

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

CRM-M-38259 of 2012

Date of Decision: September 01, 2015

Ajit Pal Singh Tiwana

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Kanwaljit Singh, Senior Advocate
with Mr. AGS Dhillon, Advocate
for the petitioner.

Mr. J.S. Brar, AAG, Punjab.

Mr. T.S. Sangha, Senior Advocate with
Mr. J.S. Lalli, Advocate for the complainant.

FATEH DEEP SINGH, J.

Initially a case by way of FIR No.38 dated 12.4.2011 under Sections 406, 420, 120-B IPC was registered with Police Station Sadar, Khanna, Annexure P/1 against the certain persons including the present petitioner-Ajit Pal Singh Tiwana who is non-resident Indian claiming to be working as a doctor in U.S.A. At first the petitioner was declared as Proclaimed Offender vide orders dated 26.9.2011 passed by learned JMIC, Khanna Annexure P/4 which by now has been rendered otiose. It is against the registration of the case the petitioner has invoked the jurisdiction of this Court in terms of Section 482 Cr.P.C. seeking quashment of FIR and all consequence/proceedings arising out of it.

Before venturing into the very merits of the case of

the parties it is necessitated to highlight the background and the allegations for better understanding of the dispute. An application dated 22.11.2010 was moved by one Surjit Singh Grewal now respondent No.2 before SSP, Khanna. In the said application a prayer has been made for lodging of FIR against the petitioner as well as his brother now respondent No.3 Amar Pal Singh Tiwana. In the complaint which is reproduced by way of FIR, it is alleged that the complainant is running his business since many years in America and he has come in contact with the petitioner and they developed friendship and were on routine visiting terms. It has been asserted by the complainant that while in USA the petitioner has represented the complainant that he and his brother respondent No.3 are jointly running a business of property dealing in India and in case the complainant wants to buy a property in the State of Punjab, India he can do so and advised him to meet respondent No.3 assuring the complainant that they will enable him to get handsome profit through this transaction. It is alleged that on 5.7.2006 when the complainant was in India respondent No.3 met him on 10.7.2006 in the presence of one Mohan Singh and who assured the complainant that he was having very good property for purchase and acting on this representation the complainant handed over ₹50 lacs to Amar Pal Singh Tiwana and returned back to USA. It is thereafter, during his visit in September 2006, the complainant met respondent No.3 at Khanna, who sought to rake up excuses and could not provide any tangible answer to the property so claimed to have been purchased. Thereafter, the complainant claims that he returned to USA and met the petitioner who gave writing dated 24.8.2008 promising to pay two and a half crore in lieu of that money. It is alleged that thereafter the complainant returned to India in February, 2009 and met Amar Pal Singh Tiwana seeking return of his money and on 10.2.2009 respondent

No.3 issued cheque No.214751 dated 10.2.2009 drawn on IDBI Bank, Patiala branch from Account No.079104000046640 amounting to ₹15 lacs assuring that the same would be honoured on presentation undertaking to pay balance amount of ₹35 lacs and two and a half crore. The complainant claims that on due presentation the cheque was dishonoured on account of insufficient funds and on the asking of respondent No.3 again presented this cheque on 27.5.2009 in Allahabad Bank, Khanna which was returned and dishonoured on 4.6.2009 on account of insufficient funds. The complainant thereafter moved the police leading to the registration of the present FIR.

During the course of investigations, the petitioner was found innocent and what is being highlighted before this Court is that there has been flip-flops by the police as one authority holding the petitioner innocent Annexure P/3 while the other in the inquiry arrayed him as an accused. Going through the arguments advanced on behalf of parties though much vehemence has sought to be raked up on behalf of the petitioner by Mr. Kanwaljit Singh, Senior Advocate arguing that being a doctor, brother of respondent No.3 the petitioner has been unduly roped in as an arm twisting tactics and neither any role has been attributed to him and liability if any could be determined by the Civil Court in view of the writing dated 24.8.2008 and, therefore, has sought to impress upon the Court that the present proceedings are pure misuse of the process and needs to be quashed which is opposed on behalf of the contesting respondents and it has been submitted by respective counsel that there has been due admission in the writing by the petitioner of such a transaction and that culpability is a subject which can only be determined after the evidence is led.

Appreciating these submissions earlier there had been divergent views as to the inherent power of this Court under the

provisions of Section 482 Cr.P.C. but an effort has been made by the Hon'ble Apex Court by laying down illustrative grounds though not exhaustive eventualities when such a power ought to be exercised which are enumerated in **State of Haryana and others vs. Ch. Bhajan Lal and others AIR 1992 S.C. 604** case and are as under:-

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 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 made out a case against the accused.
4. Where, the allegations in the FIR 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 of 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 an with a view to spite him due to private and personal grudge.

Reverting back to the instant case, though, the conduct of the Investigating Agency certainly needs to be deprecated as counsel for the State could not take the refuge under what provisions of law such repeated inquiries are being restored to by the police. No doubt, the police has vast powers for further investigations in terms of Section 173(8) Cr.P.C but it is squarely accepted on behalf of the State that there is no such proposed eventuality necessitating such a step. What rather reflects from this conduct is that the investigating agency is trying to take undue benefit out of NRI status of the parties for a motivated cause. As has been submitted on behalf of the complainant by Mr. T.S. Sangha, learned Senior counsel that is too conceded at the bar by Mr. Kanwaljit Singh, learned Senior counsel for the petitioner that till date only respondent No.3 is facing trial and that name of the petitioner does not figures in the challan presented before the Court which is holding trial. Though, learned counsel for the petitioner has sought to put forth apprehension of his client-present petitioner that supplementary challan is being presented against him are matters which cannot be taken into consideration at this stage when even the State has clearly taken stand before this Court that the trial Court is yet to take cognizance of any such report. Since admittedly as per the own stance of the petitioner though he was an accused in the FIR but as on date neither he has been summoned by the Court as an accused nor is legitimately facing any such trial in the said FIR are matters which clearly shows that at this point of time the petitioner is not an accused in these proceedings and therefore it has been rightly argued by learned counsel for the complainant that petitioner has no locus standi to invoke the jurisdiction of this Court in terms of Section 482 Cr.P.C.

Thus, in the totality of what has been discussed and detailed above the present petition is not necessitated holding that the petitioner has no legitimate right to invoke the jurisdiction of this Court and finding his petition without any merit stands dismissed.

(FATEH DEEP SINGH)
JUDGE

September 01, 2015
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