464/467/471 and 34, IPC.

3. In the present petition, it is admitted that the petitioners pledged their shareholdings in respondent No. 3-company as guarantors as alleged. However, it is pleaded that those shares were replaced by fresh set of shares on 20th September, 1996 and instead of returning the shares initially pledged, the respondent No. 2 initiated those criminal proceedings against them. It is further alleged that against the payment of Rs. 47,65,481 /- made by way of discount of Bill of Exchange, the respondent No. 2 has already recovered Rs. 42,70,230.19 by encashing the securities of petitioners. It is claimed that complaint did not contain essential ingredients of the offences complained of.

4. In the reply, respondent No. 2 has denied that 506900 shares pledged by the petitioners were replaced by 123199 shares having a total face value of Rs. 12,31,990/- on 20th September, 1996, as alleged. It is stated that Clause No. 5 of the agreement dated 8th March, 1996 executed between the parties provides that in case at any time the value of pledged shares fell so as to create deficiency or there was shortfall over bill discounting, additional security would be provided and said new/additional shares were handed over to answering respondent due to fall in the market value of said pledged shares. It is claimed that the said shares pledged did not bear any endorsement that they were under any lock-in period and/or could not be sold/transferred. In fact, shares bearing distinctive Nos. 6100698 to 7211808 were allotted pursuant to conversion of loan into equity and were under a lock-in period up to 21st December, 1999. It is asserted that letter dated 20th September, 1996 is a forged document and was never received nor bore the rubber stamp of respondent-company.

5. Contention advanced by Sh. A.K. Singla for petitioners was that after 506900 shares were replaced by 123199 shares on 20th September, 1996, former had ceased to be securities and, prima facie, no offence was made out against the petitioners. According to him, dispute between the parties was predominantly of civil nature. In support of the submission, my attention was drawn to the letter dated 22nd December, 1995 (copy at page 14) as also on the decisions in Madhavrao Jiwajirao Scindia and Ors. v. Sambhajirao Chandrojirao Angre and Ors., : 1988 CriLJ853 and Pepsi Foods Ltd. and Anr. v. Special Judicial Magistrate and Ors. 4 (1997) CCR 108 : : 1998 CriLJ1 . It was not disputed before me on behalf of petitioners/accused that 506900 shares and/or their share certificates pledged with respondent No. 2/complainant-company did not bear any endorsement that shares were in lock-in period up to 21st/25th December, 1999; that certificate dated 22nd December, 1995 (copy at page 14) issued by accused No. 5 notices that necessary enfacement had been made for restricting condition on the share certificates of pledged shares that those could not be sold/hypothecated/ transferred before 25th December, 1999; that in the letter dated 8th February, 1996, amongst others, respondent No. 3 had undertaken to transfer 506900 shares pledged with respondent No. 2 in the event of default in making payment of the amount tender Bill discounting facility, to respondent No. 2;

and that the said shares pledged by petitioners 1 to 3 were in lock-in period up to 21st/25th December, 1999. Needless to say that in the reply filed to the petition by respondent No. 2, plea taken is that 123199 shares were not given by way of replacement but were handed over due to fall in the market value of pledged shares pursuant to Clause 5 of said agreement dated 8th March, 1996. Further plea raised is that the letter dated 20th September, 1996 (copy at page 21) was never received nor bore the rubber stamp of respondent No. 2-company and had been fabricated. During the course of hearing, it was pointed out by Sh. Sanjeev Khanna for respondent No. 2 that neither the said letter nor copy thereof had been filed by the petitioners before the Metropolitan Magistrate seized of the trial. To be only mentioned that this letter notices that 123199 shares were being given by way of replacement of initially pledged shares with respondent No. 2-company. Obviously, there is serious dispute between the parties regarding genuineness of aforesaid letter and new shares numbering 123199 having been handed over towards replacement of 506900 shares to respondent No. 2-company. This dispute can be decided only on the basis of evidence to be led in complaint case and not in this petition under Section 482, Cr.P.C. At the stage of summoning, scope of inquiry has to be extremely limited to the ascertainment of truth or falsehood of the allegations made in complaint for the purpose of finding out whether a prima facie case for issue of process had been made out or not. (See : Smt. Nagawwa v. Veeranna Shivalingappa Konjalai and Ors., : 1976 CriLJ1533 . In the said backdrop, the contention advanced on behalf of petitioners about 506900 shares having ceased to be securities and allegations made in complaint, prima facie not disclosing any offence, deserve to be repelled being without any merit. Turning to another limb of argument in regard to disputes being predominantly of civil wrong, it has been held in the decisions in Trisuns Chemical Industry v. Rajesh Agarwal and Ors., : 1999 CriLJ4325 and Rajesh Bajaj v. State of NCT of Delhi and Ors., : 1999 CriLJ1833 , that criminal prosecution cannot be throttled under Section 482, Cr.P.C. merely because civil proceedings are also maintainable or that the allegations made in complaint disclose commercial or money transactions between the parties. Aforementioned two decisions relied on behalf of petitioners, thus, have no applicability to the facts of this case. For the foregoing discussion, petition deserves to be dismissed being without any

substance.

6. Consequently, the petition is dismissed being without any merit.

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