

Gurinder M. Thamon and another Vs M/s. Blue Beacon Electronics Security Systems Pvt. Ltd. and another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Oct. 5, 2012

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 202, 482

Negotiable Instruments Act, 1881 (NI) â€” Section 138, 142

Penal Code, 1860 (IPC) â€” Section 415, 420, 499, 50, 500

Citation: (2013) 2 BC 553 : (2013) 1 RCR(Criminal) 240

Hon'ble Judges: Daya Chaudhary, J

Bench: Single Bench

Advocate: Animesh Sharma, for the Appellant; Paramjit Deol, for the Respondent

Final Decision: Dismissed

Judgement

Daya Chaudhary, J.

The present petition has been filed u/s 482 Cr.P.C. for quashing of Complaint No. 20554 dated 20.10.2008 under

Sections 499 and 500 of the Indian Penal Code as well as the Summoning Order dated 02.07.2010 passed by the Judicial Magistrate 1st Class,

Chandigarh and all other consequential proceedings arising therefrom. Briefly the facts of the case as mentioned in the petition are that the present

petitioners namely Gurinder M. Thamon and Varun Thamon are part of M/s. Sekurity Xchange which is a proprietary concern and petitioner No.

1 is the proprietor and petitioner No. 2 is the Managing Director of the said firm. There was a business transaction between the petitioners" firm

and respondents" firm. There was a dispute about payment of the security equipments as respondents approached petitioners" firm for purchase of

certain security system equipments on credit. The petitioner No. 1 informed respondent No. 1 that the equipments would be supplied, in case, the

payment was made by cash or by draft and accordingly, the respondents" firm offered to make payment by cheque which was presented for

encashment but the same could not be honoured. A legal notice was sent about encashment of cheque. A complaint was also filed u/s 138 of the

Negotiable Instruments Act as well as under Sections 415 and 420 of the IPC against respondent No. 1 Company when the cheque, in question,

was not encashed. A copy of the legal notice was sent to all members of the Forum of Security Electronics Distributors". The stand of the

petitioners" firm is that the legal notice was sent in good faith for protection of business interest of the members of the Forum and there was no

intention to defame the respondents" firm in any manner. A complaint was also filed by the respondents before the Chief Judicial Magistrate,

Chandigarh and Summoning Order has been passed in the said complaint The allegation in the complaint is that by circulation of notice dated

14.07.2008 to all distributors and clients of the complainant-Company through e-mail, phone and by post, the reputation of the Company has been

damaged and the notice was sent with the intention to harm and damage and to lower down the reputation of the respondents-Company. It has

also been mentioned that the complainant has also suffered a huge financial loss in the market which has resulted into termination of credit facilities

of the complainant-Company for the purchase of security equipments.

2. The complaint/Summoning Order was challenged on the ground that the complaint does not satisfy the essential ingredients required to make out

offence of defamation outlined in Section 499 of the Indian Penal code. The respondents are claiming that they have been defamed on account of

legal Notice dated 14.07.2008 which was circulated by the firm of the petitioners to the members of the Forum, whereas, petitioners state that the

legal notice was a formal document which is mandatory u/s 138 of the Negotiable Instruments Act. In the legal notice, factual details of the

transaction have been mentioned and there was no intention to defame the respondent-Company, in any manner. Legal notice is a public document

and by disclosing the same to the members of the Forum was not going to defame the respondent-Company, in any manner. The efforts made by

the petitioners" Company was genuine and bona fide and in context of Office Legal Rights as the same has been done in good faith with bona fide

just to safeguard the interest of the members of the forum. The case of the petitioners comes under Ninth and Tenth Exception of Section 499 of

the Indian Penal Code.

3. Learned counsel for the petitioners also submits that the Summoning Order has been passed by the Magistrate without conducting mandatory

inquiry as required u/s 202 Cr.P.C.

4. Learned counsel for the petitioners relies upon the judgments of Hon"ble the Apex Court in the cases titled as Shivjee Singh Vs. Nagendra

Tiwary and Others, , Sukra Mahto Vs. Basdeo Kumar Mahto and Another, , as well as, the judgments of this Court in the cases titled as DSM

Pharma Chemicals Venlo B.V. Vs. Vijay Kumar Garg, Anil Kumar Chopra v. M.K. Khosla, 1989 (2) R.C.R. (Cri) 86.

5. Learned counsel for the respondents submits that the intention of the petitioners" Company cannot be said to be bona fide as the credibility and

reputation of the Company was star in the eyes of public and hence, the intention was not to circulate only but to down grade the image of the

complainant-Company and because of that reason, the email was sent. Only legal notice was sufficient to send to the complainant-Company and

there was no necessity to send any email. Moreover to prove the intention as bona fide is a matter of evidence and cannot be considered herein in

the present petition as no evidence is there.

6. Learned counsel for the respondents also relies upon the judgment of Hon"ble the Apex Court in the case of Adalat Prasad Vs. Rooplal Jindal

and Others,

7. I have heard the arguments of learned counsel for the parties and have also perused the contents of complaint as well as the Summoning Order.

8. Admittedly, the business transaction was there between the petitioners" Company and respondent No. 1-Company. The delivery was made by

the petitioners" Company of Electronic Security Equipments and in lieu thereof, a cheque was sent by the respondent-Company which was

presented before the Bank and the same could not be encashed on the ground that the payment was stopped by the drawer. Subsequently, a legal

notice was sent to the respondent-Company to make payment of the outstanding amount of Rs. 96,017/- along with interest. However, the legal

notice was replied on 30.07.2008, wherein, it was mentioned that the petitioners" Company was to give certain sale services which has not been

given and because of that reason, the payment was stopped. The petitioners" Company circulated a notice to members of the Forum. A complaint

was made under Sections 138/142 of the Negotiable Instruments Act read with Sections 415 and 420 of the IPC against respondent No. 1-

Company, which is still pending. Subsequently, the respondent-Company filed a complaint under Sections 499 and 500 of the Indian Penal Code

against the petitioners and on the basis of the same, the Summoning Order dated 02.07.2010 has been passed by the Judicial Magistrate 1st

Class, Chandigarh to summon the petitioners for offences under Sections 499 and 500 of the Indian Penal code. The complaint as well as the

Summoning Order have been challenged only on the ground that the legal notice is a public document and the same was sent to the complain-

ant/respondent-Company in view of the provisions of Section 138 of the Negotiable Instruments Act which is the mandatory requirement as the

payment was stopped by the drawer and hence, the cheque could not be encashed. The intention of the petitioners" company was not to defame

the respondent-Company as it was sent with bona fide intention and not with some ulterior motive to defame the respondent-Complain-ant, in any

manner. The complaint/Summoning Order has also been challenged on the ground of maintainability as no inquiry has been conducted which is

mandatory u/s 202 Cr.P.C.

9. It is also the argument of learned counsel for the petitioners that the contents of legal notice are true and correct and there was no intention to

damage and lower down the reputation of the respondent in the eyes of his customers.

10. The case of the respondent-Company is that the intention is a matter of evidence and it cannot be said that it was done in good faith as there

was no necessity to send e-mail. The object of the petitioners' Company was to defame the respondent-Company in the eyes of public and his

credibility has been lower down upon after going through the contents of legal notice.

11. To appreciate the argument of learned counsel for the petitioners, it is necessary to see as to how the present case falls under Ninth and Tenth

Exception of Section 499 of the Indian Penal-Code. "Defamation" has been defined u/s 499 IPC which is reproduced as under:-

499. Defamation.-Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any

imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such

person, is said, except in the cases hereinafter excepted, to defame that person.

12. To constitute an offence of "defamation" u/s 499 IPC, there should be imputation which must have been made with the intention of harming or

knowing or having any reason to believe that it will harm the reputation of the person against whom it is made. In fact, the offence of defamation is

the harm caused to the reputation of a person. It is necessary that the accused person intended or knew or had reason to believe that the

imputation made by him would harm the reputation of the complainant, irrespective of the fact whether the complainant actually suffered directly or

indirectly from the imputation alleged. As per Explanation 4 to the Section, no imputation is said to harm a person's reputation, unless that

imputation directly or indirectly lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his

caste or of his calling, or lowers the credit of that person, in the estimation of others or causes it to be believed that the body of that person is in

such a state which is generally considered as disgraceful. In exceptions ninth and tenth the "Word of Caution" has been mentioned by adding the

word "good faith." If something is done in good faith then that person cannot be held liable for defamation. The ninth and tenth exception to Section

499 are reproduced as under:-

Ninth Exception:-Imputation made in good faith by person for protection of his or other's interests:- It is not defamation to make an imputation on

the character of another provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other

person, or for the public good.

Tenth Exception:- Caution intended for good of person to whom conveyed or for public good. - It is not defamation to convey a caution, in good

faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person

in whom that person is interested, or for the public good.

13. For placing the case under ninth and tenth Exception to Section 499 IPC, it is to be proved that the statement/publication was intended in

good faith"" to convey a caution to one person against another or the intention of the person who has conveyed, was for the ""public good.

Although the intention of the accused person is to be seen on the basis of facts and circumstances of the case and that is also a matter of evidence.

14. In the present case, only the Summoning Order has been passed and evidence has not been recorded so far. However, in the absence of any

evidence on record, it is very difficult to return a finding whether or not the petitioners have satisfied the requirements of ""good faith"" and ""public

good"" so as to fall within the ambit of tenth exception to Section 499 IPC. It is neither possible-nor appropriate for this court to form a final

opinion whether the allegations in the complaint constitute defamation or not. On perusal of the complaint as a whole, it is difficult to form an

opinion for hearing of complaint u/s 482 Cr.P.C. at this stage. Moreover, the inherent powers u/s 482 Cr.P.C. are to be exercised by this Court to

quash criminal proceedings against the accused as held in the case of R.P. Kapur Vs. The State of Punjab, . The powers can be exercised under

the following circumstances:

(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings e.g. want of sanction;

(ii) where the allegations in the first information report or the complaint taken at its face value and accepted in their entirety do not constitute the

offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove

the charge.

15. Similarly, in Dinesh Dutt Joshi Vs. The State of Rajasthan and Another, the following observations have been made while dealing with inherent

powers of the High Court which are as under:-

6.... The principle embodied in the section is based upon the maxim: quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae

esse non potest i.e. when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable. The

section does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the section.

As lacunae are sometimes found in procedural law, the section has been embodied to cover such lacunae wherever they are discovered. The use

of extraordinary powers conferred upon the High court under this section are however required to be reserved, as far as possible, for

extraordinary cases.

16. While issuing summons to the accused, the Magistrate is to see whether prima facie case is made out for summoning or not. It cannot be said

at this stage that there is no reasonable prospect of conviction/resulting in the case after trial as at the summoning stage, the evidence was not there

with the Magistrate and on the basis of allegations in the complaint, it is to be seen that prima facie offence is made out to summon the accused

party to face trial. In view of the facts as mentioned above as well as the law position, no ground is made out to quash the proceedings at this

stage.

The petition stands dismissed accordingly.