

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

**Crl. Misc. No.M- 29465 of 2013
Date of decision: 13.10.2015**

Anil Kumar Gupta

.....Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Ramandeep, Advocate
for the petitioner.

Mr. Deep Singh, AAG, Punjab.

ANITA CHAUDHRY, J.

This is a petition filed under Section 482 Cr.P.C. seeking quashing of FIR No.99 dated 04.09.2012, registered under Sections 420, 465, 468, 471, 120-B IPC at Police Station Banur, District Patiala.

The Excise and Taxation Officer gave a complaint to the police on the basis of which above said FIR was registered. The allegations were that Kapil Gupta was driver on a vehicle owned by Yadav Transport Company, Delhi. Kapil Gupta tried to register the forms at ICC, Banur without a vehicle or the goods on 04.09.2012 at 12:15 A.M. After getting the stamps on the bills and bilties, the driver asked for Harpreet Singh, the Tax

Documents Clearance Executive, posted on the barrier. When he was told that he was transferred to Shambhu Barrier, he produced some bills issued by M/s. Overseas Grain Merchants and Commission Agents for a sum of Rs.18,46,800/-. When the Excise and Taxation Inspector asked him to show the vehicles mentioned in the bills, it was found that the driver only had the bills and the bilties and neither the vehicles nor the goods were produced. On enquiry, Kapil Gupta informed that his brother-in-law Anil Gupta had told him telephonically that two persons would come in a car and hand over bills and the bills & bilties had been handed over to him by two persons at Banur Barrier. The allegations were that forged documents had been prepared with an intention to cheat the government and intention was to get fake entries at the ICC. The involvement of Kapil Gupta and Anil Gupta, owners of Yadav Transport Company, Delhi and some more persons were suspected.

Investigation are completed and challan had been presented against Anil Gupta and Kapil Gupta.

The main submission on behalf of the petitioner is that the challan has been presented by the police without associating M/s. A.B. Traders and M/s. S.N. Overseas, Delhi and the petitioner had been unnecessarily involved and named as an accused and the proceedings should be quashed. It was urged that there were no allegations in the FIR that the petitioner was to get any benefit.

The submission on behalf of the State is that the matter was investigated and the involvement of two persons was found and in the entire episode and challan against them has been presented under Section 420, 465, 468, 471 IPC.

The issue to be examined here is whether powers under Section 482 Cr.P.C. should be exercised in this case. It is settled that the inherent power which the Court possess under Section 482 Cr.P.C. can be exercised as an exception and not the rule. It envisages three circumstances under which the inherent jurisdiction can be exercised, which are:-

- (i) to give effect to an order under the Code,
- (ii) to prevent abuse of process of court
- (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction.

8. **In R.P. Kapur. vs. State of Punjab (AIR 1960 SC 866)**, the Court summarized some categories of cases where inherent power can and should be exercised to quash proceedings.

(i) Where it manifestly appears that there is a legal bar against the institution or continuance, e.g. want of sanction;

(ii) Where the allegation in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) Where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence is reliable or not or whether on a reasonable appreciation of it, accusation would not be sustained. That is the function of the trial Judge. The Section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of justice were set out in some detail by this Court in ***State of Haryana and others Vs. Ch. Bhajan Lal and others*** (AIR 1992 SC 604). A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases. The illustrative categories indicated by this Court are as follows:-

- 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 the light of the principles laid down by the Hon'ble Apex Court, if the facts of the present case are examined, it is found that there are allegations which constitutes an offence. Adequate material has been collected by the prosecution which they would prove at the trial. Considering the allegations and in view of the principles enunciated above, I am of the view that it is not a fit case where the powers under Section 482 Cr.P.C. should be exercised.

The petition is dismissed.

13.10.2015
sunil

(ANITA CHAUDHRY)
JUDGE