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Jharkhand High Court

Case No: Cr.M.P. No"s. 364 and 365 of 2003

Ravi Uppal, Volvo India Limited and Akash Passey	APPELLANT
Vs	
State of Jharkhand and Another	RESPONDENT

Date of Decision: Aug. 13, 2008

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 5, 8
- Criminal Procedure Code, 1973 (CrPC) - Section 202, 204, 482
- Penal Code, 1860 (IPC) - Section 406, 420, 468

Citation: (2008) 57 BLJR 142

Hon'ble Judges: Dilip kumar sinha, J

Bench: Single Bench

Advocate: M.B. Lal, for the Appellant; Assistant Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

D.K. Sinha, J.
The petitioners of both the Cr. Misc. Petitions have invoked the inherent jurisdiction of this Court u/s 482 Code of Criminal Procedure for quashment of the judgment dated 26.02.2003 passed by the Addl. Sessions Judge, F.T.C.-II, Dhanbad in Cr. Revision No. 40 of 2001 arising out of common order dated 24.08.2000 passed by Shri A.K. Singh, Judicial Magistrate, 1st Class in C.P. Case No. 617 of 2000.

2. The prosecution case in short was that the complainant O.P. No. 2 Amitabh Kumar Srivastava in his complaint case No. 617 of 2000 presented before the Chief Judicial Magistrate, Dhanbad against the petitioners of both the Cr. Misc. Petitions alleged that he was working as Commercial Manager in Balaji Coke Industries (Pvt.) Limited of Pachgarhi, Katras, Dhanbad engaged in trading of Hard Coke business. The

complainant''s company used to supply Hard Coke from Porbandar, Gujarat to Hindustan Zinc Limited, Rajasthan and for transportation of Hard Coke, his company needed heavy duty trucks. It was narrated in the complaint petition that the petitioner Akash Passey (Cr.M.P. No. 365/03) had approached the complainant''s company at Dhanbad with the offer that he was the manufacturer of trucks and trailers and persuaded the complainant for physical trial of the trucks at Porbandar, Gujarat. Pursuant to such proposal his company transported hard coke by truck No. HR-38C/0073 on 01.06.99, 05.06.1999 and on 17.06.1999 which carried 38 metric tones of hard coke per trip/per truck in presence of the petitioners. It was alleged in the complaint that his company then purchased two Volvo Trucks with Traillers financed by M/s Sri International Finance Limited. Cost of two vehicles aforesaid was Rs. 53,64,376/- for which the complainant''s company made down payment to the extent of Rs. 7,86,368/- as the margin money. One transporter M/s Shri Jagdamba Road Carriers (Pvt.) Limited was arranged by the petitioners and an agreement was executed in the complainant''s company office at Katrasgarh. The trucks with trailers were supplied to the complainant''s company but it was detected from the owner book and sales certificate that the carrying capacity of each of the trucks was only about 21/22 metric tones and not 38 metric tones and in that manner the petitioners cheated and played fraud with the complainant-O.P. No. 2 though it was stated that each of the vehicles sold to them would carry 38 metric tones of goods. The money of the complainant''s company was blocked and trucks with trailers were returned to the petitioner through the financier with the request to refund the margin money and also to reimburse loss incurred to them but of no avail. Hence the complaint case.

3. Notices were sent to the Opposite Party No. 2 through different modes at various occasions but it could not be served by either process as his whereabouts could not be located and ultimately both the petitions were heard in his absence.

4. The State was represented through the A.P.P.

5. At the outset by filing the Xerox copy of the order passed by the Calcutta High Court in G.A. No. 1540/06 and C.S. Case No. 624 of 2001 Learned Counsel Mr. M.B. Lal assisted by Mr. Manoj Tandon submitted that the controversy between the parties were referred u/s 8 & 5 of the Arbitration and Conciliation Act, 1996 and the Hon''ble Court passed the following order on 28.01.2008:

The plaintiff and the defendant No. 1 have agreed that the mandate of the Arbitrator, Mr. Pulin Behari Das be terminated. The plaintiff and the first defendant are also agreed that all the disputes between the plaintiff and the first defendant be referred to the arbitration of Mr. Utpal Bose, Adv.

The plaintiff does not press the suit against the defendant No. 2. Accordingly, the suit as against the second defendant is dismissed and the disputes between the plaintiff and the first defendant are referred to the arbitration of Mr. Utpal Bose, Adv.

The plaintiff and the first defendant have submitted that the incoming Arbitrator will decide on his remuneration.

G.A. No. 1540 of 2006 and CS No. 624 of 2001 are disposed of on the above basis.

6. Learned Counsel, therefore, submitted that the dispute between the parties is of purely a civil nature and the matter has already been referred to arbitrator under the provisions of Arbitration and Conciliation Act, 1996. In spite of attempts made through different modes, the notice could not be served upon the complainant who has either perhapes left M/s Balaji Coke Industries (Pvt.) Limited or has changed the place. The learned Counsel further argued that in no manner the criminal proceeding arising out of complaint case No. 617/2000 is maintainable against the petitioners of both the petitions in the given situation and development as aforesaid, therefore, the impugned judgment passed by the Additional Sessions Judge, F.T.C.-II, Dhanbad in Cr. Revision No. 40 of 2001 upholding the order dated 24.08.2000 passed by Shri A.K. Singh, Judicial Magistrate, 1st Class, Dhanbad in CP Case No. 617 of 2000 be quashed with consequential effect.

7. In my view, arbitration and conciliation of his civil disputes between the parties is a different issue whereas the criminal proceeding against one party to the civil dispute brought about by the another party is a different issue. The learned Counsel failed to convince that the criminal proceeding of the petitioners cannot continue in the backdrop that the controversy between the parties alleged to be civil in nature has been referred to an arbitrator, in the back drop that the learned Judicial Magistrate after enquiry u/s 202 Cr.P.C. found a prima facie case u/s 406/420 and 468 I.P.C. against the petitioners and directed the processes to be issued against them. I have gone through the order impugned passed by the learned Judicial Magistrate u/s 204 Cr.P.C. on 24.08.2000 as also the judgment passed in Cr. Revision No. 39 of 2001 and Cr. Revision No. 40 of 2001 upholding the impugned order passed by the learned Judicial Magistrate which do not call for interference in exercise of the inherent jurisdiction of this Court. Accordingly, both the Cr. Misc. Petitions vide Cr.M.P. No. 364/2003 and Cr.M.P. No. 365 of 2003 are dismissed without prejudice to the merit of the complaint case No. 617 of 2000 filed on behalf of the opposite party No. 2.

8. However, this order would not affect the award if any passed by the Arbitrator in relation to the controversies between the parties with the liberty to the petitioners to re-agitate their matter at the appropriate stage. With such observation both the Cr. Miscellaneous Petitions are dismissed.