

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-21348 of 2015 (O&M)
Date of decision: December 15, 2015

Mahabir Singh

...Petitioner

Versus

Dr.Anurag Bishnoi and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.N.S.Shekhawat, Advocate
for the petitioner.

Mr.Jasdeep Singh, Advocate
for respondent No.1.

Mr.Anmol Malik, Asstt. Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. for quashing of FIR No.483 dated 01.06.2014 under Sections 406, 420, 468 and 471 IPC registered at Police Station City, Hisar and all subsequent proceedings arising therefrom.

It is stated in the petition that complainant-respondent No.1 was constructing a Banquet Resort at Hisar-Delhi Bye Pass, Hisar and respondent No.1 approached present petitioner for installation of two lifts at that site. On 09.03.2013, the petitioner proposed terms and agreement was executed between the parties, which is Annexure P-1. In the document, rates and specifications of

the lift have been quoted. Even the terms and conditions for cancellation of work were also mentioned in the agreement. In the said contract, payment schedule was fixed that 40% of the contract value shall be payable with acceptance, 50% of payment when Machine, Guide rail, Bracket would be ready for dispatch and 10% at the time of handing over of the lift. The elevators/lifts installation shall not be considered as property of owner unless full and final payment is made in the form of Demand Draft payable at New Delhi. The said lifts were to be installed at the price of ₹25 lacs i.e. ₹12.50 lacs per lift. The said agreement provides terms for cancellation and termination of contract. It is stated that as per the agreed terms, ₹10 lacs was paid i.e. 40% of the amount. However, 50% of the amount was to be paid, when the machine etc. were ready for dispatch. It is further stated in the petition that respondent No.1 was irregular in making the payment. Still the petitioner and his company dispatched the goods and the material was sent at the site. The work of approximately 65% at the site was completed. Most of the equipments were also dispatched. There was no malafide intention on the part of the present petitioner and his company. It is also stated that without examining the facts of the case and looking for incriminating evidence, the police had filed the challan under Section 173 Cr.P.C. against the present petitioner.

Notice of motion was issued and learned counsel for respondent No.1 as well as learned State counsel appeared and contested the petition.

Reply was filed by way of affidavit of Deputy

Superintendent of Police, Hisar. In the reply, it is stated that investigation was conducted and it was found that respondent had paid ₹17 lacs to the petitioner out of the total agreed amount and no potential work was done by the petitioner's company as per alleged agreement. It was also found that the petitioner is running a false and fake company. It is stated that no board of the company was found on the address mentioned on the bills of the company. It was also found that on the bills issued by the petitioner, it was written MG Club whereas the said name of the club was registered on 07.11.2013.

After going through the record and after hearing learned counsel for the parties as well as learned State counsel, I find that from the facts it is clear that agreement has been executed between the parties regarding installing two capsule lifts. There is no dispute that partial payment has been made. It is admitted at the time of arguments that some work was done. Respondent No.1 stated that agreement has not been complied with, therefore, the remaining payment has not been given. Both the parties are putting allegations on each other regarding the breach of agreement. In the FIR itself it is stated that by not acting upon the terms and conditions set out and stipulated in the written agreement, the agreement so entered automatically stands void, impracticable and proved to be bogus, forged and fabricated and the accused has used the said fabricated and forged agreement as genuine despite knowledge that it is forged one. The mere fact that during enquiry, no board of firm was found and address on the bills has been given as MG Club whereas MG

Club has been registered later on, itself will not prove commission of offence.

From the perusal of the FIR itself, is clear that it is a dispute regarding breach of agreement, which is of civil nature and the rights of the parties under the agreement are to be determined by the civil Court. There is no allegation in the FIR that there was no such firm or the petitioner was not doing the work of installing the lifts etc. Further, from the perusal of the FIR, I find that there is nothing that anybody impersonated for any other person. In no way, the agreement executed between the parties can be held as fabricated or forged.

As the matter between the parties is purely of civil nature and no cognizable offence is made out, therefore, the registration of the FIR is nothing but abuse and misuse of process of the law.

Therefore, finding merit in the present petition, the same is allowed. FIR No.483 dated 01.06.2014 under Sections 406, 420, 468 and 471 IPC registered at Police Station City, Hisar and all subsequent proceedings arising therefrom are hereby quashed.

December 15, 2015
Vgulati

(INDERJIT SINGH)
JUDGE