

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-17809-2013

Date of decision: 21.07.2015

Ranjit Singh

... Petitioner

Vs.

State of Punjab and anr.

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. G.S. Bhatia, Advocate
for the petitioner.

Ms. Anmol Grewal, AAG, Punjab.

Mr. A.S. Sodhi, Advocate
for respondent No.2.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J.

Petitioner, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seeks quashing of FIR No.14 dated 14.01.2013 under Section 406 of the Indian Penal Code ('IPC' for short), registered at Police Station Ferozepur City, District Ferozepur, as Annexure P-2 and the consequential proceedings arising therefrom.

Notice of motion was issued and any further action pursuant to the impugned FIR was stayed. Both the respondents filed their separate replies.

Learned counsel for the petitioner submits that neither there was any occasion for the petitioner to commit the offence in question, nor any such case was made out against the petitioner. He submits that even if the allegations levelled against the petitioner in the impugned FIR are taken to be true on their face-value, still no offence was made out against the petitioner. Simply because the petitioner has sold the hypothecated goods, would not amount to criminal breach of trust, as defined under Section 405 IPC. House of the petitioner already stands as collateral security against the loan amount. Petitioner has mortgaged his house with the respondent-Bank and a symbolic possession thereof had already been taken by the respondent-Bank, so as to recover the loan of Rs.2 lacs. The impugned FIR was registered six years after the account of the petitioner was declared as a Non-Performing Account ('NPA' for short).

So far as the petitioner was concerned, he did not file any civil litigation against the respondent-Bank, qua the mortgaged house of the petitioner. Learned counsel for the petitioner would next contend that in addition to the above, suit for recovery filed by the respondent-Bank against the petitioner is also pending. In support of his contentions, learned counsel for the petitioner places reliance on the following judgments of the Hon'ble Supreme Court as well as this Court: -

1. *CBI, New Delhi Vs. Duncans Agro Industries Ltd., 1996 (3) RCR (Crl.) 60 (SC).*
2. *M/s Indian Oil Corporation Vs. M/s NEPC India Ltd., 2006 (3) RCR (Crl.) 740 (SC).*
3. *M/s Thermax Ltd. Vs. K.M. Johny, 2011 (4) RCR (Crl.) 409 (SC).*
4. *Alpic Finance Ltd. Vs. P. Sadasivan, 2001 (1) RCR (Crl.)*

756 (SC)

5. *Anil Mahajan Vs. Bhor Industries Ltd., 2006 (4) RCR (Crl.) 834 (SC)*
6. *Rajnish Lathar Vs. State of Haryana, 2008 (1) RCR (Crl.) 801 (Pb & Hry HC)*
7. *Rameshwar Dass Garg Vs. Punjab National Bank, 2003 (3) RCR (Crl.) 171 (Pb & Hry HC)*
8. *M/s Deva Disc and Tiller Vs. Haryana Financial Corp., 2003 (1) RCR (Crl.) 722 (Pb & Hry HC)*
9. *S.P. Bajaj Vs. State of Haryana, 2003 (1) RCR (Crl.) 583 (Pb & Hry HC)*
10. *Sunita Bajaj Vs. Punjab and Sind Bank, 1998 (1) RCR (Crl.) 129 (Pb & Hry HC)*
11. *Ashok Kumar Grover Vs. State of Haryana, 1996 (3) RCR (Crl.) 122 (Pb & Hry HC).*

He prays for quashing of the impugned FIR as well as the subsequent proceedings arising therefrom, by allowing the present petition.

On the other hand, learned counsel for the State as well as learned counsel for respondent-Bank would contend that the petitioner is not entitled to invoke the inherent jurisdiction of this Court under Section 482 Cr.P.C., because the present petition is misconceived and bereft of any merit. They further submit that the petitioner has committed the offence under Section 406 IPC, by selling the hypothecated goods in violation of the terms and conditions of loan agreement. Petitioner also changed the name of his firm. The hypothecated goods were sold by the petitioner with malafide intention because of which he is not entitled for any relief at the hands of this Court. They jointly pray for dismissal of the present petition.

Having heard the learned counsel for the parties at considerable

length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the present case, referred to hereinabove, instant one has been found to be a fit case for exercising inherent jurisdiction of this Court under Section 482 Cr.P.C. To say so, reasons are more than, which are being recorded hereinafter.

The abovesaid factual background of the case is not in dispute. In addition to the hypothecated goods, petitioner has mortgaged his house with the respondent-Bank as a collateral security against the loan of Rs.2 lacs. It is also not in dispute that the symbolic possession of the mortgaged house has been taken by the respondent-Bank. The impugned FIR came to be registered by the respondent-Bank six years after the account of the petitioner had been declared NPA. Further, suit for recovery filed by the respondent-Bank against the petitioner is also pending, whereas petitioner did not initiate any civil litigation in this regard. Having said that, this Court feels no hesitation to conclude that the registration of the impugned FIR amounts to misuse of process of law. Continuation of the criminal proceedings arising out of the impugned FIR, would further defeat the ends of justice because of which the instant petition deserves to be allowed, by quashing the impugned FIR as well as the subsequent proceedings arising therefrom.

The abovesaid view taken by this Court also finds support from the abovesaid judgments relied upon by learned counsel for the petitioner. The law laid down by the Hon'ble Supreme Court in the case of **Duncans Agro Industries Ltd.** (supra), clearly comes to the rescue of the petitioner. Referring to the principles of law laid down in its celebrated judgment in the

case of **State of Haryana and others Vs. Bhajan Lal and others, 1992 AIR 604**, in paras 26 and 27 of its judgment in **Duncans Agro Industries Ltd.'s** case (supra), the Hon'ble Supreme Court, observed as under: -

“After giving our careful consideration to the facts and circumstances of the case and the submissions made by the respective counsel for the parties, it appears to us that for the purpose of quashing the complaint, it is necessary to consider whether the allegations in the complaint prima facie make out an offence or not. It is not necessary to scrutinize the allegations for the purpose of deciding whether such allegations are likely to be upheld in the trial. Any action by way of quashing the complaint is a action to be taken at the threshold before evidences are led in support of the complaint. For quashing the complaint by way of action at the threshold. It is, therefore, necessary to consider whether on the face of the allegations, a criminal offence is constituted or not. In recent decisions of this Court, the case of Bhajan Lal (supra), since relied on by Mr. Tulsi, the guiding principles in quashing a criminal case have been indicated.

In the instant case, a serious dispute has been raised by the learned counsel appearing for the respective party as to whether on the face of the allegations, an offence of criminal breach of trust is constituted or not. In our view, the expression 'entrusted with property' or 'with any dominion over property' has been used in wide sense in Section 405 I.P.C. Such expression includes all case in which goods are entrusted, that

is, voluntarily handed over for a specific purpose and dishonestly disposed of in violation of law or in violation of contract. The expression 'entrusted' appearing in Section 405 I.P.C. is not necessarily a term of law. It has wide and different implication in different context. It is, however, necessary that the ownership or beneficial interest in the ownership of the property entrusted in respect of which offence is alleged to have been committed must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. The expression 'Trust' in Section 405 I.P.C. is a comprehensive expression and has been used to denote various kinds of relationship like the relationship of trustee and beneficiary, bailer and bailee, master and servant, pledger and pledgee. When some goods are hypothecated by a person to another person, the ownership of the goods still remains with the person who has hypothecated such goods. The property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or the beneficial interest in or ownership of it must be in other person and the offender must hold such property in trust for such other person or for his benefit. In a case of pledge, the pledged article belongs to some other person or for his benefit. In a case of Pledge, the pledged article belongs to some other person but the same is kept in trust by the pledgee. In the instant case, a floating charge was made on the goods by way of security

to cover up credit facility. In our view, in such case for disposing of the goods covering the security to cover up credit facility. In our view, In such case for disposing of the goods covering the security to cover up credit facility. In our view, in such case for disposing of the goods covering the security against credit facility the offence of criminal breach of trust is not committed.

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The abovesaid view taken by the Hon'ble Supreme Court has been further followed consistently in numerous later judgments, including in the case as referred to hereinabove.

Reverting back to the facts of the present case and respectfully following the law laid down by the Hon'ble Supreme Court as well as this Court in the cases referred to hereinabove, it is unhesitatingly held that since the impugned FIR and proceedings arising therefrom amount to misuse of process of law, the same are liable to be set aside, for this reason also.

During the course of hearing, when a pointed question was put by this Court to learned counsel for the respondents as to how any offence, whatsoever, is made out against the petitioner in terms of the allegations levelled against him in the impugned FIR, learned counsel for the respondents had no answer and rightly so because it was a matter of record. Under these circumstances, it can be safely concluded the impugned FIR as well as the proceedings arising therefrom are liable to be set aside, so as to secure the ends of justice and also for preventing the abuse of process of law.

No other argument was raised.

Considering the peculiar facts and circumstances of the case

noted above, coupled with the reasons aforementioned, this Court is of the considered view that present petition deserves to be allowed. Consequently, impugned FIR as well as subsequent proceedings arising therefrom, are hereby quashed.

Resultantly, with the abovesaid observations made, present petition stands allowed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

21.07.2015
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