

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-34585 of 2014

.....

Date of decision:4.2.2015

Mukesh Gupta

.....Petitioner

v.

State of Punjab

.....Respondent

....

Present: Mr. Puneet Sharma, Advocate for the petitioner.

Mr. S.S. Chandumajra, Deputy Advocate General, Punjab for
the respondent-State.

.....

Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C.
praying for quashing of the impugned order dated 14.5.2014 (Annexure-
P.9) passed by learned Additional Sessions Judge, Amritsar in Criminal
Revision No.65509/14747 of 2013 titled as “Mukesh Gupta Vs. State of
Punjab” along with the charge-sheet dated 4.6.2013 and the order dated
4.6.2013 passed by learned Judicial Magistrate Ist Class, Amritsar, as no
offence under Section 406 IPC or in the alternative under Section 420 IPC
is made out.

Notice of motion has been issued in this case.

Mr. S.S. Chandumajra, learned Deputy Advocate General,
Punjab has appeared on behalf of the respondent-State and contested this
petition.

I have heard learned counsel for the petitioner and learned

Deputy Advocate General, Punjab for the respondent-State and have gone through the record.

As per the prosecution version, the FIR has been registered on the application of Ashok Kumar-complainant, who stated in the application that he is serving as Manager with the firm Mulakh Raj and Sons and looks after the entire sale work. Aggarwal Trading Company of Ravi Kumar is situated at Chowk Lachhmansar, Amritsar, where the business of filtering, crushing of grains and wheat is being carried and this entire business is being run jointly by Ravi Kumar's wife Suman Jindal and his brother-in-law (wife's brother) Mukesh Kumar alias Bittu. Ravi Kumar, his wife Suman Jindal, Premjit Arora and Charanjit Arora after hatching conspiracy with each other, fraudulently purchased grams and 'Rajmah' of the value of about ₹14,52,793/- for three times in a year from their firm M/s Mulakh Raj and Sons. They promised and assured to make the payments within time, but they did not make the payment within time and by selling their aforesaid material further, after collecting payments from there, they have run away with intention to misappropriate the amount and Ravi Kumar's brother-in-law Mukesh Kumar alias Bittu has also collected some payments from the market. All these persons, by doing this in conspiracy with each other, have cheated them and other traders of the market.

At the time of arguments, it was brought to the knowledge of this Court that the accused including the present petitioner have misappropriated the amount of various traders at Amritsar which runs into

a huge amount and after collecting the payments by selling the grams etc. they have run away.

A perusal of the allegations in the FIR itself shows that the offences under Sections 406 and 420 IPC prima facie are made out.

At the time of framing of the charge, the Court is only to see whether a prima facie case is made out or not. The Court is not to weigh the evidence at this stage for the purpose of conviction. The Court is only to see whether it is a case of no evidence or some evidence. In other words, the Court is to see whether a prima facie case is made out for framing the charge against the accused persons. The present petitioner has been named in the FIR and active role is attributed to him. The allegation is that he has also collected the payments from the market. The allegation is also that he was doing the business with Ravi Kumar and Suman Jindal. At this stage, there is nothing to show that no offence is made out against the present petitioner.

Otherwise also, in this case after framing of the charge, the petitioner has already filed the criminal revision petition and the learned Additional Sessions Judge, Amritsar vide order dated 14.5.2014 dismissed the same. Now, this petition under Section 482 Cr.P.C. amounts to filing of second revision petition in the guise of petition under Section 482 Cr.P.C. and as per Section 397(3) Cr.P.C., second revision petition is not maintainable. The facts of the case, in no way, show that the case is of civil nature and it is breach of contract.

Keeping in view the facts and circumstances of the present

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case, I do not find any merit in the present petition and the same is dismissed.

February 4, 2015.

(Inderjit Singh)
Judge

hsp