M.M. Monga Vs. Union of India

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Court : Delhi

Decided On : Aug-19-1996

Reported in : 1996IIIAD(Delhi)915; 63(1996)DLT665; 1996(38)DRJ585

Judge : N.G. Nandi, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 482; Indian Penal Code (IPC), 1860 - Sections 420; Negotiable Instruments Act, 1881 - Sections 138

Appeal No. : Criminal Writ Petition No. 378 of 1996

Appellant : M.M. Monga

Respondent : Union of India

Advocate for Def. : Mr. S.K. Aggarwal, Mr. Meet Malhotra

Advocate for Pet/Ap. : Y.P. Narulla,; S.K. Agarwal and; Meet Malhotra, Advs

Judgement :

N.G. Nandi, J.

(1) In this criminal writ petition under Article 226 of the Constitution of India, read with Section 482 of the Code of Criminal Procedure, the petitioner prays for quashing of Fir No. 248 dated 8.4,1996, registered under Sections 420 and 120B Indian Penal Code in P.S. Kalkaji, New Delhi.

(2) The say of the petitioner is that petitioner company entered into the Lpg marketing business and floated a number of companies with regard to the Lpg in view of liberalization policy of the Government of India; that the companies also started bottling plants at different places in the country and appointed distributors for carrying out its Lpg marketing business;. that the petitioner also acquired approximately 1,30,000 cylinders for Its customers and distributors the connections through out the country for supply of LPG; that respondent No.6 and its company M/s. Sterling Lpg & Fuel Ltd. was appointed as the distributors for Andhra Pradesh and Tamil Nadu by the petitioner's company; that respondent No.6 and the company signed agreement dated 31.12.1994 for setting up bottling plants in the south on partnership basis; that petitioner and the respondent also signed another agreement dated 2.1.1995 with regard to the said bottling and distribution business; that the petitioner has purchased from the Government Undertakings 2500 Mt of Lpg and after bottling the same, it has been distributed by the petitioner to its customers as per the orders of its distributors; that gas supplied by the petitioner is however not cost effective as against the gas supplied by the Government undertakings as the government had not withdrawn the subsidies till date as promised by the Finance Ministry in the Parliament; that respondent No.6 wrote a letter to the petitioner requesting to refund the security deposits as he was no more interested to do business with the petitioner and his companies; that the petitioner refunded the entire amount of Rs.20,00,000.00 vide four cheques Along with a letter; that the said cheques, however, were dishonoured as the deposits of the petitioner company of Rs.30.00 lakhs and Rs.25.00 lakhs with two companies were not returned; that respondent No.6 accordingly issued notices u/s. 138 of the Negotiable Instruments Act to the petitioner company but did not file any complaint in the court on the basis of the said notices; that the petitioner paid to respondent No.6 a sum of Rs.5.00 lakhs against one of the said dishonoured cheques and requested him for some more time for making the balance payments; that on 8.4.1996 respondent No.6 filed a false complaint u/s. 420 r.w.S. 120B Indian Penal Code cancelling the agreements dated 31.12.1994 and 2.1.1995 and also concealed the fact that the cheques were issued but the same were returned and that he failed to file any complaint u/s. 138 of the Negotiable Instruments Act within the period of limitation; that respondent

No.6 also concealed the fact that he had been having financial dealings with the petitioner and the details of the payments in lakhs received by him during the course of business;. that the dispute is a civil dispute and not a criminal dispute; that questions relate to the fulfillment of the obligations under the agreements entered into between the petitioner and respondent No.6; that the Fir does not contain any allegation constituting the offence u/s. 468 and 471 IPC; that offence u/s. 420 Indian Penal Code is compoundable at the instance of respondent No.6; that the petitioner has deposited Rs. 5.00 lakhs in the court of Metropolitan Magistrate and deposited Rs.10.00 lakhs in this court; that the complaint is malafide and false.

(3) It is submitted by Mr. Narula, learned counsel for the petitioner that cause of action is u/s. 138 of the Negotiable Instruments Act and not u/s. 420 IPC; that the dispute is of civil nature; that the complaint is false concealing the agreements between the parties; that no offence u/s. 420 Indian Penal Code is made out; that clause 5 of the agreement provides for the consequence in the event of breach of agreement; that there is no criminal intention of cheating; that the allegations in the complaint are vague; that the petitioner has paid Rs.20.00 lakhs. As against this, it is submitted by Mr. S.K. Aggarwal, learned counsel for respondents 1-5 that representation (page 25) is false; that the writing 'APPROVED By Government Of INDIA' is a deception, false hood; that 'BAJAJ LPG' is not approved by the Government and a false certificate has been given by the petitioner to induce the public to part with their money; that the intention is dishonest from the beginning; that there is a larger conspiracy, various companies are involved; that petitioners have collected Rs.65.00 lakhs in this dealership; that Fir discloses the offence; that in June, 1994 to September 1994, the accused had nothing and had no capacity to supply and there was no agreement at all during this period; that on 17.11.1993, the name of the company has been changed to Monga Blue Flames Limited, yet the accused continued to collect the money in the name of Bb Flames; that Fir and the material collected suggests the offence and quashing of complaint and investigation would not be permissible u/s. 482 Criminal Procedure Code .; that motive for payment of Rs.l5.00 lakhs after the filing of the Fir is suggestive of the truth in the allegations in the Fir and by paying this amount, the petitioner wants the whole thing to be hushed up so that the other facts and cheating by him are

not unearthed. It is submitted by Mr. Meet Malhotra, learned counsel for respondent No.6 that why a certificate of approval by Govt of India was issued by the petitioner; that Ic Number mentioned in the certificate is a falsity; that the basis of the agreement is a fraud and deception; that the victims arc countless; that Bajaj Lpg itself is a fraud; that Section 138 of the Negotiable Instruments Act is no bar to the prosecution; that investigation is in. progress and there is no question of quashing of the proceedings.

(4) Copy of the Fir is produced at page 24 wherein it is alleged that in pursuance of an advertisement in a local news paper published in Andhra Pradesh in or around May 1994 of Bbf inviting application for dealership/distributorship for marketing Birla LPG; that the complainant contacted the office of Bbf at Vijayawada where he was asked to go and meet Mr. Monga, Md of Bb Flame at Delhi Office. Thereafter the complainant was told by Mr. Monga that he has floated Bajaj Lpg and offered the distributorship of Bajaj Lpg for Andhra Pradesh and Tamil Nadu on payment of Rs.10,150.00 each towards registration and Rs.5 lakhs towards security deposit; that the complainant immediately paid Rs.l0,150.00 each as registration charges for which receipts were issued. Mr. Monga assured the complainant that he has got all the clearance approval from the Govt of India vide Ic No. 10217 for Bajaj Lpg on 2.6.94; that the complainant also got prepared Demand Draft of Rs.1.00 lakh x 2 each Dd Nos, 802459 and 802450, Punjab National Bank, Vijayawada, A.P. in favor of Bb Flames Ltd., payable at Delhi and personally handed over to Shri Monga in Nehru Place Office and obtained receipts and the appointment letter for the sole distributorship in favor of M/s. Sterling Gas & Petro Products given by Mr. Monga for the States of Tamil Nadu and Andhra Pradesh together with the assurance that Bajaj Lpg will be supplying Lpg from September/December 1994; that on 26.6.94 and 4.7.94 the complainant gave Rs.4 lakhs and one lakh respectively through DDs and obtained receipts thereof and the appointment letter for sole distributorship of Delhi; that at the advice of Mr. Monga, the complainant invited dealers/distributorship for Bajaj Lpg through newspapers, people responded and accordingly, demand draft of Rs.l0,150.00 as registration fee, Rs. 25,000.00 to Rs. 50,000.00 as security for dealers, Rs. 50,000.00 to one lakh for District distributors through DDs in favor of Bb Flames Ltd. office payable at Delhi were collected and accordingly given to Shri

Manmohan Monga at Nehru Place Office, Delhi; that the list of drafts deposited with Bb Flames Ltd. by various dealers/distributors which is more than Rs.40.00 lakhs approximately, is also enclosed; that on noneupply of Lpg till (October 1994, the complainant contacted the company office and was assured by Shri Monga that the project is getting late due to some technical reasons; that Shri S.C. Kumar, Group Consultant, Ajay Puri, general Manager Finance and Ms. S. Babra, General Manager had also been assuring at several times that the company is in the process of supply the gas shortly and Shri S.C. Kumar had also assured that there is nothing to be panicky the company is very sound as per books of account; that till date no gas is supplied; that on enquiries from Delhi and Chandigarh office and residence, it has been learnt that Mr. Monga has floated the companies with popular names of business houses, namely Birla, Modi, Dabur and Bajaj one after another and has thus cheated the public under the misrepresentation of supply of gas; that the complainant has been cheated by the aforesaid persons of Rs.7.00 lakhs and various dealers/ distributors of Rs.40 lakhs approximately.

(5) IT. may be seen from the complaint that there is a specific and clear allegation about the advertisement for dealership and distributorship for marketing Biria Lpg for the States of Tamil Nadu and Andhra Pradesh; that the complainant was also given false assurances and was induced to part with money, detailed in the complaint; that at the alleged advice of the accused, the complainant invited dealers/ distributorship for Bajaj Lpg and the people responded and paid money by Dds in favor of Bb Flames Ltd. office payable at Delhi and Rs.40.00 lakhs approx were collected by DDs deposited with Bb Flames; that even thereafter the complainant, was assured that there is no reason to be panicky as the company is very sound; that there is delay in the project due to some technical reasons and that the company is in the process of supplying gas shortly; that accused was floating companies under the popular names of business houses one alter the another and thus cheated the public by false representations of supply of gas and induced them to part with money. Thus, there are specific allegations of false representation, inducement and the cheating.

(6) Page 160 is the copy of printed letterhead containing 'BAJAJ LPG' 'APPROVED By Government Of India As Per Ic NO. 10217'. This is a certificate

that M/s. Sterling Gas & Petro Products is the sole distributor for the State of Andhra Pradesh and authorised to release advertisement in newspaper, magazines, periodicals, etc. on behalf of the company with further authorisation to appoint district distributors and area dealers in the State on behalf of the company and that Bajaj Lpg will he supplied by the company from Sept./Oct. 1994. Page 161 is the certificate identical in all respects for the State of Tamil Nadu and Pondichery in favor of Sterling Gas & Petro Products. Page 162 is the letter by the accused for Bb Flames Ltd. on the letter head of Bajaj Lpg containing the writing 'APPROVED By GOVT. Of India As Per Ic NO. 10217' slating that the company will provide Lpg cylinder each consisting of 12 Kgs to the consumer and the price of the cylinder will be parallel to the price of cylinder being provided by the public sector. Page 106 is the covering letter on the letter head of Bajaj Lpg suggesting the refund of security deposit/share application money collected from the distributors/dealers by M/s, Sterling Lp Gas & Fuels Ltd. amounting to Rs.20.00 lakhs by cheques dated 31.1.1996 whereas page 105 is the letter to Bb Flames by the Managing Partner of Sterling LP. Gas & Fuels Ltd. enclosing the receipts of deposits paid by dealers/distributors in Ap for the refund of the amounts as the distributors/dealers want the withdrawl This would suggest the receipt of amount by the accused.

(7) The principle governing the quashing of the complaint/investigation have been laid down in the case of State of Haryana v. Ch. Bhajan Lal & Ors. reported in Air 1992 (Supp) Scc 335 and the investigation/prosecution could be quashed provided the case falls within the parameters laid down in the Supreme Court decision (supra). It is suggested from the material on record so far and the allegations in the complaint that it can not be said for the present limited purpose that a false or absurd complaint has been instituted against the accused looking to the contents of the FIR. It need hardly be said that for the purposes of quashing, if any, under Section 482 Criminal Procedure Code ., the contents of the complaint have to be prima facie accepted. Taking the allegations of the alleged false assurances and the inducement by the accused in light of letters page 161 to 163, it does not appear that a case for quashing has been made out.

(8) One of the argument on behalf of the petitioner is that in view of dishonour of cheque, the complaint for the offence u/s. 420 Indian Penal Code would not be indicative of the dishonest intention to cheat. In this regard reliance is placed on the decision in 1995 Crl.LJ. 1303. In the instant case, the allegations in complaint itself disclose the offence u/s. 420 Indian Penal Code, the dishonour of cheque can not come in the way of the complainant for filing the complaint of cheating u/s. 420 Indian Penal Code There arc allegations in the complaint suggesting dishonest intention from the inception. The petitioner has also relied on the decision reported in 1992 Cri.L.J. 893 wherein the Madhya Pradesh High Court has held that 'non-payment of cheque allegedly drawn by applicant - complaint filed before the magistrate for offence u/s. 420 Penal Code - the complaint was found to be absurd and did not make out offence and the proceedings quashed.' It may be appreciated that in the case before the M.P. High Court, the complaint was found to be absurd and did not make out any offence. The allegations in the complaint were that the complainant had made payment to the applicant and post dated cheque was issued by the applicant and the magistrate had passed the cryptic and non-speaking order u/s. 200 Criminal Procedure Code . where the witnesses alleged to be present at the time of payment made by the complainant, were not examined. In my opinion the principle laid down in this decision can have no application as in the instant case the issuance of the cheques by the accused were because of the amount having been received earlier on alleged false representation and inducement. The fact of dishonour of the cheque and the notice given u/s. 138 of the Negotiable Instruments Act can not be taken in isolation of the fact preceding the dishonour of the cheque concerned. The right, if any, u/s. 138 of the said Act is independent of the alleged misrepresentation and inducement alleged in the complaint as far as the collection of money by the accused is concerned and the allegation of misrepresentation the inducement and cheating which led to the parting of money by the complainant and other persons is much prior to the stage of dishonour of the cheque for which notices u/s. 138 of the said Act has been given. In my opinion, the notice u/s. 138 of the Negotiable Instruments Act can not come in the way of the prosecution u/s. 420 IPC.

(9) I am shown the file of investigation by the learned standing counsel for the respondents 1-5. The certificate dated 1.6.1994 by Bb Flames Ltd. Nehru Place,

New Delhi is for the authorised distributor for Tamil Nadu and Pondichery States in favor of Sterling Lp Gas & Petro Products contain 'APPROVED By The GOVT. As Per Ic NO. 10217 Bajaj LPG'. It is suggested that even after the change over of the name from Bajaj Lpg to Monga Blue Flames the amount has been received by the complainant. By paying Rs.15.00 lakhs to the complainant and settling the issue with the complainant the accused can not succeed in getting things hushed up since number of persons seem to be duped and involved and money collected through the distributor appointed in the States the matter would require investigation looking to the allegations in the complaint. It need hardly be said that the quashing u/s. 482 Criminal Procedure Code . would not be permitted when the matter is at the stage of investigation unless the allegations in the complaint are absolutely absurd and false as laid down in the decision (supra). In my opinion, there is no substance in the petition, as the complaint/investigation for the offences alleged against the accused does not deserve to be quashed under Section 482 Criminal Procedure Code .

(10) , In the result, the petition being devoid of merits fails. None of the above observations shall cause any prejudice to the defense at any subsequent stage.