

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

CRM-M-30054 of 2015 (O&M).
Decided on:-04.12.2015.

Baldev Singh and others

.....Petitioners.

Versus

State of Punjab and others

....Respondents.

CORAM: *HON'BLE MR. JUSTICE HARI PAL VERMA.*

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

Present:- Mr. H.P.S. Ghuman, Advocate
 for the petitioners.

HARI PAL VERMA, J.

Prayer in this petition filed under Section 482 Cr.PC is for quashing of FIR No.5 dated 15.1.2014 under Sections 419, 406, 420 and 120-B IPC registered at Police Stationn Bhadson, District Patiala and the consequent proceedings including order of framing of charge dated 7.5.2015 and order passed by the revisional Court dated 13.8.2015.

The above FIR has been registered against the petitioners on the complaint made by complainants, namely, Bhagwant Singh, Jaspal Singh, Balwinder Singh sons of Malkiat Singh, residents of village Shahpur, Tehsil Nabha, District Patiala. As per FIR, their father and uncle

used to sell their agriculture produce through the commission agency. The petitioners were given a total amount of Rs.1,38,40,000/- by the complainant in the year 2011 and the petitioners closed their commission agency shop in the year 2011, but did not return the said amount to the complainant and rather, misappropriated the same leading to the lodging of present FIR.

Learned counsel for the petitioners has contended that no case as alleged in the FIR is made out against the petitioners as the money was not given and if money is not entrusted, the offence under Section 406 IPC i.e. breach of trust is not made out. He has further submitted that no offence is made out against the petitioners and the dispute, if any, is of civil nature, but has been given a criminal colour to falsely implicate the petitioners for the purpose of harassing and exploiting them. Since no offence of breach of trust and cheating is made out, the present FIR deserves to be quashed. Learned counsel for the petitioners has relied upon judgment of this Court passed in ***CRM No.2933-M of 2008*** decided on 8.12.2008 titled as ***Varinder Kumar and others Versus State of Punjab*** to contend that the transaction like the present one, if any, gives only civil liability and when no act of cheating or entrustment of amount is proved, the FIR is liable to be quashed. Reliance has also been placed upon ***Sat Narain and another Versus State of Punjab and others 1973 PLR 362 (P&H)***.

I have heard learned counsel for the petitioners.

Learned trial Court vide order dated 7.5.2015 has heard the parties on the point of framing of charge against the petitioners. The

contention of the petitioners that there is neither any inducement nor fraud on the part of the petitioners and the matter is completely of civil nature which has been given criminal colour, has been duly considered by the trial Court. At the time of framing of charge, only the probative value along with report under Section 173 Cr.PC is required to be looked into. While framing charge, the Court has to prima-facie consider as to whether there is sufficient ground to proceed against the accused or not, and the Court is not required to appreciate the evidence at that stage. Learned Additional Sessions Judge, Patiala has placed reliance on the case of ***Onkar Nath Mishra Versus State (NCT of Delhi) 2008(1) RCR (Criminal) 336***, that at the time of framing of charge, the court is to see if the material and documents placed before it discloses ingredients of offence, and at this stage, strong suspicion would justify the framing of charge.

The facts of ***Varinder Kumar and others' case (supra)*** are different in the sense that in that case, the amount was given against a receipt admitting the rate of interest agreed to be paid to the complainant, but in the present case, no such receipt was given.

The allegations against the petitioners are that they have induced the complainant to pay a heavy amount of Rs.1,38,40,000/- and the said amount was kept and utilized by the petitioners on the pretext of paying interest to the complainant, but later on, they refused to repay the said amount to the complainant. Thus, the possibility of commission of offence of cheating and criminal breach of trust cannot be ruled out. The

facts in the present case are not absolutely civil in nature, rather, the same have the element of criminal offences as well.

In view of the above, this Court finds no substance in the argument of learned counsel for the petitioners and the present petition, being without any merit, is dismissed.

Needless to say that the observations made hereinabove shall have no bearing on the merit of the case and the trial Court shall decide the case on the basis of availability of evidence.

September 04, 2015
Yag Dutt

(HARI PAL VERMA)
JUDGE