

Crl. Misc. No. M-17337 of 2011

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Crl. Misc. No. M-17337 of 2011 (O&M)

Date of decision: 03.03.2015

Sunil Kumar Salaria and another

....Petitioners

Versus

State of Punjab and another

....Respondent

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

Present: - Mr. Rohiteshwar Singh, Advocate, for the petitioners.

Mr. S.S. Chandumajra, DAG, Punjab.

PARAMJEET SINGH, J. (ORAL)

Instant petition under Section 482 of the Code of Criminal Procedure has been filed for quashing FIR No.12 dated 04.02.2011 registered under Sections 406/420 IPC at Police Station Mukerian, District Hoshiarpur, along with all consequential proceedings.

Brief facts for disposal of the present petition are to the effect that petitioner No.1 was an employee of respondent No.2/complainant and had been working as a salesman with the complainant. When a sum of ₹ 11,52,000/- became due against petitioner No.1 he stopped working for respondent No.2. When respondent No.2 approached petitioner No.1 for payment, he made one or the other excuse and his father stood by him completely in this regard. However, with the intervention of the respectables, petitioner No.1 agreed in writing to pay ₹ 6,50,000/- in instalments and respondent No.1 agreed to recover rest of the payment

Crl. Misc. No. M-17337 of 2011

from the parties to whom goods had been supplied. However, even after settlement no payment was made. It is submitted that articles had been entrusted to petitioner No.1 which have been allegedly sold by him and he has misappropriated the sale proceeds of those articles.

In pursuance of notice of motion respondents No.1 and 2 filed separate replies. In its reply respondent No.1 has averred that on the application moved by respondent No.2-complainant police authorities conducted an enquiry wherein it was found that respondent No.2 had to receive ₹ 11,52,000/- from the petitioners regarding the bills of mobiles, however, petitioners refused to pay the same. Thus, case under Sections 406/420 IPC was registered against the petitioners.

In his reply respondent No.2 has averred that petitioner No.1 was working with respondent No.2 as a sub-supplier and was supplying mobiles to small shop owners. He was to handover payment of the sold mobiles to respondent No.2, which he kept with him and thus committed fraud with respondent No.2. Petitioner No.1 also executed an agreement to pay the amount but he failed to do so. FIR has been registered against the petitioner after due enquiry. No cause of action has arisen to the petitioners to invoke the inherent jurisdiction of this Court.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioners contends that petitioner No.1 was employed as a Salesman with the complainant and he used to sell goods on behalf of the complainant. Learned counsel contends that

Crl. Misc. No. M-17337 of 2011

goods were sold by petitioner No.1 on behalf of the complainant to various parties and if those parties fail to pay the dues, petitioners cannot be held liable for the offence punishable under Section 406 IPC. Learned counsel for the petitioners further contends that it is incumbent upon the complainant to prove that petitioner No.1 had actually received any payment from the persons, to whom the goods were sold and has misappropriated the same.

Learned State counsel contended that in the enquiry made by the police authorities, petitioners have been found guilty for the offence punishable under Sections 406 and 420 IPC. The petitioners have misappropriated the payment and refused to pay the same to the complainant.

I have considered the contentions raised by learned counsel for the parties.

Admittedly, petitioner No.1 was working as a Salesman with the complainant. He used to sell the goods on behalf of the complainant and used to recover the payment from the parties to whom the goods were sold. Once the goods are sold, petitioner was bound to pay the received amount to the owner of the goods. Petitioner No.1 was entrusted the goods in good faith being employee-Salesman, however, he had not paid the amount to the complainant received for the goods rather stated that the amount had not been paid by the purchasers. The contention of the learned counsel for the petitioners that petitioner was selling the goods on behalf of the complainant and the payment can be

Crl. Misc. No. M-17337 of 2011

recovered from the purchasers, cannot be accepted at this stage. Entrustment of goods to petitioner No.1 is an admitted fact and some of the articles have been further sold and amount has not been shown to be deposited with the complainant or recovered from the persons to whom the goods were sold. Said amount prima facie appears to have been fraudulently misappropriated by the petitioners and offence under Section 406 IPC is prima facie made out against the petitioners. Besides this, there are allegations under Section 420 IPC against the petitioners that petitioner had received the goods and thereafter sold the same to other persons. Entrustment of goods is admitted but no amount has been allegedly received by the petitioners from the persons to whom the goods were sold. As a result of which it is not forthcoming as to where the said amount has gone and has not been accounted for. Otherwise also, the case is at initial stage.

In view of the settled position of law that at the stage of investigation FIR cannot be quashed, petition is devoid of any merit.

Dismissed.

However, anything expressed hereinabove shall not be taken as an expression on the merits of the case.

(Paramjeet Singh)
Judge

March 03, 2015
R.S.