IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-25771-2013 (O & M)
Date of Decision: 09.03.2015

Ashok Gupta and others
... Petitioner(s)

Versus

State of Punjab & Another
... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

1) Whether Reporters of the local papers may be allowed to see the judgment ?.
2) To be referred to the Reporters or not ?.
3) Whether the judgment should be reported in the Digest ?

Present: Mr. Bipan Ghai, Sr. Advocate with
Mr. Mandeep Kaushik, Advocate,
for the petitioners.

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

Mr. Puneet Bali, Sr. Advocate with
Mr. Nitish K. Vasudeva, Advocate,
for respondent no.2-complainant.

Paramjeet Singh, J.

CRM-37538-2013

This is an application for impleading the complainant as respondent no.2 in the main petition.

Having heard learned counsel for the parties and in view of grounds mentioned in the application, the complainant being necessary party is impleaded as respondent no.2. Amended memo of parties is taken on record.

CM stands disposed of accordingly.

CRM-37539-2013

Allowed, as prayed for, subject to all just exceptions. Additional affidavit on behalf of the complainant-respondent no.2 is taken on record.

CRM-39330-2013

Allowed, as prayed for. Annexures P-16 and P-17 are taken on record.

CRM-5402-2014

This is an application for adding Sections 420, 465, 467, 468, 471 and 120-B of the Indian Penal Code (in short, 'IPC') in addition to Section 406 of IPC.

It is mentioned in the application that the police has filed status report wherein it is disclosed that Sections 420, 465, 467, 468, 471 and 120-B of IPC have been added.

Having heard learned counsel for the parties and in view of grounds mentioned in the application, instant application is allowed.

CRM-M-25771-2013

Instant petition has been filed under Section 438 of the Code of Criminal Procedure for grant of pre-arrest bail to the petitioners in case FIR No.253 dated 20.06.2013, registered at Police Station Zirakpur, District SAS Nagar (Mohali), under Sections 406, 420, 465, 467, 468, 471 and 120-B of IPC.

Brief facts of the case are to the effect that complainant-N.K.Mittal, Managing Director of M/s. Villayati Ram Mittal, Pvt. Ltd. moved application to the effect that his RMC Pump make PUTZ Meister, steel, cement and shuttering materials have been stolen from Trishla City Site High Ground Road Zirakpur by Ashok Gupta, Nand Lal, Ashish Goel and Ishu Goel, Directors and Staff of M/s. Goel Buildcom Private Limited, Panchkula. It was also mentioned by the complainant that his other articles are also lying on the site which can also be stolen by the accused. On the basis of the application of complainant, formal FIR was registered.

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

Learned senior counsel for the petitioners contended that complainant-N.K.Mittal, who is one of the Directors of M/s. Valayati Ram Mittal, was issued letter of intent (Annexure P-2) on 11.11.2011 by M/s. Trishla Build Tech Pvt. Ltd. for construction of group housing society. Since M/s. Valayati Ram Mittal was not able to execute the work, therefore, the said work was allotted to M/s. H.R.Goel Buildcon Pvt. Ltd. 327, Industrial Area Phase 2, Panchkula vide letter of intent dated 08.02.2012 (Annexure P-3). Learned senior counsel further contended that relationship between M/s Trishla Buildtech Pvt. Ltd. and M/s H.R.Goel Buildcon Pvt. Ltd. became strained as some information regarding payment of amount of WCT/TDS while making the payment to the petitioners was sought by the Excise and Taxation Officer, Chandigarh. M/s. Trishla Buildtech Pvt. Ltd. Group Housing Society through its Director Harish Gupta filed a suit for recovery of Rs.2,36,54,357/- and for permanent injunction against M/s. H.R.Goel Buildcon Pvt. Ltd. in the Court of Additional Civil Judge (Sr. Divn.), Dera Bassi, who directed the parties to maintain status quo. The petitioners filed counter-claim to the said suit to the effect that construction material worth crores of rupees belonging to the petitioners was lying at the spot and huge amount was due towards M/s Trishla Buildtech Pvt. Ltd. Learned senior counsel further contended that since relationship between the company of petitioners and M/s. Trishla Buildtech Pvt. Ltd. became sour, therefore, M/s. Trishla Buildtech Pvt. Ltd. in connivance with complainant got the present case registered just to put pressure on the petitioners. Learned senior counsel further contended that M/s. Vallayati Ram Mittal Pvt. Ltd. had not even started the construction work but they also had put some raw material and equipments on the site of M/s. Trishla Buildtech Pvt. Ltd. which was later on sold by M/s. Vallayati Ram Mittal Pvt. Ltd. to the firm belonging to the petitioners. M/s. Vallayati Ram Mittal Pvt. Ltd. had also issued a VAT Invoice No.104 dated 04.10.2012 (Annexure P-11), regarding sale of concrete pump Model No.BSA-1407D for a total sum of Rs.11,90,100/-, in favour of the firm belonging to the petitioners. The payment regarding the sale of abovesaid pump was made to M/s.

Vallayati Ram Mittal Pvt. Ltd. vide three different account payee cheques. Learned senior counsel further contended that the VAT charged on the bill was shown in 3rd quarter return for the year 2012-13 and the same was deposited with the Excise and Taxation Department. The custodial interrogation of the petitioners are not required.

Per contra, learned State counsel and learned senior counsel for the complainant vehemently opposed the contentions of learned counsel for the petitioners and relied upon status report filed in terms of order dated 09.09.2013 passed by a Coordinate Bench of this Court. Learned counsel contended that the petitioners have prepared forged bills of complainant-company by taking undue advantage of their relations with the complainant-company. The petitioners have also misappropriated the goods of the complainant company. The cheques relied upon by the petitioners were in fact twoards the rent paid for RMC Pump which are duly reflected in the returns of complainant-company. Learned senior counsel further contended that the complainant had taken the assignment of construction of flats from M/s. Trishla Build Tech Pvt. Ltd. and the complainant had appointed the petitioners, being known, for supervising the affairs of the company. Petitioner no.1 was authorized by the complainant to file the sales tax returns. After taking the project, the complainant had purchased various items including shuttering etc. which were lying on the site of Trishala City. Petitioner no.1 made the complainant to understand that Trishala Build Tech Pvt. Limited has no money to execute the project and petitioner no.1, who was having the original letter of intent signed between Trishala Build Tech. Private Lmited and M/s. Villayati Ram, had returned the same to M/s. Trishla Build Tech Pvt. Limited. Consequently, the petitioners obtained the same contract of construction of flats from M/s Trishala Build Tech Pvt. Limited in the name of their own company i.e. M/s H.R.Goel Buildcon Pvt. Limited. On being requested by the petitioners, the complainant allowed them to use the building material lying at the site of M/s Trishala Build Tech. The petitioners also offered to pay the rent for the RMC pump for six months. Learned counsel further contended that the petitioners prepared the forged bills on the fake/forged proforma of complainant-company and thereby showed that the complainant had sold the building material as well as RMC pump to them. The petitioners have also forged printed VAT invoice. The complainant had received the amount of Rs.11 lacs as rent for the use of RMC pump by the petitioners for three months which is evident in the income-tax returns of the complainant. Learned counsel further contended that on being verified from the concerned department, the invoice relied upon by the petitioners has been found to be fake and there was no mention in respect of sale of machinery in the income-tax balance sheet for the year 2012-13 belonging to the complainant.

I have considered the rival contentions of learned counsel for the parties.

The petitioners are the Directors of M/s H.R.Goel Buildcon Pvt. Limited, Panchkula, engaged in building construction. As per the petitioners, they have not committed any theft as alleged by the complainant. In fact, RMC pump has been sold by the complainant, vide receipt dated 04.10.2012. The petitioners have claimed that on the basis of information supplied by them, notice dated 17.04.2013 has been issued to the complainant by the Excise and Taxation Department and on this account, the present false case has been got registered against them.

To enable this Court to reach the ultimate conclusion, status report of the investigation was sought and it was revealed that none of the building material including the RMC Pump was ever sold to the petitioners. In fact, the said pump was taken on rent by the petitioners and the amount which was paid through cheques, was the rent for using the said pump as is evident from the returns of the complainant-company. It has also come in the investigation that the petitioners had prepared the forged bills on the fake/forged proforma of complainant-company and thereby showed that the complainant had sold the building material as well as RMC pump to them. The invoice relied upon by the petitioners has been found to be fake and there was no mention in respect of sale of machinery in the income-tax balance sheet for the year 2012-13 belonging to the complainant.

Hon'ble the Apex Court, in ***CBI Vs. Anil Sharma, JT 1997(7) SC 651***, has held as under:-

> *"We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The court has to presume that responsible Police Officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring would not conduct themselves as offenders."*

Petitioner no.1 being authorized to file the returns of complainant-company had misappropriated the building material of complainant and created fake bills to show the purchase of building material and showed the bogus entries in the sales tax returns of the complainant. Petitioners no.1 and 2 appear to have managed everything as forged. The edifice of the case of petitioners no.1 and 2 is based on the falsehood and forged documents. Petitioners no.1 and 2 have not come to the Court with clean hands. Moreover, another FIR has also been registered against petitioners no.1 and 2 for committing the offences of fraud and forgery etc. All this appears to have been done by petitioners no.1 and 2, however, there is nothing much against petitioners no.3 and 4, at this stage. The custodial interrogation of petitioners no.1 and 2 is necessary to unearth the fraud.

Keeping in view the above, interim order dated 07.08.2013 is made absolute qua petitioners no.3 and 4, however, vacated qua petitioners no.1 and 2. Resultantly, instant petition qua petitioners no.1 and 2 is dismissed.

Disposed of in the aforementioned terms.

09.03.2015 **(Paramjeet Singh)**
parveen kumar **Judge**