

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

**Crl. Misc. No.M- 27348 of 2012
Date of decision : 26.08.2015**

Rajan Singhal

.....Petitioner(s)

Versus

State of U.T. Chandigarh and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. K.P.S. Dhillon, Advocate
for the petitioner.

Mr. Gagandeep Singh Wasu, Addl. P.P.
for U.T. Chandigarh-respondent no.1.

ANITA CHAUDHRY, J.

The petitioner by way of instant petition under Section 482 Cr.P.C. seeks quashing of FIR No.157 dated 23.08.2012 registered under Sections 420 IPC at Police Station Sector 19, Chandigarh and subsequent proceedings emanating there from.

Notice of motion was issued. State has filed its reply. Service on the private respondents could not be effected, therefore, they were served through substituted service. Though there was no appearance.

Learned counsel for the petitioner submits that in the initial investigation the police had found that there was no case and the private respondents had sent a legal notice under Section 138 of

the Negotiable Instruments Act and the FIR was registered after 5 – 6 months. It was urged that the matter in dispute is purely civil in nature which has been given the shape of criminal complaint and at the most, the complainant could seek redressal by lodging a complaint under Section 138 of the Negotiable Instruments Act. It was urged that the complainants were neither the recipients of the cheque nor the cheque was in their favour and false FIR had been lodged of frivolous allegations based on a concocted story.

In support of the contention, the counsel for the petitioner had relied upon ***K. Chandran Vs. Ponnappa Moothan and another 2013(1) RCR (Criminal) 312*** and ***G. Sagar Suri Vs. State of U.P. 2000(1) RCR (Criminal) 707.***

On the other hand, the State counsel submits that the petition is wholly misconceived and no complaint had been filed under the Negotiable Instruments Act and the complainants have paid Rs.8 lacs and a cheque was given in February, 2012 though, the account had been closed on 04.01.2012 and it was a clear case of cheating and it would be the trial Court which would adjudicate the issues on the basis of evidence led before it.

A complaint was lodged by Sumit Batra and Pankaj Saluja containing the allegations that they were sub-brokers and were running their business in the name and style of M/s. R.K. Global in Azad Market, Delhi. Tarun Kathuria, a diamond businessman referred Rajan Singhal to them as he was interested in doing share business and required the services of a sub-broker. The complainants were

into the business of shares for the past many years and they were also interested and a meeting was arranged in Karnal and it was agreed that Tarun Kathuria and Rajan Singhal would invest money in shares and the complainants were to get commission at the prevalent market rate. The complainants went to the house of Rajan Singhal in Chandigarh where Rajan asked for money as he was in dire need. The complainants were doing business with Rajan Singhal, therefore, after arranging the amount, the complainants delivered the amount to Rajan Singhal and he assured to return the same within 3 months. The complainants were in constant touch with Rajan Singhal and he kept on assuring that he would return the amount. The complainants again visited his house and asked him to return the amount but Rajan was avoiding them and did not return Rs.8 lacs. The complainants again visited the house of the accused where he promised to arrange Rs.6 lacs within days and issued a cheque bearing No. 300597 of Rs.2 lacs on 26.02.2012. The cheque was presented which was dishonoured and the account had been closed. The allegations are that the accused had induced the complainants to deliver a sum of Rs.8 lacs with an intention to cheat and he had not returned the amount. The matter was investigated but before the challan could be filed, the co-ordinate Bench stayed the filing of the challan.

The allegations in the FIR clearly refer to the *mala fide* intention on the part of the petitioner right from day one. Knowing fully well that he had closed the account, he had issued a cheque. In this view of the matter, it can safely be concluded that *mens rea* was

there and the cheque had been issued with an intention to cheat the complainants. It is settled that facts of each case are to be examined. So far as the offences under Section 138 of the Negotiable Instruments Act and Section 420 IPC are concerned, both are distinct and entirely different. There is no material to show that any complaint was filed. Even if the complaint had been filed, the ingredients for constituting the offence are different as there is a statutory presumption that the accused had issued a cheque for discharging an existing financial liability whereas there is no such requirement under the Indian Penal Code.

In **G. Sagar Suri's** case (supra), the facts were entirely different as is apparent from the observations made in para no. 14 of the judgment which reads as under:-

"We agree with the submission of the appellants that the whole attempt of the complainant is evidently to rope in all the members of the family particularly who are the parents of the Managing Director of Ganga Automobile Ltd. in the instant criminal case without regard to their role or participation in the alleged offences with a sole purpose of getting the loan due to the Finance Company by browbeating and tyrannizing the appellants of criminal prosecution. A criminal complaint under [Section 138](#) of the Negotiable instruments Act is already pending against the appellants and other accused. They would suffer the consequences if offence under [Section 138](#) is proved against them. In any case there is no occasion for the complainant to prosecute the appellants under

Sections 406/420 IPC and in his doing so it is clearly an abuse of the process of law and prosecution against the appellants for those offences is liable to be quashed, which we do."

Broad guidelines have been framed by the Hon'ble Apex Court for exercise of powers under Section 482 Cr.P.C. in the case of **State of Haryana and others Vs. Ch. Bhajan Lal and others**, AIR 1992 SC 604, which read as under:-

"105. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case

against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. Do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the

proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

In ***Bhajan Lal's*** case (supra), the Hon'ble Supreme Court had specifically held that the power vested in the High Court for quashing of an FIR can be exercised where the allegations made in the FIR even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence.

In ***State of Karnataka Vs. L. Munniswamy and others*** (1997) 2 SCC 699, the Hon'ble Supreme Court of India had held that the High Court is entitled to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or where the ends of justice require that the proceeding ought to be quashed. It has further been held that the High Courts have been invested with inherent powers both in Civil and Criminal matters to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment of prosecution. The Court further observed that the ends

of justice are higher than the ends of mere law through justice must be administered according to laws made by the legislature.

It is well established that inherent jurisdiction can be exercised for quashing the proceedings to prevent the abuse of the process of the Court and even to secure the ends of justice. It is true that ordinarily criminal proceedings instituted against an accused must be tried under the provisions of Criminal Procedure Code and the High Court should be reluctant to interfere but at the same time there are some cases where the inherent jurisdiction can and should be exercised in quashing the proceedings where it is found that the FIR or the complaint even if taken at their face value does not disclose or constitute an offence and the present case is one of such cases.

The powers under Section 482 Cr.P.C. have to be used sparingly, carefully and with caution and in my view, it is not a fit case for exercising the inherent jurisdiction under Section 482 Cr.P.C. which is to be exercised only to avoid the abuse of process of law and to secure the ends of justice. The matter cannot be said to be purely civil in nature. There are allegations against the petitioner. It is not a case of double jeopardy. This Court should not interfere in the criminal proceedings which are at the threshold and the High Court cannot exercise its jurisdiction under Section 482 Cr.P.C. The impugned FIR and the consequential proceedings arising there from are found to be *bona fide* and legitimate.

The Supreme Court has repeatedly cautioned that the

power of quashing a criminal proceeding at the stage of summoning should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. From the above discussion, it cannot be said that the allegations made in the complaints, even if they are taken at their face value and accepted in entirety to be correct, do not make out a case against the petitioner under Section 420 IPC. In such circumstances, I refrain from exercising powers under Section 482 Cr. P.C. to quash the complaints at the threshold.

The petition is dismissed.

26.08.2015
sunil

(ANITA CHAUDHRY)
JUDGE