

M/S Malhotra Rubbers Ltd. vs . State Of Delhi & Ors. on 4 June, 2016

M/s Malhotra Rubbers Ltd. Vs. State of Delhi & Ors.

CC No. 184/1/14
PS Moti Nagar
04.06.2016

Present: Sh. Pawan, Ld. counsel for the complainant is present.

1.

Vide this order, the undersigned shall decide whether the accused persons should be summoned for the offence alleged against them on the basis of evidence led by the complainant at pre-summoning stage.

2. Brief facts of the case are that the accused no.2 and 3 namely Ashwani Sharma and Vikrant Pathak had joined the complainant company just to take away data of the company and to take away their secret programmes. It is stated that accused persons had undertook that they would serve the company for at least 3 years from the date of joining and would maintain the confidentiality of the information, trade secrets, trade knowhow, client database etc. It is further stated that the company had spend Rs.1,58,410.00/- on relocation of the accused persons. It is stated that after collecting all the confidential information, accused persons left the company without showing any reasonable ground. It is argued on behalf of the complainant that accused persons have committed offence U/s 420/406 IPC read with Section 120-B IPC and U/s 43 & 66 of Information Technology Act.

3. In the present matter complainant company has examined two witnesses in total at pre-summoning stage. Complainant has examined Sh. Abhishek Bhandari as CW1 and Sh. Akashdeep as CW2.

4. At pre-summoning stage, CW1 Sh. Abhishek Bhandari, employee/Head of HR of the complainant company stated that he has been legally authorized by Board resolution dated 22.09.2014 Mark 'A' to depose before the Court. It is stated by him that two persons namely Ashwani s/o Sh. S.N. Sharma and Vikrant Pathak s/o Sh. Rajesh Jagdish Pathak approached the complainant company for employment. Both were earlier working with GRL Tyres who was competitor of complainant company. It is stated that in the month of June-July 2014 they conducted interview of the accused persons. It is stated that accused Ashwani was posted as Senior Manager Export Marketing and accused Vikrant Pathak was posted as Manager Export Marketing. They commenced their employment from 01.08.2014. It is stated that the accused persons executed their undertaking agreement and Non Circumvention Non Disclosure agreement which are duly notarized on 01.08.2014, the same are Ex.CW1/A (OSR) and Ex.CW1/B (OSR). He exhibited the application form of accused no. 2 for joining the post as Ex.CW1/C (OSR), the photocopy of the PAN card and

passport of accused no. 2 as Mark 'B' and Mark 'C', the offer letter and appointment letter of accused no. 2 as Mark 'D' and Mark 'E', the mail trail between the accused no. 2 and the complainant company as Mark 'F', the application form of accused no. 3 for joining the post as Ex.CW1/D (OSR), the photocopy of the PAN card and Driving Licence of accused no. 3 as Mark 'G', the photocopy of the Electricity bill of accused no. 3 as Mark 'H'. He exhibited the appointment letter of accused no. 3 as Mark 'I', the mail trail between accused no. 3 and the complainant company as Mark 'J', the detail of expenditure made by the complainant company on the re-allocation and equipped for the office work as Mark 'K', the incorporation certificate of the complainant company as Mark 'L'. Complaint to the SHO PS Moti Nagar in respect of offence u/s 420/406 IPC r/w 120B IPC dated 23.09.2014 as Mark 'M'.

5. It is stated by CW2 Sh. Akashdeep, employee/ Manager IT in the complainant company that he is working with the complainant company since Feb'2013 and he is responsible for the IT Department of the complainant company. It is stated that accused no.2 and 3 joined the company on 01.08.2014. It is stated that upon joining he personally handed over the laptop connected to server and provided department related data like customer data, pricing, knowhow of the technology to accused persons. It is stated that the accused persons are the residents of Mumbai and the company provided expense of reallocation of the accused persons i.e. their renting, transporting etc. It is stated that company provided them proper training to work with the company. Before joining the company both the accused persons were working with GRL Tyres. It is stated that after getting all the data from the complainant company, both accused persons left the company without any information. Later they informed HR Department through their personal e-mail. It is stated by him that once he saw that both the accused persons in connivance with each other were taking out some print outs (around 40-45 pages) from the company data. It is stated by him that both the accused persons had joined the complainant company for 25 days only in order to steal secret information of the company. There was an agreement that they cannot leave the office of the complainant company before 3 years, in this manner they breached the agreement. He adopted the documents Ex.CW1/A to CW1/D as being the official documents maintained by the complainant company. He also adopted the documents Mark B to L. It is stated that the company also made a complaint to SHO, PS Moti Nagar to register a case against accused persons but police did not register any complaint.

6. No other witness was examined by the complainant, hence pre-

summoning evidence was closed.

7. It is argued on behalf of the complainant that accused persons have committed offence punishable U/s 420/406 IPC read with Section 120-B IPC and U/s 43 & 66 of IT Act and they may be summoned for the same.

8. Arguments have been heard, file has been perused by the undersigned.

9. Following are the judgments of Hon'ble Supreme Court of India which have some bearing on the present case.

i). In Indian Oil Corpn. v. NEPC India Ltd. (2006) 6 SCC736 , it was observed:

"13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.

ii). In G.Sagar Suri v. State of U.P. [(2000) 2 SCC 636] Hon'ble Supreme Court has observed: (SCC p.643, para 8) "It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter.

This court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under section 482 of the code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

iii). In Pepsi Foods Ltd. v. Special Judicial Magistrate (1998) 5 SCC 749, it was observed:

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

10. It has been observed by Hon'ble Supreme Court in above stated cases that the order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the

complainant to succeed in bringing charge home to the accused.

11. In the present case complainant has examined 2 witnesses. The first witness CW1 Sh. Abhishek Bhandari simply stated that the accused persons were earlier working in a competitor company of the complainant. He also deposed about the expenditure incurred by the complainant company on relocation of the accused persons. He stated nothing about any criminal act being committed by the accused persons.

12. The second witness CW2 Sh. Akashdeep stated that he handed over a laptop connected to server and provided department related data like customer data, pricing, knowhow of the technology to the accused persons. It is also stated by him that once he saw that both accused persons in connivance with each other were taking out some print outs around 40-45 pages from the company data. It is stated by him that both the accused persons had joined the complainant company for 25 days only in order to steal secret information of the company. There was an agreement that they cannot leave the office of the complainant company before 3 years.

13. All the allegations alleged by CW2 are his apprehensions only as CW2 has not seen what was printed in those 40-45 printed pages. Further the allegation is bald as no date has been mentioned by CW2, when he saw the accused persons taking the alleged data. The complainant company and its employees have presumed that accused persons left their company in 25 days despite there being an agreement of 3 years just in order to steal secret information from the company, however, a Court cannot summon anyone to face criminal trial simply on the apprehension of the complainant. Simply because accused persons were earlier working in a competitor company does not raise a presumption that they joined the complainant company just in order to steal the data. Further the fact that accused persons were earlier working in the competitor company was within the knowledge of the complainant company despite that it employed the accused persons, in such circumstances from the reasoning of the complainant it can also be presumed that complainant company employed the accused persons just in order to get the data of the competitor company, wherein the accused persons were working earlier.

14. To hold a person guilty of cheating, it is necessary to show that he fraudulently induced another persons to do or not to do certain things. In the present case there is no allegation of any such fraudulent or dishonest inducement. The accused persons used the computer system of the complainant only with the permission of the complainant, hence offence U/s 43 read with Section 66 Information Technology Act is also not made out. There is no evidence of misappropriation of any property, which might have been entrusted to the accused persons, hence offence U/s 406 IPC is also not made out in the present case.

15. Apart from the apprehension of the complainant there is no clear cogent and direct evidence on record to prove that the accused persons have committed alleged offences. Thus, there is no prima facie evidence on record to summon the accused persons for any of the offences alleged by the complainant.

16. Apparently, the present complaint has been filed just to pressurize the accused persons in order to recover the expenses made by the complainant company in relocation and training of the accused persons and to recover damages for leaving the complainant company without proper notice.

17. In view of the above stated discussion, this Court is of considered opinion that there is no reliable evidence on record to summon the accused persons to face trial for commission of offences punishable U/s 420/406 IPC read with Section 120-B IPC and U/s 43 & 66 of Information Technology Act. The complaint is accordingly dismissed. Original documents, if any, be returned. File be consigned to Record Room after due compliance.

(GAJENDER SINGH NAGAR) MM-04:West:THC:Delhi 04.06.2016