SUPREME COURT OF INDIA

Shree Mahavir Carbon Ltd

Vs.

Om Prakash Jalan (Financer)

Crl.A.No.1875 of 2013

(K.S.Radhakrishnan and A.K.Sikri, JJ.)

28.10.2013

JUDGMENT

A.K.Sikri, J.

1. Leave granted.

2. The appellant-company has filed a complaint registered as ICC No.62/2008 under Sections 420/406/468/471, Indian Penal Code against the respondent herein and two others. After recording preliminary evidence, the learned Judicial Magistrate First Class (JMFC), Salipur, Orissa took cognizance of the aforesaid offence and issued summons to the accused persons including the respondents. On receiving the summons, the respondents filed applications under Section 482 of the Code of Criminal -Procedure with a prayer that orders dated 9.6.2008 by the learned JMFC taking cognizance of the complaint be quashed. It was pleased that the complaint was with regard to rendition of accounts maintained by the accused persons in respect of business between the complainant and the accused persons and therefore the dispute was of civil nature. The High Court has allowed the said application thereby setting aside orders taking cognizance of the offence. It is this order which is challenged by the appellant-complainant in these proceedings.

3. The impugned order is two page order. After taking note of facts in one paragraph, the High Court has allowed the application and quashed the order taking cognizance of the

offence and the discussion leading to this judgment is contained in the following paragraph:

> "On perusal of the nature of allegations made in the complaint petition and the statements given by the complainant and the witnesses, it is clearly disclosed that the dispute is civil in nature relating to settlement of the accounts between the parties and no offence is made out."

4. Questioning the rationality of the aforesaid order, Mr. Ganguli, the learned senior counsel appearing for the appellant, took us through the various paragraphs of the complaint on the basis of which he made an attempt to demonstrate that it was not simply a civil dispute pertaining to - settlement of accounts between the parties. He also argued that the High Court had allowed petition filed by the respondent under Section 482,Cr.P.C. without giving any reason inasmuch as the impugned judgment hardly contained any discussion for arriving at the conclusion that the dispute in question was civil in nature. Learned senior counsel, who appeared for the respondent, though tried to argue that conclusion of the High Court that dispute was of civil nature, he candidly concededly that the impugned judgment does not disclose as to how this finding was arrived at and that it was a non-speaking order. He, thus, submitted that instead of this Court is examining the issue, the matter be relegated back to the High Court for hearing afresh. Mr. Ganguly also accepted this suggestion of Mr. Giri. Accordingly, we set aside the impugned judgment and remand the case back to the High Court to decide the same with direction to hear afresh the petition filed by the respondent under Section 482 of the Cr.P.C. and decide it on merits without being influenced by the earlier view taken in the impugned order dated 16.1.2012.

5. Before we part with, we would like to observe that this case necessitates making certain comments on the importance of rationale legal reasoning in support of judicial orders. From the extracted portion, which is the only discussion on the merits of the matter, it can clearly be discerned - that what is stated is the conclusion and no reasons are given by the High Court for holding that dispute between the parties is civil in nature. The complainant in its complaint had made various specific allegations of cheating, siphoning of funds and falsification of accounts etc. In the complaint filed by the appellant, the appellant averred that it is engaged in the business of manufacturing and sale of low ash phos metallurgical coke. The appellant entered into a tripartite agreement dated 08.04.2003 with Om Prakash Jalan respondent No.1 herein and Mr. Rajeev Maheshwari- Respondent No.3 herein. In this agreement Respondent Nos.1 and 3 agreed to provide sufficient funds for expansion of the coke oven plant owned by the appellant and in consideration thereof the respondents were to be allotted 70% of the existing shares of the appellant company while 30% of its shares were to be retained by the existing shareholders. It was also agreed that the Board of Directors of the appellant Company would be reconstituted with three directors consisting of one nominee of the appellant company, and one nominee each from the respondent companies. Respondent No.1 was to become the Managing Director of the Company. It was further agreed between the parties that while the respondent would bring in the additional working capital for operation and expansion of the plant but

one of the - contracting parties shall be entitled to withdraw any profits till such time there is enough working capital in the company.

6. It was further agreed that the profit and loss as earned for the new expansion would be shared in the same ratio till 31st March 2004 and thereafter on the total plant would also be shared in the same ratio. Pursuant to the said agreement the control and management of the appellant company and its Coke Oven Plant was virtually taken over by the respondents while they remained responsible to both the Company and its existing shareholders who have been running the business since the inception of the company till the execution of the tripartite agreement.

7. As per the allegation in the complaint, no sooner the respondents assumed control over the business of the appellant company, the respondents started indulging in large scale fraudulent transactions for and on behalf of the company, subjecting the appellant company to great loss and consequences and also foisted civil and criminal liabilities on the company as well as its Directors and shareholders. Large amount of money from the appellant company's account was allegedly siphoned out in favour of third parties without the appellant company having any transaction with them. Large amounts were also allegedly deposited in the appellant company's account in cash purportedly received by them from third parties, thus - making the appellant company, its directors and shareholders liable for violation of laws and commission of crime. It was also alleged that large sums of money was also siphoned out from bank accounts of the appellant company and paid to third parties without the company entering into any transaction with them.

8. In the complaint instances of siphoning of the funds by the accused persons to its own company have been given. On this basis, the appellant/complainant sought to make a complaint that the aforesaid acts of the accused persons amounted to offence since punishable under Sections 419,420,406,486,471 of the IPC.

9. The JMFC after going through the preliminary evidence recorded by him had chosen to take cognizance of the matter. Challenge against this order has been accepted by the High Court it becomes the bounden duty of the High Court to give appropriate and sufficient reasons on the basis of which it arrived at a conclusion, the dispute was merely that of accounts with no elements of criminality. We are conscious of the legal position that Ingredients of each of the provisions of IPC, which is sought to be foisted upon the respondents, are to be prima facie established before cognizance of the complaint is taken by the Judicial Magistrate. However, when the summoning order is quashed holding that it is a civil dispute, various - allegations and averments made in the complaint and preliminary evidence led in support thereof has to be appropriately dealt with by the High Court. We are not commenting upon the merits of these allegations. However, there is no discussion worth the name, in the impugned judgment, as to how and on what basis the High Court accepted such a plea of the respondents herein, in recording its conclusion that it was a case of rendition of accounts simplicitor.

10. After all the High Court was setting aside the order of the Subordinate Court by which Subordinate Court had taken cognizance in the matter. This could be done after appropriately dealing with the contentions of both the parties, more specially when it was first judicial review of the orders of the Court below. In *Hindustan Times Ltd. vs. Union of India*[1], this Court made pertinent observation in the context:

> "In an article on Writing Judgments, Justice Michael Kirby (1990) 64 Austr L.J p.691) of Australia, has approached the problem from the point of the litigant, the legal profession, the subordinate Courts/tribunals, the brother Judges and the Judge's own conscience. To the litigant, the duty of the Judge is to uphold his own integrity and let the losing party know why he lost the case. The legal profession is entitled to have it demonstrated that the Judge had the correct principles in mind, had properly applied them and is entitled to examine the body of the judgment for the learning and precedent that they provide and for the reassurance of the quality of the judiciary which is still the centre-piece of our administration of justice. It does not take long for the profession to come to know, including through the written pages of published judgments, the lazy Judge, the Judge prone to errors of fact, etc. The reputational considerations are important for the exercise of appellate rights, for the Judge's own self discipline, for attempts at improvement and the maintenance of the integrity and quality of our judiciary. From the point of view of other Judges, the benefit that accrues to the lower hierarchy of Judges and tribunals is of utmost importance. Justice As prey of Australia has even said *in Petit vs. Dankley*[2], that the failure of a Court to give reasons is an encroachment upon the right of appeal given to a litigant.
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> It was finally stated:
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> "In our view, the satisfaction which a reasoned judgment gives to the losing party or his lawyer is the test of a good judgment. Disposal of cases is no doubt important but quality of the judgment is equally, if not more, important. There is no point in shifting the burden to the higher Court either to support the judgment by reasons or to consider the evidence or law for the first time to see if the judgment needs a reversal.
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> In that case, the order of dismissal of the writ petition by the High Court was affirmed by us but the task fell on the Supreme Court, to inform the appellant why it had lost the case in the High Court."

11. In the present case, we have avoided to do this exercise and have not gone into the merits of the case to find out whether the conclusion of the High Court is correct or not, as the counsel for both the parties have agreed for remand of the matter.

12. It is no where suggested by us that the judgment should be too lengthy or prolix and

disproportionate to the issue involved. However, it is to be borne in mind that the principal objective in giving judgment is to make an effective, practical and workable decision. The court resolves conflict by determining the merits of conflicting cases, and by choosing between notions of justice, convenience, public policy, morality, analogy, and takes into account the opinions of other courts or writers (Precedents). Since the Court is to come to a workable decision, its reasoning and conclusion must be practical, suit the facts as found and provide and effective, workable remedy to the winner.

13. We are of the opinion that while recording the decision with clarity, the Court is also supposed to record sufficient reasons in taking a particular decision or arriving at a particular conclusion. The reasons should be such that they demonstrate that the decision has been arrived at on a objective consideration.

14. When we talk of giving "reasons" in support of a judgment, what is meant by "reasons"? In the context of legal decision making, the focus is to what makes something a legal valid reason. Thus, "reason would mean a justifying reason, or more simply a justification for a decision is a consideration, in a non-arbitrary ways in favour of making or accepting that

decision. If there is no justification in support of a decision, such a decision is without any reason or justifying reason.

15. We are not entering into a jurisprudential debate on the appropriate theory of legal reasoning. It is not even a discourse on how to write judgments. Our intention is to simply demonstrate the importance of legal reasoning in support of a particular decision. What we have highlighted is that instant is a case or arriving at a conclusion, in complete absence of reasons, what to talk of adequate or good reasons that justifying that conclusion.

16. In the given case, it was required by the High Court to take note of the arguments of the complainant on the basis of which complainant insist that ingredients of the particular offences alleged are prime facie established justifying the cognizance of the complaint and the arguments of the respondents herein on the basis of which respondents made an endeavor to demonstrate that it was a pure civil dispute with no elements of criminality attached. Thereafter, the conclusion should have been backed by reasons as to why the arguments of the complainant are merit less and what is the rationale basis for accepting the case of accused persons. We hope that this aspect would be kept in mind by the High Court while deciding the case afresh.

17. Accordingly, this appeal is allowed and the impugned order is set aside with direction as aforesaid. No costs.

Judgment Referred

1(1998) 2 SCC 0242

2(1971) 1 NSWLR 0376 (CA)