NEUTRAL CITATION NO: 2022/DHC/004014

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

\+ **CRIMINAL MISCELLANEOUS CASE 3444 OF 2013**

Between:-

MOHD. RAFAT KHAN
A-64, ASHOKA ENCIAVE-II
SECTOR 37, FARIDABAD,
HARYANA **…..PETITIONER**

(Through: Mr. Rajat Mathur, Advocate (Amicus Curiae) alongwith petitioner in person.)

AND

M/S. TECKINFO SOLUTIONS PVT LTD
1/1 BA IIIrd FLOOR MOHAMMAD PUR
NEW DELHI- 110066 **…..RESPONDENT NO.1**

MR. SUNIL GUPTA
ACCOUNTANT M/S TECKINFO SOLUTION PVT. LTD
1/1 BA. IIIrd FLOOR,
MOHAMMADPUR
NEW DELHI -110066 **…..RESPONDENT NO.2**

MR. NALIN MITTAL
S/O SHRI KANTA PRASAD
MANAGING DIRECTOR-
M/S TECKINFO SOLUTION PVT. LTD
1/1 BA. IIIrd FLOOR,
MOHAMMADPUR
NEW DELHI -110066 **…..RESPONDENT NO.3**

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MR. UDAY ANANT VAISHAMPAYAN,
S/O SHRI ANANT G. VAISHAMPAYAN
DIRECTOR- M/S TECKINFO SOLUTION PVT. LTD
1/1 BA. IIIrd FLOOR,
MOHAMMADPUR
NEW DELHI -110066 …..RESPONDENT NO.4

MS. MANISHA GUPTA
DIRECTOR- M/S TECKINFO SOLUTION PVT. LTD
1/1 BA. IIIrd FLOOR,
MOHAMMADPUR
NEW DELHI -110066 …..RESPONDENT NO.5

CHIEF SECRETARY
GOVT OF DELHI
SECRETARIAT, NEW DELHI …..RESPONDENT NO.6

(Mr. Rajesh Gogna, CGSC alongwith Ms. Priya Singh, Advocate)

% Pronounced on : 27.09.2022

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J.

This petition under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) is directed against the order dated 15.03.2013, passed by the Additional Sessions Judge/Special Judge, NDPS/South District, Saket Court, New Delhi, in Crl. Rev.No.34/13 (Original Number 55/12), dismissing the criminal revision preferred by the petitioner against order dated 22.06.2012, passed by the Metropolitan Magistrate, whereby, the learned Metropolitan Magistrate had dismissed the complaint under Section 203

of Cr.P.C. filed by the petitioner against the respondents for commission of the offences punishable under Section 379/355/406/420/499/500/506/120B/34 of IPC and under Sections 40/41 of the Information Technology Act, 2000 (in short 'the IT Act').

2. The brief facts of the case are that the petitioner started working in the year 2006 as Sales Manager-Software with the respondent No.1 company. In the year 2011, he was appointed as Sales Head on a monthly salary of Rs.1,32,620/-. According to him, neither he was paid salary w.e.f. April, 2011 nor any reasonable explanation was given to him, and on the contrary the respondents acted criminally against the petitioner. On 23.07.2011, the respondent No.4, who was the Director of the company vide e-mail dated 23.07.2011 had instructed respondent No.2 for clearing the dues of the petitioner. When the petitioner approached respondent No.2 on 27.07.2011, instead of clearing the dues, respondent No.2 assaulted him, tore petitioner's shirt's collar, attacked him by broken glass and also threatened to kill him. On 16.08.2011, the petitioner filed a complaint to the police about the incident dated 27.07.2011 and subsequent events. The police, however, on 02.09.2011 closed the enquiry. On 17.08.2011, the petitioner was sacked from the respondent company without any termination letter. On 18.08.2011, the respondent No.1 had served the petitioner a proposal for settlement of dues. On 01.09.2011, the petitioner had served a legal notice upon respondent No.1 to clear the dues of a sum of Rs.4,30,540/- towards the outstanding salary and allowances from April to August, 2011 and Rs.4,64,100/- towards leave encashment for 105 days upto 17.8.2011 and Rs.20,00,000/- towards compensation for mental and physical harassment. The petitioner also claimed a sum of Rs.9,30,495/- towards

committing criminal breach of trust and cheating. On 01.09.2011, the respondent also sent a demand notice to the petitioner with intention to tarnish his image; calling him cheater, unsocial and absconder while spoiling his career. On 05.09.2011, the petitioner denied the contents and defamatory allegation of respondent in their demand notice dated 01.09.2011. Since the police also did not take any action, therefore, on 24.10.2011 the petitioner filed a criminal complaint under Section 200 of the Cr.P.C. alongwith an application under Section 156(3) of the Cr.P.C. alleging that the respondent No.1 (through respondent Nos. 3 to 5) have committed the offence jointly and severally under Sections 355/406/420/499/ 500/120-B of IPC etc. On 16.01.2012, the learned MM declined to entertain application under Section 156(3) of the Cr.P.C. with liberty to the petitioner to lead his pre-summoning evidence. On 22.06.2012, the learned MM after recording pre-summoning evidence of the petitioner, did not find any substance and dismissed the complaint under Section 203 of the Cr.P.C. The order of dismissal of the complaint was assailed by the petitioner before the revisional court, however, the same has also been rejected vide impugned order dated 15.03.2013. Hence, the petitioner has approached this court under Section 482 of the Cr.P.C.

3. Since the petitioner was appearing in-person, therefore, this court vide order dated 14.08.2015 thought it proper to appoint Shri Rajat Mathur, Advocate as *Amicus Curiae* to represent the petitioner.

4. In pursuance to request, learned *Amicus Curiae* has assisted this court on behalf of the petitioner. Since the petitioner is also appearing in-person, therefore, he has also been allowed to make his submissions.

5. The submissions made on behalf of the petitioner are that the learned MM has failed to act as per the settled legal position and has examined the entire matter as if he was deciding the case finally. According to the petitioner, he adduced sufficient evidence and brought on record adequate material to show that the offence in question has been made out and, therefore, the standard of scrutiny of the evidence should have been limited to the purpose of issuing summons to the respondents instead of examining the possibility of conviction. At the stage of issuing summons, the learned Magistrate was not required to do detail exercise and hence, he has committed legal error in appreciating the entire material. It is also submitted that the learned revisional court has also miserably failed to exercise its power under Section 397 of the Cr.P.C.

6. The learned counsel appearing on behalf of the respondents opposed the prayer. He submits that this court in exercise of its power under Section 482 of the Cr.P.C. has a limited power to see as to whether the court below has committed any jurisdictional error or not. According to him, the order of issuing summons has a serious consequence and the court concerned is empowered to apply its mind on the basis of the material available on record to see as to whether *prima-facie* case for issuing of summons is made out or not. According to him, under the facts of the present case since the trial court did not find any material to issue summons, therefore, no fault can be found. He, therefore, prayed for dismissal of the revision.

7. I have heard the learned counsel appearing on behalf of the parties and perused the record.

8. The scope of inquiry under Section 202 of the Cr.P.C. is extremely restricted only to finding out the truth or otherwise of the allegation made in the complaint . In order to determine whether process should be issued or not under Section 202 of the Cr.P.C. , or whether the complaint should be dismissed by resorting to Section 203 of the Cr.P.C. on the footing that there is no sufficient ground for proceeding on the basis of the statement of the complainant and his witnesses, of course no elaborate exercise is necessitated. No doubt, the inquiry at the stage of Section 202 of the Cr.P.C. does not partake the character of a full dress trial, which can only take place after process is issued under Section 204 of the Cr.P.C calling upon the proposed accused to answer the accusation made against him by adjudging the guilt or otherwise of the accused person. To put it differently, the Magistrate has to satisfy himself simply on the evidence adduced by the prosecution whether *prima-facie* case has been made out so as to put the proposed accused on a regular trial and that no detailed inquiry is called for during the course of such inquiry.

9. In the instant case, the petitioner alleged that on 27.07.2011, he went to respondent No.2 to inquire about the outstanding amount and allowances whereupon the respondent No.2, Sunil Gupta, abused, manhandled, physically assaulted the petitioner, tore his shirt's collar, attacked him by broken glass and threatened to kill him. It is stated that respondent No.4 by his e-mail dated 23.07.2011 had instructed the respondent No.2 for clearing the dues, despite that aforesaid treatment was given to the petitioner. The petitioner also stated that the incident was witnessed by *Sakir Khan* and other colleagues of the company. According to him, he reported the incident to the Director *Ms. Manisha Gupta*, (respondent No.5 herein), *Mr. Nalin Mittal* (respondent No.3

herein) and *Mr.* Uday *Anant Vaishampayan* (respondent No.4 herein) vide telephone and e-mail dated 27.07.2011. According to the petitioner, instead of taking any action, against respondent No.2, the other respondents also supported him. The petitioner has examined himself in his pre-summoning evidence and has also relied upon certain documents which are marked as Exhibits *CW1/A, CW1/B, CW1/1 to CW1/23*. The learned MM after examining the material available on record noted that the petitioner did not utter an iota of his allegation, to the effect, that he was defamed by the accused persons in any manner. He did not examine any witness who could have stated on oath that the image of the petitioner was lowered. It was, therefore, found that no offence under Section 500 of the IPC was made out. The learned MM also noted that the petitioner did not allege the ingredients of offence of cheating and neither the ingredients of the offence of criminal breach of trust against the accused persons were found, therefore, both offences were not *prima-facie* proved. The learned MM also noted that in the absence of any allegations that all the accused persons had conspired together the offence under Section 120-B of IPC is not made out and since there was no eye witness examined by the complainant, therefore, the offence under Section 355 of IPC was also not found to have been made out. With respect to offence under Section 506 of IPC, it has been stated that the petitioner did not allege even a single incident when he was criminally intimidated by any of the accused persons and, therefore, no ingredient of offence under Section 506 of IPC was found. In paragraph No.13 of the order passed by the learned MM, it has been said that the offence under Section 379 of IPC and Sections 41/42 of the IT Act, are also not established. Beside the aforesaid reasoning, the learned MM in

paragraph No.14 of his order found that the complainant had waited for 20 days before making complaint with respect to the incident dated 27.07.2011. The aforesaid fact has been considered against the petitioner and while taking overall view into the matter, the learned MM did not find sufficient grounds to proceed against the respondents. Accordingly, the complaint was dismissed under Section 203 of the Cr.P.C.

10. The revisional court by impugned order dismissed the revision while taking note of the fact that the contents of the complaint statement of the petitioner and the evidence led before the learned MM suggest that the dispute is of civil nature and the petitioner is trying to give it a criminal colour. According to the revisional court, the dispute was mainly with respect to non-payment of his salary and some allowances. The Revisional court has also relied upon a decision of the Hon'ble Supreme Court in the case of ***Amit Kapoor v. Ramesh Chander and Anr.***[1] where scope of Section 482 of Cr.P.C. has been discussed. The revisional court has also placed reliance on a decision of the Hon'ble Supreme Court in the case of ***Pepsi Food Ltd v. Special Judicial Magistrate***[2]**.**

11. This court is conscious of the fact that in exercise of its power under Section 482 of Cr.P.C, the court is not obliged to interfere unless there is a gross injustice caused to the other side or the decision under challenge is grossly erroneous with no application of mind. It is a settled legal position that interference in exercise of power under Section 482 of Cr.P.C. is not warranted unless the court is satisfied that the order under challenge is either based on no evidence or material evidence is ignored

[1] 2012 STPL (Web) 507 SC
[2] (1998) 5 SCC 749

or judicial discretion is exercised arbitrarily or perversely. The court is also cognizant of the fact that an order of issuing summon has a serious consequence. The order of issuing summon must reflect that the concerned court has applied its mind to the facts of the case and the law applicable thereto. The trial court has to examine the nature of the allegations made in the complaint and the evidence, both oral and documentary, in support thereof and then to decide whether the same is sufficient to proceed with the matter.

12. If the complaint of the petitioner, in the instant case, is examined, the same would indicate that in paragraph No.3 of the complaint, the petitioner had stated that on 27.07.2011, he went to inquire about his salary, dues and other allowances to respondent No.2 (*Sunil Gupta).* He further stated that respondent No.2 abused, manhandled, physically assaulted the petitioner, tore his shirt's collar, attacked him by glass and threatened to kill him. As per the averments, this incident was witnessed by one *Sakir Khan* and other colleagues of the company. In paragraph 4 of the said complaint he further stated that the incident was further informed/reported to respondent Nos. 3, 4 & 5 by telephone and vide e-mail dated 27.07.2011. The petitioner has produced the copies of those e-mails alongwith his complaint. He further stated that on 16.08.2011 he reported the incident to SHO of Police Station R.K. Puram, Delhi, and apprised about the attack, cheating etc. There are various other averments made in the complaint, the same are not necessary to be referred here. It is seen that *Sakir Khan* has filed his affidavit as CW1/4 before the Magistrate stating therein that when the petitioner was discussing with respect to certain issues, respondent No.2, *Sunil Gupta* suddenly started abusing, tore his shirt, attacked and threatened to kill him by broken

glass. He intervened and later reported the matter to the management. In complaint dated 16.08.2011 made to police, in paragraph No.1 thereof, same averments have been made. The record would indicate that the petitioner appeared as a witness before the Magistrate to record his pre-summoning evidence and he deposed in his evidence that respondent No.2, *Sunil Gupta* abused, manhandled, tore his shirt's collar and attacked him with broken glass. He also mentioned about the fact of witnessing the incident by *Sakir Khan* etc. *Sakir Khan* appeared before the concerned Magistrate as (CW-2) and made a statement wherein he confirmed the facts mentioned in the affidavit filed alongwith the complaint.

13. If the allegations and material brought on record before the Magistrate are carefully examined, this court finds that in paragraph No.11 of the order dated 22.06.2012, passed by the Magistrate, the findings recorded therein are perverse. Paragraph No.11 of the said order is being reproduced as under:-

> *"Section 355 IPC talks about the punishment for the offence of assault or criminal force, with intent to dishonour a person, otherwise then on grave provocation. As per the complainant, on 27.07.2011, he was manhandled by accused no.2, who tore his shirt and attacked with broken glass. I did not find any reasonable evidence, in support of the said allegation. Though, as per complainant, he was saved by his colleagues from the said attack of accused no.2, but none of the said colleagues, were examined in pre-summoning evidence. There was no medical evidence on record, in support of the said allegation. There was no direct or indirect evidence in support of the said allegation. Complainant had relied upon his torn shirt, which was Ex. CWl/A, to emphasis that the said incident had occurred. But he did not give evidence, to show prima facie, that the said shirt was torn by accused no.2 only and nobody*

> *else. There was every possibility, that the said shirt might have torn by any other reason except the allegation in question. There was no evidence, that the said shirt had fingerprints of accused no.2, which could have cushioned the allegation of the complainant. No eye witness or hearsay evidence was led by the complainant, in support of the aforesaid allegations. Therefore, the said allegation, remained a bald allegation only, devoid of any reliable evidence. I therefore, did not find any evidence, which could suggest that incident dated 27.07.2011 had in fact occurred. Therefore, accused persons did not commit the offence of Section 355 IPC prima facie".*

14. The learned Magistrate did not find any reasonable evidence in support of the allegations. The Magistrate noted that evidence of none of the colleagues of the petitioner was recorded. There was no medical evidence on record in support of the allegations and, therefore, there was every possibility that the said shirt might have been torn for any other reason except the allegations in question. The Magistrate also noted that there was no evidence that the said shirt had fingerprints of Respondent No.2, which could have cushioned the allegations of the complaint. According to him, no eye witness or hearsay evidence was led by the complainant in support of the allegations.

15. The nature of inquiry required at the stage of Section 203 of the Cr.P.C. was completely misinterpreted by the learned Magistrate. A critical examination of the facts was not necessary at that stage. What was required to be done was to consider the allegations made in the complaint and the material which has been brought on record and not that what more the petitioner could have also done and has not been done. The Magistrate has wrongly held that no eyewitness or hearsay evidence has been produced whereas, CW-2 appeared before the magistrate and has confirmed his statement that he has specifically made

in his affidavit which supports the allegations against respondent No.2, Sunil Gupta.

16. So far as the decision of the Hon'ble Supreme Court in the case of ***Pepsi Food Ltd (supra)*** is concerned, the legal position expounded therein is not disputed. The Hon'ble Supreme Court in the said case was dealing with the allegations against the accused for the offence under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1994. The order of summoning was declined to be interfered by the High Court in exercise of its power under Article 226/227 of the Constitution. Under the facts of that case, the Hon'ble Supreme Court found that there was nothing on record to show that the appellant therein held the license for the manufacture of the offending beverage. It was found therein that the same was one of the cases where there is an abuse of the process of law and hence, the interference was made therein. The decision of the Hon'ble Supreme Court in the case of ***Pepsi Food Ltd. (supra)*** would not have any application under the facts of the present case.

17. On the basis of the aforesaid analysis of facts and legal position, this court finds that there are sufficient allegation and material available against the respondent No.2 (*Sunil Gupta*) with respect to offence punishable under Section 355 of the IPC. However, there is no material available against any of the other accused persons for any offence as alleged by the petitioner. The impugned order is, therefore, affirmed so far as the other accused persons are concerned except against the respondent No.2 (*Sunil Gupta)*. It is, therefore, directed that the learned Magistrate to reconsider the matter for framing of charge against the

respondent No.2/Sunil Gupta only with respect to the offence punishable under Section 355 of IPC as discussed in the preceding paragraphs.

18. The petition is partly allowed to the extent indicated above.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

SEPTEMBER 27, 2022
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