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Court : Rajasthan

Decided On : Mar-19-1987

Reported in : 1987(1)WLN761

Judge : Navin Chander Sharma, J.

Appeal No. : S.B. Criminal Miscellaneous Petition No. 40 of 1987

Appellant : Kumar Rajeev

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

Navin Chander Sharma, J.

1. Yashwant Singh Singhvi non-petitioner No. 2 was proprietor of M/s. Shiva Chemicals, Udaipur, who had obtained a soft loan of Rs. 1,84,000/- from the Rajasthan Finance Corporation repayable in yearly instalments. Singhvi paid interest for the first year but failed to take the payment of instalments for the year 1978-79 whereupon the RFC called upon Singhvi to make payment and on his failure, the R.F.C. took over management and possession of the factory on March 6, 1980.

2. Singhvi instituted a civil original suit against the R.F.C. alleging that the latter had no right to remain in possession and that the possession which had been taken over by the R.F.C. may be declared invalid. He moved an application for temporary injunction. The Additional District Judge, Udaipur, granted temporary injunction restraining the RFC from auctioning the factory or any of its assets during the pendency of the suit and the Corporation was directed to take land tax to keep the chemicals in safe custody. Both the RFC and M/s Shiva Chemicals came in appeal before this Court. In Miscellaneous Appeal No. 114 of 1980 filed by the RFC, M/s Shiva Chemicals Udaipur agreed before the learned Single Judge that the plant and machinery purchased with the said loan advanced by the RFC may be sold and sale proceeds may be adjusted against the money due to the corporation. In view of the above statement the RFC. was allowed to sell the plant and the machinery. It was told by Mr. A.L. Mehta appearing for the RFC that the Corporation did not want to exercise an> rights what so ever of the chemicals lying at the factory. In view of the above statement, the learned Single Judge ordered that the plaintiff will be at liberty either to lift the chemicals or to keep the chemicals at the risk and the plaintiff could look after the chemicals being permitted by the Corporation. The Corporation was to provide timely facility to M/s Shiva Chemicals to have access to the chemicals. Later on the application filed by R.F.C. the matter was again put up before the learned single Judge because the chemicals have not been lifted by M/s Shiva Chemicals and the plant and the machinery had also not been sold by the Corporation. The plaintiff agreed to certain procedure and according to the procedure pointed out by plaintiff, the learned Single Judge passed an order on August 12, 1981 with the chemicals lying at the factory would be incorporated into an inventory by the plaintiff which he may remove from the site. With regard to the exercise of the right in respect of the chemicals, as given in order dated July 21, 1981, it was ordered that the R.F.C. will keep the factory open on working test, between 9 a.m. to 5 p.m. the R.F.C was given 1-1/2 months' time to complete the sale of the plant and the machinery. These were two interim orders passed by the learned Single Judge in S.B. Civil Miscellaneous Appeal No. 114 of 1980 which had been filed by the R.F.C. and ultimately, both Civil Miscellaneous Appeal No. 114 of 1980 and 6 of 1981 were decided by the learned Single Judge on December 23, 1981 Miscellaneous Appeal filed by M/s Shiva

Chemicals was dismissed. It may be mentioned here that M/s Shiva Chemicals have omitted the relief for possession in the plaint and co-intended itself by making a prayer for future damages till the possession is restored to it. Consequently, the application of the plaintiff under Order 39, Rule 4, CPC was held not to be maintainable. The plaintiff had been insisting about chemicals. The learned Single Judge observed that the plaintiff was free to remove the chemicals in which the order was passed by the learned Single Judge as already mentioned above. The Corporation had disclaimed all rights over the chemicals. Thus the very basis of the plaintiff's application under Order 39, Rule 4, CPC filed and was held to have rightly been rejected by the Additional District Judge. So far as Miscellaneous Appeal No. 114 of 1980 of the R.F.C. was concerned, the appeal was partly allowed and the restraint order passed against the Corporation restraining it from auctioning the hypothecated property was set aside.

3. Naturally when Singhvi after obtaining a soft loan of Rs. 1,84,000/- from the R.F.C. sometime in the year 1978 and only paid interest for the first year, he could not expect that softness will continue. It was bound to be hardened as against such a defaulting single who wanted to take all undue advantage and who wanted to keep his interference in the factory by not lifting the chemicals despite ample opportunity being given by this Court by two interlocutory orders. His intentions were very clear. From the complaint which he filed, he alleged that on the date of the incident i.e. on October 27, 1982, he went to the factory on Dusshera day to perform the opening ceremony of the factory and he was wrongfully restrained by the petitioner Kumar Rajeev and alleged that petitioner committed an offence under Section 341, 352 and 506 I.P.C. The Judicial Magistrate took cognizance under Section 341 I.P.C. against the petitioner and ordered that summons may be issued against the petitioner and others.

4. The learned Counsel for Singhvi raised a preliminary objection and his objection is that remedy of filing the revision was available to the petitioner and he has not availed of that remedy and, therefore, this Court should not exercise its inherent powers under Section 482 of the Code of Criminal Procedure. Mr. A.K. Acharaya appearing for Singhvi has relied upon the decision of the Himachal Pradesh High Court in case of Gopal Chauhan v. Smt. Satya and Anr. reported in 1979 Cr. L.J.

446. In that case it was held that where a Magistrate orders the issue of process against an accused, it is open to him move the original court first and it would also be proper for him to avail that remedy by one invoking the inherent powers of the High Court. In ordinary course, therefore, the High Court would not like to encourage the litigant to invoke its extra ordinary powers or inherent powers without first utilising the remedy available to him with the lower authority.

5. As against this Mr. B.S. Shishodia referred to the decisions reported in : 1977 CriLJ1146 , : 1980 CriLJ822 and : 1983 CriLJ159 . In Dr. Sharda Prasad Sinha v. State of Bihar : 1977 CriLJ1146 , a complaint had been filed against the appellant charging him that having committed offence under Section 54(1)(a) and Section 57(c) of the Bihar and Orissa Act, 1915, it was found that the allegations contained in the complaint filed by the Excise Inspector did not constitute any offence. The appellant moved the High Court under Section 482 of the Code of Cr. P for quashing the order passed by the Sub-Divisional Magistrate Patna taking cognizance of the offence charged against the appellant. The High Court dismissed the application summarily. His Lordship Bhagwati, J. speaking for the Court observed in para 2 of the reported judgment that it is now settled law that where the allegations set out in the complaint or the charge-sheet do not constitute any offence, it is competent to the High Court exercising its inherent jurisdiction under Section 482 of the Code of Cr. PC to quash the order passed by the Magistrate taking cognizance of the offence. On examination of the allegation set out in the complaint, their Lordships found that the complaint did not aver that with or without any remuneration the women who were performing the cabaret was being employed or permitted to be employed by the club and that they are performing the cabaret in a part of the club premises in which liquor was being consumed by the public. In such circumstances it was held that the High Court ought not to have rejected the application of the appellant for quashing the order of the Sub-Divisional Magistrate. The Supreme Court quashed the proceedings in the criminal cases.

6. In Trilok Singh v. Satya Deo : 1980 CriLJ822 where the dispute between the parties related to the purchase of truck under hire purchase agreement with a default clause entitling the financier to seize the truck on default, the purchaser

has launched a criminal prosecution against the financier on which the Magistrate directed the issue of summons against 9 accused under Section 395 of the Indian Penal Code. It was held on the well settled principles of law before a suitable case where the criminal proceedings ought to have been quashed by the High Court in exercise of its inherent powers before the dispute raised by the respondent was purely of a civil nature even assuming the fact stated by him to be substantially correct. In *Municipal Corporation, Delhi v. Ramakishan Rastogi* : 1983 CriLJ159 the Supreme Court following its decision in *Smt. Nagawwa v. Virana Shivlingapa* : 1976 CriLJ1533 & the decision in the case of *Shardaprasad Sinha v. State of Bihar* : 1977 CriLJ1146 , laid down that proceedings against the accused in the initial stages can be quashed only if on the fact of the complaint all the papers accompanying the same, no offence is constituted. In other words the test is that taking the allegations and the complaint as they are without adding or subtracting anything if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its inherent powers under Section 482 of the Code of Criminal Procedure.

7. In the instant case Singhvi alleged in his complaint that he was the proprietor of M/s Shiva Chemicals located in the Industrial area of Madari & this factory was running since the year 1976. Loan was taken from the RFC for purchase of machinery at the time of the installation of the factory. It was alleged that goods worth lacs of rupees was lying in the factory. Despite that the petitioner and others had locked the factory which they had no right to do It was stated that the RFC had already the right to sell the machinery which had been purchased from the loan amount. In order, therefore, to restart the factory, Singhvi wanted that certain persons with whom on Dashera day falling in the year 1982 at 9 am. to restart the factory but the petitioner and other accused persons closed the door and restricted Singhvi in entering the factory and burdened him with dire consequences. The complaint placed reliance on the interim order of this Court case on August 12, 1981 where under it was alleged that this Court had directed the petitioner and other accused persons to keep the factory open from 9 a.m to 5 p.m. But despite that Singhvi was obstructed and prevented to go inside the factory to exercise the right to go therein to restart the factory. It may be mentioned that while deciding Civil Miscellaneous Appeal No. 114 of 1985 by M/s Shiva Chemicals on December

23, 1981, the learned Single Judge observed very clearly that the plaintiff had omitted to seek the relief for possession in the plaint and he contented himself for praying than the damages till the possession was restored to him. It was stated that the plaintiff did not want to claim relief for possession and no interim relief or restoration of the possession can be granted to the plaintiff and his application under Order 39, Rule 4, CPC was not maintainable. In the face of this judgment. Singhvi had no right to go to the factory for the purpose of restarting the factory on the alleged suspicious day of the Dusshera of the year 1982 and the petitioner had every right to prevent Singhvi from entering into the factory for the purpose. It was nowhere the assertion of Singhvi in the plaint that he wanted to go inside the factory to lift the chemicals lying at the factory. In the absence of such an assertion, the allegations contained in the plaint and averments made there in did not disclose any offence against the petitioner. I am, therefore, of the view that the proceedings pending in the court of Judicial Magistrate First Class, Udaipur in the form of Criminal Case No. 317 of 1983 for the offence under Section 341 should be quashed. In exercise of the powers of this Court under Section 482 Cr. PC and I do hereby quash the entire proceedings. This Miscellaneous Petition succeeds accordingly.