

CRM-M-16440-2014 (O&M)

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

**CRM-M-16440-2014 (O&M).
Decided on: January 19, 2015.**

Siri Chand Saini and another

..... Petitioner(s)

Versus

State of Haryana

..... Respondent(s)

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CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

**PRESENT Mr.Sachit Kumar Sahijpal, Advocate,
for the petitioners.**

Mr.M.S.Sidhu, Addl. A.G., Haryana.

**Mr.Vikas Chauhan, Advocate,
for the complainant.**

M.M.S. BEDI, J (ORAL)

Petitioners seek concession of pre-arrest bail in a case registered at the instance of General Manager of M/s JSW Steel Limited alleging that petitioner No.1 had promised the complainant to make available 72 acres of land in village Bamnikhera and Atohan, District Palwal, @ ₹82,50,000/- per acre within a period of 180 days. A sum of ₹7.02 crore was paid to the petitioners but the petitioners informed the complainant that the farmers were demanding higher rate as such, the petitioners were asked to return the amount paid to them. The petitioners allegedly forged receipts of the farmers to evade their liability. Petitioner No.1 had allegedly

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issued two cheques of ₹3 crore to return the amount received from the complainant but the said cheques were not honoured.

Counsel for the petitioners has vehemently contended that it is a case of civil liability and an economic offence for which the FIR could not have been registered directly without holding a preliminary enquiry as per judgment in **Lalita Kumari Vs. Govt. of U.P. and others, 2013 (4) RCR (Crl.) 979.**

I have heard the learned counsel for the petitioners and the learned counsel for the complainant as well as the State counsel.

At the initial stage, on 19.5.2014, counsel appearing for the petitioner had submitted before this Court that the petitioners were ready to discharge their liability/partial liability as per the allegations in the FIR without prejudice to their legal rights. Interim bail was granted observing that out of 5.86 crores due to the petitioners, they will pay a sum of Rs.3 crores by paying Rs.1 crore in the shape of bank draft on 20.6.2014 and the remaining amount of Rs.2 crores on different date i.e., on 5.7.2014. The said order was passed taking into consideration the admitted liability of the petitioners to the extent of Rs.3 crores for which two cheques had been issued by them.

It has been informed by the counsel appearing on behalf of the petitioners today that as per the averments in the FIR, the petitioner had repaid sum of Rs.1.16 crores to the complainant

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out of Rs.7.02 crores. In view of interim orders passed by this Court a sum of Rs.1.50 crores has been paid to the complainant. Another sum of Rs.46 lacs which has been paid to the farmers on behalf of the complainant has not been received back as the amount was paid on behalf of the complainant.

Counsel further informs that on the basis of dishonoured cheque a complaint was filed by the complainant under Section 138 of the Negotiable Instruments Act at Bellari, Karnataka for the cheques drawn at Rewari.

Without going into the further details and the extent of liability of the petitioners, it is pertinent to observe here that counsel for the petitioners and the complainant agree that as per the memorandum of understanding between the complainant and the petitioners the proceedings for arbitration have been invoked as there has been an arbitration clause in the memorandum of understanding.

Counsel for the complainant has vehemently opposed the application for pre-arrest bail contending that it is a case where the complainant has been duped on the basis of the documents which were prepared by the petitioners in connivance with the fictitious farmers.

I have considered the said contention of the learned counsel for the complainant. It will certainly be a debatable issue whether it is a case of preparation of fake documents warranting

conviction for offences under Sections 468 and 471 IPC, if seen in context to the law laid down in **Mohammed Ibrahim & ors. Vs. State of Bihar & anr., 2009 (8) SCC 751**. It appears to be a case of liability which falls within the criminal as well as civil category as it is required to be determined whether from the inception, the petitioners had any intention to cheat the complainant. Since out of the amount of Rs.7.02 crores, liability has been discharged to the extent of approximately Rs.3 crores, it will be expedient, in the interest of justice, taking into consideration the statement of the counsel for the petitioner appearing on 19.5.2014 that liberty of the petitioners be protected subject to his discharging 50 per cent of the liability as agreed to by the petitioners without prejudice to the rights of the petitioners or the complainant to settle the accounts and recover the amount by adverting to the civil remedies as the criminal proceedings cannot be permitted to be used as an arm twisting device to recover money when it is a debatable issue as to whether the liability is exclusively of civil nature or involves the traits of criminality.

The petition is allowed. It is ordered that in case of arrest of the petitioners, they will be released on bail to the satisfaction of the arresting officer subject to the following conditions:

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(i) That the petitioners will join the investigation as and when required;

(ii) That the petitioners will not tamper with the

evidence or hamper investigation, in any manner; and

(iii) That the petitioners will pay another sum of Rs.50 lacs to the complainant within a period of two months in the shape of bank draft by handing over the same to the Investigating Officer. It will be open to the Investigating Officer to hand over the same to the complainant party against the appropriate memo without prejudice to the rights of the parties to settle the money dispute or to effect recoveries in accordance with law.

The petitioners will also not leave India without permission of the Court. The petitioners will also not browbeat the witnesses and delay the criminal proceedings, in any manner. It is made clear that in case of violation of any of the above said conditions, this order will be deemed to have been cancelled.

January 19, 2015.
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(M.M.S. BEDI)
JUDGE