

CASE NO.:
Appeal (crl.) 742 of 2008

PETITIONER:
SUNEET GUPTA

RESPONDENT:
ANIL TRILOKNATH SHARMA & ORS

DATE OF JUDGMENT: 28/04/2008

BENCH:
C.K. THAKKER & AFTAB ALAM

JUDGMENT:
J U D G M E N T
REPORTABLE

CRIMINAL APPEAL NO. 742 OF 2008
ARISING OUT OF
SPECIAL LEAVE PETITION (Crl) No. 2671 OF 2007
WITH
CRIMINAL APPEAL NO. 743 OF 2008
ARISING OUT OF
SPECIAL LEAVE PETITION (Crl) No. 3844 OF 2007
SUNEET GUPTA . . . Appellant

Versus

SWAMI RAOTE & ANR. . . Respondents

C.K Thakker, J.

1. Leave granted.
2. The present appeals are directed against common judgment and order passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Miscellaneous Nos. 49200-M of 2003 and 30393-M OF 2004. Both the above petitions were filed by the respondents-accused under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') for quashing First Information Report (FIR) lodged by the appellant herein for offences punishable under Sections 468, 406 read with 120B of the Indian Penal Code (IPC).
3. Short facts giving rise to the present proceedings are that in 1998, appellant Suneet Gupta entered into a registered Partnership Firm with one Shashi Kant Mangla in the name and style of M/s K.M. Agencies. The said Firm was the stockist and distributor of consumer goods of M/s Johnson & Johnson, a Limited Multinational Company ('M/s Johnson & Johnson Ltd.' for short). According to the appellant, partnership of M/s K.M. Agencies had certain claims over M/s Johnson & Johnson Ltd. on account of freight, octroi paid for goods returned, display of goods of the company, etc. It is the case of the appellant that the above claims were duly verified by the officials of M/s Johnson & Johnson Ltd.
4. In or about March, 2001, differences arose between the two partners of M/s K.M.

Agencies, i.e. between the appellant herein and Shashi Kant Mangla, the other partner. The latter, therefore, joined another partnership firm of M/s Mangla Agencies with Ravi Kant Mangla, Atul Gupta and two others. It is the allegation of the appellant that Shashi Kant Mangla who was a partner along with the appellant of M/s K.M. Agencies falsely, dishonestly and with a view to cheat and defraud the appellant-complainant, misrepresented before M/s Johnson & Johnson Ltd. that the name of partnership firm of M/s K.M. Agencies was changed to M/s Mangla Agencies. On the basis of such representation Shashi Kant Mangla informed M/s Johnson & Johnson Ltd. that payment which was required to be made by the Company (M/s Johnson & Johnson Ltd.) to M/s K.M. Agencies should now be made to M/s Mangla Agencies. According to the appellant, M/s Johnson & Johnson Ltd. was aware of the fact that M/s K.M. Agencies and M/s Mangla Agencies were different; M/s K.M. Agencies, a partnership firm was never dissolved; Suneet Gupta who was one of the partners of M/s K.M. Agencies continued to remain partner of the said firm and Mr. Shashi Kant Mangla, one of the partners of M/s K.M. Agencies had joined another partnership firm of M/s Mangla Agencies and as such payment which was required to be made by M/s Johnson & Johnson Ltd. to M/s K.M. Agencies could not be made to M/s Mangla Agencies and yet such payment was made with a view to deprive M/s K.M. Agencies and particularly appellant-Suneet Gupta. The appellant-complainant, in the circumstances, was constrained to issue legal notice on March 4, 2003 to the respondents herein which was received by them on March 10, 2003. In the said notice, the complainant stated that M/s Johnson & Johnson Ltd. was required to pay Rs.2,73,189.70 to M/s K.M. Agencies but no such payment was made to M/s K.M. Agencies. It also came to the notice of the complainant that the amount has been misappropriated by partners of M/s Mangla Agencies and officials of M/s Johnson & Johnson Ltd. colluded with the partners of M/s Mangla Agencies and all of them had thus played fraud upon the complainant. The appellant also filed a complaint before the Director General of Police, Chandigarh on May 2, 2003 and requested him to direct the police authorities to enquire into the matter. It appears that necessary inquiry was made, the respondents submitted their replies, but nothing further was done in the matter. The appellant, therefore, was constrained to lodge First Information Report (FIR) No. 266 of 2003 on September 16, 2003, against all the accused for offences punishable under Sections 468, 406 read with 120B, IPC at Police Station, Sarabha Nagar, Ludhiana. Police arrested respondent No. 3 Devinder Sabharwal, Anil Triloki Nath Sharma and Vivek Bhatnagar. Respondent Nos. 1 and 2 herein as also Surrinder Mohan, proprietor of M/s Key Ess Associates obtained

anticipatory bail from the Sessions Court. Other three accused persons, namely, Shashi Kant Mangla, Ravi Kant Mangla and Atul Gupta, all partners of M/s Mangla Agencies were denied anticipatory bail by the learned Additional Sessions Judge. During the pendency of their bail applications before the High Court, however, the prosecution made a statement that the presence of those three accused was not required in the case and consequently their bail petitions became infructuous. Meanwhile, the respondents herein filed Criminal Miscellaneous Nos. 49200/2003 and 30393/2004 in the High Court of Punjab & Haryana under Section 482 of the Code for quashing FIR registered against them.

5. The appellant also stated that a detailed inquiry was made by the Police. It collected the entire evidence and found that prima facie case was made out against the accused persons and accordingly charge-sheet was submitted on May 13, 2004 against accused persons, namely, Devinder Sabharwal, Vivek Bhatnagar, Anil Triloki Nath Sharma and Swami Raote. Swami Raote evaded arrest and hence proceedings under Section 82 of the Code were initiated against him. The prosecution put Shashi Kant Mangla, Ravi Kant Mangla and Atul Gupta, partners of M/s Mangla Agencies in Column No.2 while Surrinder Mohan was made a prosecution witness. The prosecution then moved an application under Section 190 read with Sections 239 and 240 of the Code for summoning Shashi Kant Mangla, Ravi Kant Mangla and Atul Gupta as accused persons for trial.

6. The High Court vide the impugned order dated August 1, 2006, allowed both the petitions and quashed FIR lodged by the appellant. It is this order which is challenged by the appellant in the present appeals.

7. Notice was issued by this Court on April 27, 2007, counter-affidavit and affidavit-in-rejoinder were thereafter filed and the matters were ordered to be posted for final disposal. That is how the matters are before us.

8. We have heard the learned counsel for the parties.

9. The learned counsel for the appellant contended that the High Court was wholly in error in quashing FIR lodged by the appellant. It was submitted that from the allegations levelled in the FIR prima facie case for offences punishable under Sections 468, 406 read with 120B, IPC had been made out. According to the learned counsel, what is seen at this stage is whether on the basis of the allegations made in the complaint, prima facie case has been made out against the accused and not whether trial against them would ultimately result in conviction of the accused. It was the case of the appellant in the complaint that two partnership firms of M/s K.M. Agencies and M/s Mangla Agencies were distinct, different

and independent of each other. So far as M/s K.M. Agencies is concerned, there were only two partners, the appellant and Shashi Kant Mangla. Shashi Kant Mangla became one of the partners of other partnership firm as well, i.e. of M/s Mangla Agencies. But the appellant-complainant had nothing to do with the other partnership firm, (M/s Mangla Agencies). Dues of M/s K.M. Agencies which were to be paid by M/s Johnson & Johnson Ltd. could not, in the circumstances, be diverted to the other partnership firm with which the appellant-complainant had no connection whatsoever. All the partners of M/s Mangla Agencies and all the officials of M/s Johnson & Johnson Ltd. were aware of this fact and yet in collusion with each other and with a view to deprive M/s K.M. Agencies in general and the appellant-complainant in particular, payment was made by M/s Johnson & Johnson Ltd. to M/s Mangla Agencies. Thus prima facie all the accused had committed offences mentioned in the FIR and the High Court should not have quashed it. The High Court was also not right, submitted the counsel, in holding that it was a civil dispute and there was abuse of process of law on the part of the complainant in initiating criminal proceedings. It was submitted that apart from civil liability, the accused persons had committed crimes and on the basis of allegations in the FIR, and on investigation being made, the police authorities found substance in the allegations of the complainant and charge-sheet was submitted. It was, therefore, submitted that the appeal deserves to be allowed by setting aside the order passed by the High Court by directing the respondents to face criminal proceedings.

10. Learned counsel for the contesting respondents supported the order passed by the High Court. It was submitted that the dispute is of a civil nature. It was a dispute between two partnership firms and initiation of criminal proceedings was only with a view to use pressure against the accused so that they will be constrained to enter into some settlement with the complainant. As per settled law, a court of law cannot be used as a means to pressurize the opposite party so that he may accede to the demand of the complainant. The High Court was convinced that on the facts and in the circumstances of the case, no criminal proceedings could have been initiated and hence, quashed the proceedings which cannot be said to be illegal or contrary to law. It was, therefore, submitted that the appeals deserve to be dismissed.

11. On behalf of respondent No. 4, an affidavit is filed by PPS, Dy. Superintendent of Police, Sarabha Nagar, Ludhiana stating therein that the matter involved determination of complicated points of facts and law which could not have been gone into by the High Court in a writ petition. It was stated that detailed inquiry by PPS, Dy. Superintendent of

Police, Sarabha Nagar, Ludhiana revealed that there was prima facie case of commission of offences punishable under Sections 468, 406 read with 120B, IPC. Some accused were arrested also. In the circumstances, the High Court could not have aborted the proceedings as has been done.

12. Having heard the learned counsel for the parties and having considered the rival contentions, in our opinion, it cannot be said that the High Court was wrong in quashing criminal proceedings. It is clear from the case put forward by the appellant himself that virtually the proceedings were 'civil' in nature. There were two partnership firms, one M/s K.M. Agencies, consisting of appellant and Shashi Kant Mangla and the other of M/s Mangla Agencies wherein Ravi Kant Mangla (one of the partners of M/s K.M. Agencies) was a partner. It was the case of Shashi Kant Mangla that M/s K.M. Agencies was no more in existence and it had changed its name from M/s K.M. Agencies to M/s Mangla Agencies and all the transactions of M/s K.M. Agencies would thereafter be dealt with by M/s Mangla Agencies. Obviously, therefore, payments which were to be made to M/s K.M. Agencies should be made to M/s Mangla Agencies. It also appears that M/s Johnson & Johnson Ltd. was informed which changed the Code from M/s K.M. Agencies to M/s Mangla Agencies. It is further clear that though payments were made in June-July, 2001 by M/s Johnson & Johnson Ltd. to M/s Mangla Agencies, a notice through an advocate was issued by the complainant only on March 4, 2003, i.e. after substantial period about two years. A complaint was made to Director General of Police, Chandigarh by the complainant in May, 2003. The record further reveals, as stated by respondent Nos. 1, 2 and 3 in the counter-affidavit, that it was contended by the accused that the matter was civil in nature and based on commercial transactions and there was a dispute between the parties and as such there was no element of mens rea. It was also submitted by the accused that the complainant, with an ulterior motive and mala fide intention, used pressure tactics and was harassing them in connivance with local police and filed a complaint on May 2, 2003. The police authorities were convinced about the nature of dispute and after seeking legal opinion from District Attorney closed the proceedings. Subsequently, however, the complainant 'after making cosmetic changes in the earlier complaint' and using undue influence filed FIR No. 266 of 2003 on September 16, 2003 for commission of offences punishable under Sections 468, 406 read with 120B, IPC. According to the accused, it was motivated and the police authorities obliged the complainant by helping him.

13. The High Court, in our opinion, rightly considered the facts in their proper perspective and observed that the dispute

related to settlement of accounts between principal and its agent; the principal being M/s Johnson & Johnson Ltd. and the agent being M/s K.M. Agencies (earlier) and M/s Mangla Agencies (later). The High Court also noted that it was M/s K.M. Agencies which informed the principal i.e. M/s Johnson & Johnson Ltd. that M/s K.M. Agencies had closed its business and the business was thereafter continued by M/s Mangla Agencies and all drafts be issued in favour of M/s Mangla Agencies. The High Court took note of the fact that even the complainant had informed the principal that there was dispute between the partners of M/s K.M. Agencies and hence no payment should be made to M/s Mangla Agencies till the dispute was finally resolved between the parties. That, however, does not give rise to criminal liability and entitle the complainant to initiate criminal proceedings, particularly when M/s Johnson & Johnson Ltd. substituted in the Company record name of M/s Mangla Agencies in place of M/s K.M. Agencies. The resultant effect of substitution of name was that whatever sums were due to M/s K.M. Agencies were considered to be due to M/s Mangla Agencies.

14. The High Court, in the circumstances, observed as under;

"This is really a case of one partner trying to drag the principal company into a criminal litigation to recover dues which the principal had paid to the other partner. The dispute and the relationship inter se has become a tripartite one. Suneet Gupta had a dispute with Shashi Kant Mangla but instead of tackling him he got lodged F.I.R. No. 266 dated September 16, 2003 registered at Police Station Sarabha Nagar, Ludhiana, under Sections 468/406/120-BIPC to pressurize the petitioners to settle the matter. It is not a clear cut and direct case in which any contractual relationship between Suneet Gupta with the company has been breached. Indeed Suneet Gupta had no direct relationship with the company. It was M/s K.M. Agencies of which he was one of the partners which had developed contractual relationship and later in June/July, 2001, M/s Mangla Agencies got substituted in place of M/s K.M. Agencies. Suneet Gupta either ignored this development or remained oblivious of it for nearly 2 years. The first notice was issued after passage of long time on March 4, 2003. This notice was clearly to drag the company into the inter se dispute between two partners."

15. The Court proceeded to state;
"The complaint of Suneet Gupta and the

steps taken by the police have clearly converted a tri-partite civil dispute into a criminal one and have involved the managers of the principals in a dispute between the partners of the firm."

16. The High Court, therefore, concluded that the steps taken by the complainant Suneet Gupta were in clear abuse of process of law and accordingly allowed both the petitions.

17. By passing the impugned order and quashing criminal proceedings, in our opinion, the High Court has neither committed any error of law nor of jurisdiction which deserves interference in exercise of power under Article 136 of the Constitution.

18. Our attention has been invited by the learned counsel for the accused to several decisions of this Court. In our opinion, however, it is not necessary to refer to those decisions since we are of the view that the High Court was right in quashing criminal proceedings.

19. We may, however, refer to one aspect. Learned Counsel for the appellant strenuously relied upon an order of this Court in *State of Punjab v. Dharam Vir Singh Jethi*, 1994 SCC (Cri) 500. In that case, charge-sheet was submitted by Police and thereafter FIR was quashed by the High Court.

20. In the light of the said fact, this Court observed;

"Heard learned counsel for the State as well as the contesting respondent. We are afraid that the High Court was not right in quashing the First Information Report on the plea that the said respondent had no role to play and was never the custodian of the paddy in question. In fact it was averred in the counter-affidavit filed in the High Court that the said respondent had acted in collusion with Kashmira Singh resulting in the latter misappropriating the paddy in question. At the relevant point of time the respondent concerned, it is alleged, was in overall charge of the Government Seed Farm, Trehan. This allegation forms the basis of the involvement of the respondent concerned. The High Court was, therefore, wrong in saying that the respondent concerned had no role to play. A specific role is assigned to him, it may be proved or may fail. In any case, pursuant to the First Information Report the investigation was undertaken and a charge-sheet or a police report under Section 173(2) of the Code of Criminal Procedure was filed in the court. If the investigation papers annexed to the charge-sheet do not disclose the

commission of any crime by the respondent concerned, it would be open to the court to refuse to frame a charge, but quashing of the First Information Report was not permissible."

21. In our opinion, however, the ratio laid down in the above case will not apply to the facts of the case. As already indicated in the earlier part of the judgment, FIR was lodged by the complainant on September 16, 2003 and immediately within less than a month, the accused invoked the jurisdiction of the High Court under Section 482 of the Code by filing petitions on October 12, 2003. At that time, challan was not filed in the Court. It was after a substantial period of about seven months that on May 13, 2004, charge-sheet was filed by the police authorities. Moreover, in Dharam Vir Singh, the accused was shown to be in possession of property and later on misappropriated it. The High Court, however, quashed the proceedings inter alia observing that the accused was never the custodian of paddy and was not in charge of the Government Seed Farm which was factually incorrect. In the light of factual scenario, this Court set aside the order of the High Court quashing criminal proceedings.

22. In the case on hand, the High Court was right in coming to the conclusion that a civil dispute \026 pure and simple - between the parties was sought to be converted into a criminal offence only by resorting to pressure tactics and by taking police help which was indeed abuse of process of law and has been rightly prevented by the High Court.

23. For the foregoing reasons, in our view, the order passed by the High Court is in consonance with law and requires no interference. The appeals deserve to be dismissed and are, accordingly, dismissed.