

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

**CRM-M-8856 of 2012 (O&M)
Date of Decision: 23.3.2015**

Balwant Singh Kaler

.....Petitioner

Vs.

State of Punjab

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. N.S.Shekhawat, Advocate
for the petitioner.

Ms. Anmol Grewal, AAG, Punjab.

Mr. Yogesh Chaudhary, Advocate
for the complainant.

RAMESHWAR SINGH MALIK J. (ORAL)

Petitioner, by way of instant petition, under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seeks quashing of FIR No. 24 dated 24.2.2012 under Section 382 of the Indian Penal Code ('IPC' for short), registered at Police Station Raikot, District Ludhiana Rural and the subsequent proceedings arising therefrom.

Notice of motion was issued and pursuant thereto, reply by way of affidavit dated 12.9.2012 was filed on behalf of the respondent-State.

Briefly put, facts of the case are that, on 18.11.2011, an application No. 1389-SCF dated 18.11.2011 was received from police Station Raikot through H.C. Ravinder Singh No. 146, which was submitted by Jagga Singh son of Surjit Singh resident of H.No. 10432, Indira Colony, Gali No.4, Rahon Road, Ludhiana regarding snatching of vehicle and cash. It was submitted by Jagga Singh-complainant that he was a resident of the abovesaid address. When he was going from Bathinda to Ludhiana in his truck at about 10'O clock and reached near village Litra, carrying an amount of Rs. 1,32,000/- and one mobile phone, 16/17 persons came there in one white colour car one black colour car and four motorcycles, including Jaspal Singh, Balwant Singh Kaler and Sumeet-employees of Shriram Transport Finance Company, Ludhiana ('Company' for short). He further stated that he has brought goods from Chennai to Bathinda and reached Bathinda on 17.11.2011. The abovesaid persons snatched his truck, cash amount as well as mobile phone. He prayed for taking appropriate action against the accused and also for getting his articles back.

During the course of enquiry, it transpired that complainant had taken a loan of Rs. 8 lacs from the company, for the abovesaid truck. This amount including interest thereon, was to be returned by the complainant. He defaulted in making the payment and an amount of Rs. 2,43,440/- was outstanding against him. Initially, allegations levelled by the complainant were not substantiated. The enquiry was conducted by the police without registering FIR. However, the enquiry report was not accepted by the Senior

Superintendent of Police, Jagraon, Ludhiana and directed the authorities to register an FIR and thereafter, conduct an investigation in the matter. During the course of investigation, on 11.4.2012, the abovesaid truck alongwith some other articles was recovered from the premises of the company at village Kotla, District Jalandhar. It has been so stated in the reply filed on behalf of the State. It has been further stated in the preliminary submissions that petitioner and other accused could not be arrested till 12.9.12 and final report under Section 173 Cr.P.C. will be presented in the court of Illaqa Magistrate, after arresting the petitioner and other accused.

Based on the abovesaid narration of facts, learned counsel for the petitioner submits that in fact, since the complainant was in default of payment of his loan amount, he himself surrendered the vehicle in question on 18.11.2011. He wrote a letter Annexure P-4 in this regard. After taking the truck in possession, inventory of the articles was prepared vide Annexure P-5. Accordingly, the Station House Officer, Police Station, Division No.5, Ludhiana, was intimated in this regard, vide Annexure P-6. The complainant had already filed a suit for rendition of accounts vide Annexure P-3. The complainant surrendered the truck in question in terms of loan-cum-hypothecation agreement Annexure P-1. Annexure P-2 was the statement of account of the complainant, which shows that an amount of Rs. 2,43,440/- was outstanding against the complainant on 18.11.2011.

Relying upon a judgment of the Hon'ble Supreme Court in the **Managing Director, Orix Auto Finance (India) Ltd. Vs.**

Jagmander Singh and another, 2006 (2) SCC 598, a judgment of this Court in **Kanwal Aggarwal Vs. State of Haryana and another, 2006 (3) RCR (Criminal) 920**, a judgment of Rajasthan High Court in **Aarif Khan Vs. State of Rajasthan, 2008 (3) RCR (Criminal) 450** and a judgement of Madhya Pradesh High Court in **Lalit Mittal and another Vs. Adesh Kumar Gupta 2005 (4) RCR (criminal) 741**, learned counsel for the petitioner submits that it was a case of hire-purchase agreement. The company was entitled to take the possession of the vehicle of loanee on his defaulting in payment. He concluded by submitting that in view of the law laid down in the abovesaid judgments, even if contents of the FIR are taken to be true on their face value, no offence, whatsoever, is made out against the petitioner. He prays for allowing the present petition.

Per contra, learned counsel for the State submits that accused persons including the petitioner could not have taken law into their hands. A clear case was made out against the accused. She further submits that since a cognizable offence under Section 382 IPC was made out, the Senior Superintendent of Police rightly directed to register an FIR. If the allegations levelled in the impugned FIR are taken to be true on their face value, it cannot be said that no offence was made out against the petitioner. She concluded by submitting that the judgments relied upon by the learned counsel for the petitioner do not apply to the facts of the present case. She prays for dismissal of the petition.

Similarly, while drawing support from the arguments raised by the learned counsel for the State, learned counsel for the

complainant submits that petitioner was the main accused. A clear case under Section 382 Cr.P.C. was made out against the accused persons including the present petitioner. He further submits that the complainant immediately reported the matter to the police and there was no delay on his part. He also prays for dismissal of the petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this Court is the considered opinion that present one is not a fit case, warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. To say so, reasons are more than one, which are being recorded hereinafter.

The pleaded and argued case on behalf of the petitioner do not go hand in hand. The pleaded case on behalf of the petitioner is that the complainant himself surrendered the vehicle. Further, all the judgments relied upon by the learned counsel for the petitioner are based on entirely different set of facts, which recognised the right of the finance company to repossess the vehicle. Thus, on the one hand, it has been pleaded and argued case on behalf of the petitioner that it was the complainant who himself surrendered the vehicle to the company and on the other hand, it was claimed that on the basis of the abovesaid judgments, the finance company could have repossessed the vehicle. In view of these self contradictory stands taken on behalf of the petitioner, present petition is liable to the dismissed.

Another material aspect of the matter is that it was not

argued on behalf of the petitioner that the truck was taken into possession by the petitioner, as an authorized representative of the company, in terms of the loan agreement. In this view of the matter, the pleaded and argued case on behalf of the petitioner is based on entirely different set of facts than the facts which were before the Hon'ble Supreme Court in Jagmander Singh's case (supra), before this Court in Kanwal Aggarwal's case (supra), before the Madhya Pradesh High Court in Lalit Mittal's case (supra) and before the Rajasthan High Court in Aarif Khan's case (supra). Having said that, this Court feels no hesitation to conclude that none of the judgments cited by the learned counsel for the petitioner has been found to be of any help to the petitioner, being distinguishable of facts.

It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

So far as principles of law settled by the Hon'ble Supreme Court on the scope and ambit of Section 482 Cr.P.C. are concerned, it has been laid down right from the case of **A.K.Kraipak and others Vs. Union of India and others, 1969 (2) SCC 262**, which has been consistently followed in later judicial pronouncements, particularly in the case of **State of Haryana versus Bhajan Lal and others, AIR 1992 SC 604; Indian Oil Corporation Vs. NEPC India Limited**

(2006) 6 SCC 736; Zandu Pharmaceutical Works Limited. VS. Mohd. Sharaful Haque (2005) 1 SCC 122; Central Bureau of Investigation Vs. K.M.Sharan, 2008 (4) SCC 471 and Arun Bhandari Vs. State of U.P and others, 2013 (2) SCC 801.

In what fact situation, an FIR is to be quashed, the Hon'ble Supreme Court laid down the following broad principles in Bhajan Lal's case (supra).

(a) 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;

(b) 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;

(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) 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”

The abovesaid law laid down in Bhajan Lal's case (supra), came to be reiterated by the Hon'ble Supreme Court in Arun Bhandari's case (supra) and para 28 to 30 of the judgment read as

under:-

“In R. Kalyani v. Janak C. Mehta and others (2009) 1 SCC 516, after referring to the decisions in Hamida v. Rashid, 2007 (2) RCR (criminal) 917 and State of Orissa v. Saroj Kumar Sahoo 2006 (1) RCR (criminal) 324, this Court eventually culled out the following propositions: -

“15. Propositions of law which emerge from the said decisions are:

a. The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

b. For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

c. Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the

accused to hold absence of any mens rea or actus reus.

d. If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.”

It is worth noting that it was observed therein that one of the paramount duties of the superior court is to see that person who is absolutely innocent is not subjected to prosecution and humiliation on the

basis of a false and wholly untenable complaint.

*Recently in **Gian Singh v. State of Punjab and another 2012 (4) RCR (criminal) 543**, a three-Judge Bench has observed that:*

*“55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim *quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest*. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. *Ex debito justitiae* is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.”*

Reverting back to the facts of the present case and respectfully following the law laid down in the cases, referred to hereinabove, it is unhesitatingly held that under no circumstances, it can be said that even after treating the allegations levelled in the FIR to be true on their face value, without adding anything thereto and without extracting anything therefrom, no case is made out against the petitioner.

In fact, the present case does not fall in any of the

abovesaid categories carved out in Bhajan Lal's case (supra). Under these circumstances, it can be safely concluded that the petitioner has failed to make out a case for interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered opinion that present petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference is made out.

Resultantly, present petition stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

23.3.2015
Ak Sharma

Whether to be referred to Reporter?