2024 INSC 142

Non-Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.776 OF 2024

Shiv Jatia ... **Appellant**

versus

Gian Chand Malick & Ors. ... **Respondents**

with
CRIMINAL APPEAL NO.777 OF 2024

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. The appellant in Criminal Appeal no.776 of 2024 is the accused no.2 in the complaint filed by the 1st respondent-complainant under Section 200 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.PC') alleging the commission of offences under Sections 420, 406, 467, 468 and 472 read with Section 120-B of the Indian Penal Code, 1860 (for short, 'the IPC') and Section 13 of the Essential Commodities Act, 1955. The appellants in Criminal Appeal no.777 of 2024 are the accused nos.1, 4 and 5 in the same Complaint. The appellants in these two appeals filed a

petition under Section 482 of the Cr.PC before the High Court of Punjab and Haryana at Chandigarh for quashing the said complaint and for quashing the summoning order dated 16th July 2013 passed on the said complaint. The High Court, by the impugned judgment dated 25th August 2014, dismissed the said petition.

2. On 23rd September 2002, under the Liquified Petroleum Gas (LPG) Distributorship Agreement (for short, 'the Distributorship Agreement'), the accused no.1 – M/s.Energy Infrastructure (India) Limited (for short, 'the accused company') appointed the 2nd respondent-accused no.7 (Arun Sharma, Proprietor of M/s.Arshya Max Agencies) as a distributor for distribution of LPG cylinders in the areas of Panchkula and Chandigarh. The 2nd respondent, on behalf of the accused company, purported to execute a Point of Sale agreement on 7th March 2003 (for short, 'the POS agreement') by which he purported to appoint the 1st Respondent-complainant as a sales outlet (Point of Sale) in the town of Dhanas to sell MaxGas to the consumers. By the POS agreement, the 2nd respondent agreed to pay a flat rate commission per cylinder sold by the 1st respondent-complainant. A demand draft in the sum of Rs.74,900/- was issued in favour of the accused company by the 1st respondent-complainant.

3. The accused company addressed a letter dated 3rd March 2004 to the 2nd respondent alleging serious lapses in

customer services rendered by the 2nd respondent, which allegedly caused a big dent in the reputation of the accused company. Various instances of lapses in service were set out in the said letter. The accused company also stated that the 2nd respondent had illegally supplied the cylinders to the 1st respondent-complainant beyond the assigned territory in Punjab. It was specifically stated in the said letter that the name of the 1st respondent-complainant was not reflected in the records of the accused company as a Point of Sale. The accused company alleged that, thus, the 2nd respondent had committed a breach of the Distributorship Agreement. Another allegation in the said letter was that a cheque issued by the 2nd respondent had been dishonoured.

4. A private complaint was filed by the 1st respondent-complainant on 17th July 2004 before the Illaqa Magistrate, Chandigarh. The allegation in the said complaint is that the 2nd respondent, along with accused nos.5 and 6, approached the 1st respondent-complainant and disclosed that they were involved in the business of manufacturing and selling LPG. The 1st respondent-complainant has relied upon the alleged information furnished by the three accused and their representations. There is an allegation that the accused allured the 1st respondent-complainant to join hands with them and relinquish his old venture of supplying LPG in the market. The 1st respondent-complainant alleged in the complaint that while the POS agreement was executed on 7th March 2004, he paid a sum of Rs.74,900/- to the accused

company by way of a demand draft. It is alleged that the accused company encashed the said demand draft. Further allegation in the complaint is that the 1st respondent-complainant paid the security deposit for 360 empty cylinders at the rate of Rs.700/- per cylinder to the accused and received the cylinders/refills. Based on the assurance that the accused company will supply at least 600 refills against 300 empty cylinders in a month, the 1st respondent-complainant made investments to purchase trucks, engage staff, take telephone connections, etc. The allegation is that apart from the sum of Rs.74,900/-, the 1st respondent-complainant paid a sum of Rs.2,10,000/- to the accused company. It is alleged that the accused company supplied only 250 to 300 refills to the 1st respondent-complainant against the assurance of 600 refills. It is further alleged that from 5th March 2004, the accused company stopped supplying LPG refills to the 1st respondent-complainant. It is alleged that the accused company did not take delivery of the empty cylinders and failed to refund the security deposit. Notwithstanding the letter dated 17th May 2004 sent by the 1st respondent-complainant, no action was taken by the accused company. Therefore, the allegation is that the accused company committed a breach of trust by not refunding the security deposit and not accepting the empty cylinders from the 1st respondent-complainant. It is alleged that there was a common intention on the part of the accused company and other accused to play fraud upon the 1st respondent-

complainant. It is alleged that due to the non-supply of refills by the accused company, the reputation of the 1st respondent-complainant has been adversely affected. The appellant in the Criminal Appeal no.776 of 2024 was arraigned as an accused in the capacity of the Managing Director of the accused company. The 1st appellant in the Criminal Appeal no.777 of 2024 is the accused company. The 2nd and 3rd appellants have been described in the complaint as "liable officers" of the accused company as per the averments made in the complaint. They are the accused nos.4 and 5.

5. The learned Judicial Magistrate, First Class, Chandigarh, from 17th November 2004 onwards, recorded the statements of the 1st respondent-complainant and other witnesses. After examining the witnesses, on 15th December 2011, the learned Magistrate held that for proper adjudication of the case, it was necessary to send the complaint to the jurisdictional police station for investigation in accordance with Section 202 of the Cr.PC. According to the case made out by the appellant, a report under Section 202 of the Cr.PC was never submitted by the Police, and without waiting for the said report, the learned Magistrate passed the summoning order on 16th July 2013 for the offences punishable under Sections 420, 406, 467, 468 and 472 read with Section 120-B of the IPC and Section 13 of the Essential Commodities Act, 1955. By the impugned judgment and order dated 25th August 2014, the High Court dismissed the quashing petition by holding that disputed questions of fact were involved in the

petition, which can be dealt with only after recording evidence.

SUBMISSIONS

6. The learned senior counsel appearing for the appellant pointed out that sub-section (1) of Section 202 of Cr.PC provides that if an accused resides at a place beyond the area where the learned Magistrate exercises his jurisdiction, the issue of process shall be postponed by directing that a police officer or any other person should make an investigation. An option is available to the learned Magistrate to inquire into the case himself. He submitted that from the record of the Trial Court called for by this Court and from the affidavit filed by the 3rd respondent-Union Territory of Chandigarh, it is established that the report under Section 202 of the Cr.PC was not received by the Court before passing the order of summoning. The Police forwarded no such report. He urged that in view of sub-section (1) of Section 202 of the Cr.PC, as the individual accused were admittedly residing outside the territorial jurisdiction of the learned Magistrate, without compliance with Section 202 of the Cr.PC, the order of summoning could not have been passed. He submitted that the three accused were the residents of New Delhi. He, thus, submitted that the summoning order was completely illegal. He submitted that the accused company is a limited company which never authorised the 2nd respondent-7th accused to execute the said agreement on its behalf. He submitted that

in any case, on the plain reading of the complaint, there is no allegation against the appellants about the commission or omission of any acts which constitute any offence. He submitted that, reading the complaint as a whole, it is apparent that no case was made out to issue a process against the appellants. He pointed out that the High Court has not considered the case on merits.

7. The learned senior counsel appearing for the 1st respondent-complainant submitted that though the Police report under Section 202 of the Cr.PC may not have been on record, but it cannot be said that the Police had not prepared any such report. He submitted that by the Distributorship Agreement, the accused company had appointed the 2nd respondent as its distributor of LPG cylinders. Therefore, the 2nd respondent was competent enough to execute an agreement on behalf of the accused company in favour of the 1st respondent-complainant. He submitted that the security deposit amount had gone to the account of the accused company. He submitted that the ingredients of the offences alleged were made out on a plain reading of the complaint. Whether the 2nd respondent was empowered to execute the said agreement on behalf of the accused company can be decided only after evidence is adduced. He also submitted that on a plain reading of sub-section (1) of Section 202 of the Cr.PC, it was not necessary for the learned Magistrate to appoint a Police Officer to carry out the investigation. The learned Magistrate had the jurisdiction to conduct an inquiry

himself as specifically provided under sub-section (1) of Section 202 of the Cr.PC. He submitted that the learned Magistrate recorded the statements of the 1st respondent-complainant and two other witnesses. The 1st respondent-complainant, also produced documents in support of the complaint. He submitted that the recording of the evidence of three witnesses and consideration of the documents by the learned Magistrate constitutes an inquiry under sub-section (1) of Section 202 of the Cr.PC. He would, therefore, submit that the High Court has rightly held that this is a case where the 1st respondent-complainant, should be allowed to lead evidence. The issues raised by the appellant can be decided only after the evidence is adduced.

CONSIDERATION OF SUBMISSIONS

8. In this case, there is no dispute that some of the accused, including three of the appellants, were residing outside the territorial jurisdiction of the Court of the learned Magistrate before whom the complaint was filed by the 1st respondent–complainant. Sub-section (1) of Section 202 of the Cr.PC was amended with effect from 23rd June 2006 by the Act No.25 of 2005. Sub-section (1) of Section 202 of the Cr.PC, as amended, reads thus:

> **"202. Postponement of issue of process.—**
> (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under

> section 192, may, if he thinks fit, **and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,** postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:
>
> Provided that no such direction for investigation shall be made,—
>
> (a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or
>
> (b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.**"**
>
> **(emphasis added)**

The portion starting from "and" and ending with "his jurisdiction" was added with effect from 23rd June 2006. The requirement of postponing the issue of the process was introduced on 23rd June 2006 which is applicable only when one of the accused stays outside the jurisdiction of the court. The said requirement is held to be mandatory. The mandatory requirement of postponing the issue of the process because the accused was residing at a place beyond the area where the learned Magistrate exercises his jurisdiction was not applicable when the complaint was filed in 2004. The

mandate introduced with effect from 23rd June 2006 was not applicable on the date of filing of the complaint. We are not examining whether the amended provision will apply to a complaint filed before 23rd June 2006 in which the order of issue of process has been passed after 23rd June 2006.

9. We may note here that when the order dated 15th December 2011, calling for the report from the concerned Police Station under Section 202 of the Cr.PC was passed, the learned Magistrate had already recorded the evidence of the 1st respondent-complainant and two witnesses–S.C.Mahto (CW-1) and Rajiv Kumar (CW-3). Therefore, after recording the evidence of the three witnesses, the learned Magistrate was not satisfied that the material on the record of the complaint, including the testimony of the three witnesses, was sufficient to pass the summoning order. That is why the learned Magistrate had called for the report under Section 202 of the Cr.PC.

10. Initially, some controversy was raised as the order dated 17th December 2012, passed by the learned Magistrate, records that a report was received. Therefore, we called for a soft copy of the record of the complaint. The record reveals that the report referred to in the order dated 17th December 2012 was submitted by the Police, seeking two more months to file the report. It is an admitted position that on record of the complaint, the report made by the Police under Section 202 of the Cr.PC was not received. In any case, Shri

Kanwardeep Kaur, IPS, Senior Superintendent of Police, Union Territory of Chandigarh, in the affidavit filed on 24th October 2023, categorically stated that the Police did not file the report under Section 202 of the Cr.PC till 16th July 2013, when the summoning order was issued by the learned Magistrate.

11. After recording the evidence of the three witnesses and perusing the documents on record, the learned Magistrate passed the order calling for the report under Section 202 of the Cr.PC. He postponed the issue of the process. The learned Magistrate ought to have waited until the report was received. He had an option of conducting an inquiry contemplated by sub-section (1) of Section 202 of the Cr.PC himself due to the delay on the part of the Police in submitting the report. But, he did not exercise the said option. For issuing the order of summoning, the learned Magistrate could not have relied upon the same material which was before him on 15th December 2011 when he passed the order calling for the report under Section 202 of the Cr.PC. The reason is that, obviously, he was not satisfied that the material was sufficient to pass the summoning order. It is not the case of the 1st respondent-complainant that when the learned Magistrate passed the order dated 16th July 2013, there was some additional material on record. At least, the order of the learned Magistrate does not say so. The order does not even consider the earlier order dated 15th December 2011 calling for the report under sub-section (1) of Section 202 of the

Cr.PC. The order issuing process has drastic consequences. Such orders require the application of mind. Such orders cannot be passed casually. Therefore, in our view, the learned Magistrate was not justified in passing the order to issue a summons.

12. Therefore, an order of remand is warranted. But, we cannot overlook that the complaint subject matter of these appeals was filed on 17th July 2004, and the order of summoning was passed nine years thereafter, i.e. on 13th August 2013. The complaint is nearly twenty years old; even the summoning order was passed eleven years ago. Therefore, we allowed the learned senior counsel appearing for the parties to address us on merits. We may note that the High Court has not recorded cogent reasons for not entertaining the prayer for quashing the complaint. The only reason given by the High Court is that there were disputed questions of fact, and therefore, the controversy can be decided only after evidence is recorded.

13. We have perused the averments made in the complaint and examined the documents relied upon by the 1st respondent-complainant. The first document is the Distributorship Agreement dated 23rd September 2002 executed by the accused company in favour of the 2nd respondent-Arun Sharma, in his capacity as the Proprietor of M/s.Arshya Max Gas. Under the said agreement, the accused company appointed the 2nd respondent as its exclusive

distributor confined to the territory specified in Annexure–A to the agreement. The territory was limited to Panchkula and Chandigarh. Clause 1 of the said agreement clearly states that the 2nd respondent accepted the appointment as an exclusive distributor of the accused company in the territory as defined in Annexure-A. Taking the said agreement as correct, there is no clause in the agreement which allows the 2nd respondent to appoint anyone as a sales outlet (Point of Sale) on behalf of the accused company.

14. Now, we come to the POS agreement relied upon in the complaint. A photocopy of the agreement is placed on record. The agreement is purportedly executed on behalf of the accused company by the 2nd respondent, showing his designation below his signature as the Proprietor of M/s.Arshya Max Gas. Admittedly, neither any Director nor any officer of the accused company has signed the same. The said agreement does not contain anything to show that the accused company had authorised the 2nd respondent to execute the said agreement. There is no such recital. In the complaint as well as in the deposition of the 1st respondent–complainant, it is stated that in February and March, 2003, accused no.7 (2nd respondent) and accused nos.4 and 5 approached him for involving him in their business and appoint him as their Point of Sale for the area of Chandigarh and its surroundings. It is stated that the accused company and other accused (except accused no.7) had appointed respondent no.7 as the sole distributor in Chandigarh. In his

deposition, the 1st respondent-complainant stated that the 2nd respondent provided empty cylinders to the 1st respondent-complainant on payment of a security deposit of Rs.700/- per cylinder. Thus, the empty cylinders were not provided by the accused company. The 1st respondent–complainant deposed that the POS agreement was executed by the 2nd respondent–accused no.7, and he identified the signature of the 2nd respondent. Only one thing is relevant in his evidence: he claims that a demand draft of Rs.74,900/- was issued in the name of the accused company and was encashed by the accused company. There is a specific averment in the complaint that the appellant-accused no.2 was the Managing Director of the accused company. Very general allegations are made in the complaint by referring to the "accused" without explicitly referring to any particular accused. But, the claim is that the money was taken by the accused company and the agreement was executed in favour of the 1st respondent–complainant by the accused company, which was signed by the 2nd respondent, who was neither an Officer nor a Director of the accused–company. It is not the case in the complaint that the 2nd respondent was authorised by the Board Resolution of the accused company to sign the POS agreement with the 1st respondent–complainant. The Distributorship Agreement executed by the accused company did not authorise the 2nd respondent to execute the POS agreement on behalf of the company. Moreover, it is not the case that the 1st respondent complainant handed over the

demand draft to any of the directors of the accused company. It was apparently handed over to the 2nd respondent. The deposit of the demand draft in the account of the accused company will, at the most, give rise to civil liability. Even the empty cylinders were provided to the 1st respondent-complainant by the 2nd respondent against the deposit. The accused company had no role in this. There is no contractual relationship between the accused company and the 1st respondent-complainant.

15. In fact, the entire dispute is of a civil nature arising out of a commercial transaction. Therefore, in our considered view, taking the complaint and documents relied upon by the 1st respondent–complainant as correct, no case was made in the complaint or in the evidence of the 1st respondent to proceed against the appellants. The evidence of CW-3 (Rajiv Kumar) shows that he has stated that the 2nd, 5th and 6th respondents in the Criminal Appeal of accused no.2 had approached the 1st respondent–complainant and had represented that the accused company is a limited company and accused nos.2 to 4 are its Directors. There is no allegation that the accused company was involved, in any manner, with the transaction between the 2nd accused and the 1st respondent–complainant. Hence, continuing the complaint against the appellants will amount to an abuse of the process of law. Therefore, a case is made out for quashing the complaint as against the appellants.

16. Hence, the Appeals must succeed. The impugned judgment dated 25th August 2014 is set aside insofar as the appellants are concerned. The complaint bearing Criminal Complaint no.128 dated 17th July 2004 pending in the Court of Judicial Magistrate, 1st Class, Chandigarh is, hereby, quashed only insofar as the appellants are concerned. The complaint will proceed against the rest of the accused. The other accused can raise appropriate defences at the time of framing charge or Trial. The Appeals are partly allowed on the above terms with no order as to costs.

.....J.
(Abhay S. Oka)

.....J.
(Ujjal Bhuyan)

New Delhi;
February 23, 2024.