IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Crl. Misc. No. M-3593 of 2010 (O&M)
Date of decision : 04.02.2015

Ashish Luthra & others ....Petitioners

versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.S. Rai, Sr. Advocate, with
Mr. Paras Talwar, Advocate
for the petitioners

Mr. Daljeet Singh Virk, AAG, Punjab

Dr. Anmol Rattan Sidhu, Sr. Advocate
with Mr. Vishal Deep Goel, Advocate
for respondent No. 2

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RITU BAHRI , J.

In the present petition filed under Section 482 Cr.P.C, quashing of FIR No. 157 dated 16.07.2009 under Sections 420/406 IPC registered at P.S. Divn. No. 8, Jalandhar and all subsequent proceedings arising therefrom, is being sought

F.I.R has been registered on the statement of respondent No. 2 against the petitioners with the allegations that petitioners had committed fraud with the complainant by charging excess amount of Rs.43,416 dollars in lieu of supply of scrap. The complainant is having its firm known as Marker Overseas, Hoshiarpur Road, Jalandhar where after importing the scrap from various countries, he supply the same to other firms here. In December, 2005, he got to know about the petitioners from the Internet that they deal in scrap. On 20.12.2005, the complainant sent 20,000 U.S Dollars through ICICI Bank in the Bank account of Ashish Luthra and he was told by him that the money will remain as advance with him and if the complainant will send more amount, then he will send him the entire consignment within 30 days through ship. On various dates, the complainant sent Rs.57,969/- U.S Dollars through bank to Ashish Luthra, who in lieu of these dollars, sent him 237.070 M.Ts of scrap along with bills and other documents. On receipt of the consignment, on weighing, the scrap was found to be 210.510 M.Ts.. The scrap was found to be less in weight by 26.510 M.Ts. The scrap weighing 210.510 M.Ts is valued at Rs.46,169/- dollars. The advance is lying with Ashish Luthra to the tune of Rs.31,800/- dollars. The complainant told Ashish Luthra that he has dispatched the material lesser in weight and of inferior quality, who assured the complainant that whatever is the defeciency, he will dispatch the quality material at less rates, by adjusting this amount. On 18.04.2006, the complainant entered into agreement with Ashish Luthra along with Ram Prakash Luthra at Jalandhar, which was signed by them. In that agreement, he has agreed to supply good quality scrap at lesser rate, the scrap weighing 1,250 M.Ts on sending the money within two months. As per this agreement, from 26.04.2006 up to 05.12.2006, the complainant sent 59,632/- American dollars through bank to Ashish Luthra, who in lieu of that sent three consignments weighing 200 M.Ts scrap valuing Rs.47,746/- dollar and thereafter, he did not send any further consignment. The complainant asked him to refund Rs.43,416/- dollars. In this background, F.I.R was registered against the petitioners.

Mr. R.S. Rai, Senior counsel assisted by Mr. Paras Talwar, Advocate is seeking quashing of F.I.R on the ground that it was purely commercial transaction, based on the agreement dated 15.12.2005 (P-2) and as per agreement, there is a provision for arbitration, vide which the dispute if any between the parties could have been amicably resolved by appointing an arbitrator. It is a simple case of breach of contract and is purely a civil dispute. The penal provisions under Section

406/420 IPC are thus not attracted.

On notice, a reply has been filed by Balkar Singh, PPS, ACP (North) Jalandhar on behalf of State of Punjab-respondent No. 1 stating therein that after registration of F.I.R, the investigation was carried out and it was found that the complainant was allured by petitioner No. 1 by deceitful means to enter into business transactions and goods were supplied but the same were found to be defective and quantity was also less. Ashsih Luthra in connivance with his co-accsued wife Jyoti Aashish and Ram Parkash Luthra-petitioner No. 2 and 3, had defrauded the complainant to the tune of Rs.43,416 US dollars which is equivalent to Indian Currency of Rs.20 lacs. Hence, the offence of cheating as per Section 415 of Cr.P.C is made out against the petitioners. The arbitration clause mentioned in the agreement dated 15.12.2005 (P-2) has no bearing when the petitioners were found to have cheated the complainant of a huge amount i.e Rs.20 lacs.

Respondent No. 2 in the written statement filed before this Court has referred to the communication between him and petitioner No. 1 (R-1 to R-3) wherein the petitioner has admitted to the said liability on 20.05.2006 and confirmed again on 21.12.2006 and after that there has been no transaction whatsoever between the parties. Further there are some complaints pending against the petitioners with similar allegations (R-4 to R-9) in which it has been mentioned that the petitioners had cheated number of people regarding which the complaints have also been made to the police in Mauritius.

Further there are number of complaints from the second secretary High Commission of India against the petitioner which have been referred for appropriate action. The petitioners have not even file their annual returns and financial statements in Mauritius and name of their company has been struck off from the Register under the Company

Act in Mauritius. The petitioners have infact run away from Mauritius as various complaints were received against them from Jalandhar, Chennai, Dubai, Australia etc (R-10 to R-13). One another F.I.R has also been lodged in Amritsar on the same lines wherein the accused had cheated the said complainant of their hard earned money (R-14)

Further it has been submitted that in the arbitration proceedings in the Hon'ble Court at Mumbai, the petitioners had concealed the factum of FIR lodged against them and in the reply sent to the legal notice to the complainant by the petitioners for initiating the arbitration proceedings, the complainant had clearly mentioned that the same is not a civil dispute and subject to the outcome of the criminal proceedings pending against the petitioners (R-15).

After going through the facts of the case and the replies filed by the respondents, the dispute in the present case rests on two agreements i.e 15.12.2005 and 18.04.2006. Pursuant to the first agreement i.e 15.12.2005, the petitioners were informed that the quality of scrap was inferior and less in quantity. Subsequently the second agreement dated 18.04.2006 was entered into between the parties but the petitioners repeated the said mistake again. Further apart from the F.I.R, there are number of complaints pending against the petitioners with similar allegations, as referred to by Dr. Anmol Rattan Sidhu, learned senior counsel. As per the above said complaints, the name of the company of the petitioners has been struck off from the Register under the Company Act in Mauritius, as number of complaints were received against them from Jalandhar, Chennai, Dubai, Australia etc (R-10 to R-13).

Thus, this Court while exercising jurisdiction under Section 482 Cr.P.C cannot examine the evidence with regard to breach of contract between the parties, the relevant evidence will be led in the trial Court.

The parameters are set out in State of Haryana and others v. Bhajan Lal and others, AIR 1992 SC 604 (1), S.Khusboo vs.Kanniamal and another, 2010 (2) RCR (Criminal) 793 and Som Mittal vs. State of Karnataka, (2008) 3 SCC 574 wherein it has been discussed that how the power under Section 482 Cr.P.C should be exercised, which reads as under:-

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

In the facts of the present case, the petitioner has supplied less and inferior quality of material to the complainant and further has not returned the money, as committed by him, as he has supplied less and inferior quality of material to the complainant, pursuant to two agreements dated 15.12.2005 and 18.04.2006, thus, the offence of cheating is clearly made out against him. Pursuant to agreement dated 15.12.2005, the material supplied by the petitioner to the complainant was found to be less and of inferior quality and as per Annexure R-1 to R-3, the petitioner has admitted to the said liability on 20.05.2006 and confirmed again on 21.12.2006 and after that there has been no transaction whatsoever between the parties. Pursuant to agreement dated 18.04.2006, the petitioner received 59,632/- American dollars which was sent by the complainant, who in lieu of that sent three consignments weighing 200 M.Ts scrap valuing Rs.47,746/- dollar and thereafter, he did not send any further consignment and further did not bother to refund Rs.43,416/- dollars. The respondent/complainant has placed on record some materials to show that similar complaints are pending against the petitioners (R-4 to R-9).

The allegations that the respondent/complainant had been cheated cannot be gone into by the Court, in the proceedings under Section 482 Cr.P.C. The case of the petitioner does not fall in any of the categories mentioned above in Bhajan Lal's case (supra) whereby this Court can exercise its power for quashing of F.I.R.

Accordingly, the petition is dismissed.

04.02.2015 (RITU BAHRI)
G Arora JUDGE