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(2006) 03 P&H CK 0144

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 33499-M of 2005

Sigma Interactive India Pvt. Ltd.	APPELLANT
Vs	
State of Punjab and Others	RESPONDENT

Date of Decision: March 21, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 34

Citation: (2006) 17 CriminalCC 998

Hon'ble Judges: Nirmal Yadav, J

Bench: Single Bench

Advocate: Sanjay Kaushal, for the Appellant; R.K. Nihalsinghwala, DAG, Punjab, for the respondent Nos. 1 to 3, Mr. A.M. Punchhi, for the respondent Nos. 5 to 9 and Mr. R.S. Ghai with Mr. Vishal Gupta, for the respondent No. 11, for the Respondent

Final Decision: Dismissed

Judgement

Nirmal Yadav, J.
The petitioner Company-Sigma Interactive India Pvt. Ltd., through its Managing Director, has filed this petition u/s 482 of the Code of Criminal Procedure seeking direction to respondent Nos.1 to 3 to register a case under Sections 341,417,418,420,426,427,447 and 448 read with Sections 34 and 120-B of the Indian Penal Code against respondent Nos.4 to 11 in pursuance of its complaint dated 27.4.2005 (Annexure P-5).

2. The facts as per the pleadings of the petitioner, are that petitioner-Company is engaged in the business of providing information technology services in the field of software technology. Respondent No.4 Sanjiv Sethi, Director of M/s.Gilard Electronics Private Limited (hereinafter referred to as "Gilard") approached the petitioner-Company as they had approximately 16000 square feet constructed area on the ground floor.

Accordingly, a registered lease-deed was executed for taking on lease only the administrative block comprising of 4000 square feet covered area, parking space and lawn located at C-131, Industrial Area, Phase VII, Mohali, by the petitioner-Company for a period of 5 years commencing from 1.5.2003 to 20.4.2008. The said period was extendable with the mutual consent of the parties and if lessee wanted to vacate the premises before the expiry of the lease period, then he was to give a notice of 3 months in writing. The petitioner-Company has invested a sum of over Rs.1 crore in setting up its establishment at the rented premises. The petitioner has been regularly paying the rent @ Rs.44,000/- per month to the landlord-Company.

3. It is further pleaded that sometime in the month of December-January 2003 the Director of Gilard Company entered into a criminal conspiracy with M/s.Hutchison Essar South Limited (hereinafter referred to as "Hutch") for leasing out the entire area i.e. 16000 square feet, including 4000 square feet leased out to the petitioner-Company. It was mutually decided between respondent Nos.4 to 9 and Hutch that petitioner would be evicted/dispossessed from the portion rented out to it and possession would be handed over to Hutch. On the other hand, the petitioner-Company never gave any complaint to its lessor. In furtherance of the criminal conspiracy and common intention of Directors of Gilard and respondent Nos, 10 to 11, they initiated a spate of illegal actions against the petitioner-Company by threatening its officials to peacefully vacate the premises in its possession or they would be evicted by use of force. They started digging pits in front of main entrance of office of petitioner-Company to create obstacles for access to its office, which would be evident from photographs, Annexure P-2. On account of digging pits, the water supply was disconnected to the portion of petitioner-Company and, therefore, respondents committed the offence of mischief as defined u/s 425 I PC, which is punishable under Sections 426 and 427 IPC. Being aggrieved by the illegal action of Directors of Gilard, the petitioner-Company filed a civil suit before the Civil Judge, Kharar on 29.3.2004 for permanent injunction. Along with civil suit, an application for stay was also filed. After considering the facts and circumstances of the case, the civil Court vide order dated 20.5.2004 restrained the Gilard from disturbing and interfering in the peaceful possession of the petitioner-Company. However, the respondents in clear disregard of the stay order, started construction on petitioner"s portion by spreading construction material all over the land forming part of petitioner"s portion in order to obstruct the access to the office of petitioner-Company. On 23rd June, 2004, the electricity supply was disconnected to the petitioner"s portion with a motive a bring at half the functioning of the petitioner-Company. This act caused a lot of damage to the petitioner-Company i.e. to the tune of Rs. 1 lakh per day. The petitioner-Company through its Managing Director approached respondent No.3 for registration of a case against respondent Nos.3 to 11, but no action was taken as respondent No.3 refused to register an FIR against the other respondents. The respondents have committed an offence of criminal trespass under Sections 441 and 442 IPC, which is punishable under Sections 447 and 448 IPC. The respondents have also cheated the petitioner by executing lease-deed in favour of Hutch on 26.2.2004 including the area which was leased to the petitioner. After disconnection of

electricity supply, the petitioner approached the Punjab State Electricity Board for having a new electricity meter in its own name. The Punjab State Electricity Board demanded certain documents which were to be produced by the owner of the premises. But in spite of repeated requests made by the petitioner to the Directors of Gilard, the documents were not provided to the petitioner-Company. The petitioner-Company has made several complaints to respondent No.3 to register a case against respondent Nos.4 to 11 but no criminal proceedings have been initiated against the respondents.

4. On notice of the petition, respondent Nos. 1 to 3 filed reply by way of affidavit of Harpreet Singh, PPS Deputy Superintendent of Police, Mohali, stating that on the basis of written complaint submitted by the petitioner, inquiry was got conducted by the DSP through SHO, Police Station Mohali and it was found that there was no truth in the complaint. The inquiry was approved by the Senior Superintendent of Police. It is further submitted that litigation is pending between the parties in the civil Court at Kharar.

5. Respondent Nos.5 to 9 in their reply submitted that petitioner is guilty of deliberate suppression of material facts. The petitioner has deliberately concealed the details of civil litigation initiated by it. The petitioner filed a civil suit in the civil Court at Kharar seeking permanent as well as mandatory injunctions. Petitioner also sought a restraint against the respondents from disturbing its possession. A letter was sent to the Chairman of the petitioner-Company requesting that petitioner-Company may shift to the adjoining premises and in the interest of all concerned, the matter should be resolved amicably. The petitioner had principally agreed to relocate its office at the premises C-132 after executing of fresh lease-deed, which is evident from the e-mail, Annexure R5/7. Since the petitioner had principally agreed to shift to the adjoining premises, Gilard executed a lease-deed with Hutch. However, without any provocation, judicial proceedings were initiated by the petitioner by filing the civil suit. It is stated that construction had been started in view of mutual understanding between petitioner and Gilard and pits, if any, dug in front of the premises have already been filled after completion of construction on the first floor of the premises, which is depicted in the photographs, Annexure R5/31. It is further pleaded that respondents have always been ready and willing to provide all the documents to the petitioner-Company for getting a separate electricity connection. It was also indicated that whatsoever expenses would be incurred in getting the connection from the Punjab State Electricity Board, that may also be deducted from the rent payable to the respondent. The letter dated 9.7.2004 written in this regard to the petitioner-Company, is Annexure R5/16. It is further pleaded that the dispute between the parties is purely of civil nature and there is absolutely no element of criminality. There was no criminal intention on the part of the respondents to commit any criminal offence. The written complaints submitted by the petitioner have already been inquired into by the police authorities and they have not found any substance in the same. It is pleaded that it is purely a dispute between a landlord and a tenant and petitioner has already availed the alternative remedy by approaching the Court of competent jurisdiction for the redressal of its grievance.

6. I have heard learned counsel for the parties and perused the material on record.

7. Learned counsel for the petitioner argued that respondents have executed a lease-deed in favour of the petitioner for 5 years and the said lease is to expire on 30.4.2008. But Gilard Company has executed a lease-deed with Hutch even with regard to the portion rented out to the petitioner in order to forcibly evict the petitioner. The respondents have disconnected the water as well as electricity supply. Even the injunction granted by the civil Court has been disobeyed for which the petitioner has already filed a contempt application before the competent Court. It is pleaded that the petitioner has approached the SHO of Police Station, Mohali and has also approached Senior Superintendent of Police, Ropar but no action has been taken against the respondents. The learned counsel further argued that it is not disputed that cognizable offence has been committed by the respondents and a complaint to this effect has also been made to the police authorities, but no case has been registered against the wrong doers, whereas, the police authorities have no option but to register a first information report against the respondents. In support, the learned counsel referred to a couple of decisions of the Apex Court in Ramesh Kumari v. State (NCT of Delhi) and others, 2006(1) ACJ 410 (S.C.): 2006(2) CCC 145 (S.C.): Criminal Appeal No. 1229 of2002 decided on 21.2.2006 and State of Haryana and others Vs. Ch. Bhajan Lal and others, .

8. On the other hand, learned counsel for the respondents argued that without adopting the procedure provided under the Code of Criminal Procedure, the petitioner is not entitled to approach the High Court by filing this petition seeking direction to register a case against the respondents. Learned counsel argued that the case of Ch.Bhajan Lal (supra) does not lay down that in each and every case, the High Court should issue a direction to the police authorities for registration of offence. In cases in respect of which the complainant could have adopted alternative efficacious remedy in an appropriate Court, the complainant may be advised to adopt that remedy and for that purpose he need not rush to the High Court. It is argued that the petitioner has already availed the alternative remedy by filing a civil suit seeking injunction against the respondents. Even otherwise, it is purely a case of civil nature and, therefore, no criminality is attached to the facts of the case. It is, therefore, argued that ratio of Apex Court"s decisions in the cases of Ch.Bhajan Lal and Ramesh Kumari (supra), have no applicability in the present case.

9. On consideration of rival contentions of the parties, I am of the view that so far as legal proposition is concerned, there cannot be any dispute. The provision of Section 154(1) is very clear on this aspect. It lays down that every information, relating to a cognizable offence, if given orally to an officer-in-charge of a police station, shall be reduced to writing. It envisages that the police should register a case and if police fails to discharge its statutory duty, then the Court has the power to issue appropriate directions. Admittedly, the inherent powers are conferred on this Court u/s 482 of the Code of Criminal Procedure for issuing appropriate direction in case of any inaction on the part of the police authorities. However, this power has to be used sparingly and in exceptional cases as observed in Bhajan Lal"s case (supra), in the following words

".....The High Court may in exercise of powers under Article 226 or u/s 482 of Cr.P.C. interfere in proceedings relating to cognizable offences to prevent abuse of the process of any Court or otherwise to secure the ends of justice. However, power should be exercised sparingly and that too in the rarest of rare cases."

10. It is well settled that every case is to be decided on its own facts. It is not disputed that petitioner and respondent-Gilard are having relation of tenant and landlord and they are facing the usual ordeal of a dispute between a landlord and a tenant. The petitioner-Company has already approached the civil Court for redressal of its grievance: The Civil Court has already issued injunction in favour of the petitioner and for disobedience of the same, the petitioner has filed a petition for contempt.

There is another aspect of the matter. A perusal of Section 154(3) provides that when information is made to the police and police has refused to take notice of the same any person aggrieved by refusal on the part of the Officer-in-charge of the Police Station to record the information, may send the substance of which information in writing and by post to the Superintendent of Police concerned, who if satisfied that such information discloses the commission of offence, shall either investigate the case himself or direct an investigation to be made by any police official subordinate to him. The complainant is also given a right u/s 190 read with Section 200 of the Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate has a discretion to inquire into the complaint or to direct the concerned police to investigate into the offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint. In case he finds that complaint/evidence recorded prima facie discloses offence, he is empowered to take cognizance of the offence and may issue process to the accused.

11. In this case, the petitioner having already availed the alternative remedy by filing the civil litigation, apparently, the dispute inter se the parties appears to be of civil nature i.e. a dispute between a tenant and a landlord. The petitioner has also not adopted either of the procedures provided under the Code, as referred to above. As a consequence, without adopting the above procedure, the petitioner is not entitled to approach this Court by invoking its inherent jurisdiction seeking direction for registration of a case.

For the foregoing reason, the petition fails and it is accordingly, dismissed.