IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 207

Criminal Miscellaneous No.M-5809 of 2014
Date of Decision: *July 22, 2015*

Rahul Mishra & another

..... PETITIONER(S)

VERSUS

State of Haryana & another

..... RESPONDENT(S)

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

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

. . .

PRESENT: - Mr. Sanjay Abbot, Advocate, for the petitioners.

Mr. D.R. Singla, Deputy Advocate General, Haryana.

Mr. Anand Chhibbar, Senior Advocate, with Mr. Gaurav Mankotia and Mr. Vaibhav Sahni, Advocates, for respondent No.2.

. . .

Jaspal Singh, J

1. The instant petition has been preferred by Rahul Mishra & another under Section 482 Cr.P.C. for quashing FIR No.59 dated January 19, 2014 (Annexure P-1) under Sections 409, 420, 467, 468, 471, 120-B IPC, registered at Police Station, Chandnibagh, Panipat and all proceedings emanating therefrom.

2. Instant FIR has been registered on the basis of a complaint made by respondent No.2 – Surender Pal Singh. Allegations levelled in FIR against petitioner are as follows:-

> "That respondent No.2, through its partnership firm, M/s Gargi Overseas 172-R, Model Town, Panipat purchased a Ferrari car, bearing registration no. DL 4C AC 1440 from petitioner No. 1, through petitioner No. 2, on 08.06.2011 for a sum of Rs. 1,85,00,000/- (Rupees One Crore Eighty Five Lacs Only) which was paid by respondent No. 2 vide pay order no. 849127 dated 06.04.2011, drawn on SBI, SCB, G.T. Road, Panipat, Haryana, in favour of petitioner No. 1. It is alleged that at the time of the sale, petitioner No. 1 and petitioner No. 2 assured the complainant that they would get the car transferred in the name of respondent No. 2 for which respondent No. 2 signed all the necessary documents for transfer. It is further alleged that petitioner No. 1 and petitioner No. 2 retained the original R/C of the car by saying that the same would be required in the R.T.O. at the time of transfer. It is alleged that the petitioner No.1 and petitioner No. 2 assured respondent No. 2 that the H.P. Agreement endorsed on the R.C. in favour of ICICI bank would be cancelled after clearing the loan on the car. It is alleged that respondent No. 2 had requested petitioner No. 1 & 2 several times to transfer the said vehicle in the name of respondent No. 2 or get an NOC issued from RTO Delhi permitting respondent No. 2 to get the car registered in Haryana. It is alleged that the petitioner No. 1 & 2 failed to transfer the said vehicle or get an NOC and have been making false excuses. It is alleged that the original RC is still in the possession of petitioner No. 1. It is alleged that at the time of sale of this car, both petitioner No. 1 & 2 represented to the complainant that the car was free from any litigation and was not required in any case. It is alleged that as per the legal notice of respondent No. 2 dated 31.08.2012, the respondent No.2 reiterated his apprehension of the car being involved in a criminal case. It is further alleged that petitioner No.1 has got the car on superdari. It is alleged that the petitioner No.1 & 2 were aware that the said car was the case property in a case under investigation by DRI. It is further alleged that the petitioner No.1 & 2 not only have the knowledge of this case but are also liable for tax evasion as they have sold a tainted vehicle to respondent No.2 under a well hatched criminal conspiracy. It is alleged that the sale consideration of Rs.1,85,00,000/- (Rupees One Crore Eighty Five Lacs Only) was made at Panipat. It is lastly alleged that all the petitioners evaded custom duty of the car and created a false seal and thereafter transferred the car and cheated the complainant for a sum of Rs. 1,85,00,000/- (Rupees One Crore Eighty Five Lacs Only). A copy of the impugned FIR dated 19.01.2014 is annexed herewith as ANNEXURE P-1."

3. While challenging the FIR in question, learned counsel for the petitioner has argued that even if allegations contained in FIR or the complaint are taken at their face value and accepted in their entirety, do

not *prima facie* constitute any offence and it is well settled that when the FIR do not disclose a cognizable offence justifying an investigation by police officer under Section 156(1) Cr.P.C., the same deserves to be quashed. While developing his argument, it has been contended that neither any offence under Section 409 IPC or under Section 420 IPC nor other offence for committing any forgery or production of the forged documents are made out. To constitute an offence under Section 409 IPC, ingredients provided in Section 405 IPC i.e. (a) entrusting a person with property or with any dominion over property, (b) that person entrusted, (i) dishonestly misappropriating or converting that property to his own use; or (ii) dishonestly using or disposing of that property or willfully suffering any other person so to do in violation of any direction of law prescribing the mode in which such trust is to be discharged and of any legal contract made, touching the discharge of such trust, need to be fulfilled and as the said vehicle along with the original registration card is in the possession of respondent No. 2, no ingredient is made out.

4. The petitioners are neither importers nor the dealer of cars. As per the allegations, on April 8, 2011, a Ferrari car bearing registration No.DL4C-AV-1440 was sold to respondent No.2 by petitioner No.1 through petitioner No.2 for total sale consideration of ₹ 1,85,00,000/-. The keys as well as car was delivered by petitioners to respondent No.2 at Delhi. Pay order dated April 6, 2011 for ₹ 1,85,00,000/- was also given to petitioner No.1 at Delhi. After deducting his commission of ₹ 5

lac, petitioner No.2 transferred the remaining amount of ₹ 1.80,00,000/- in the account of petitioner No.1. Since the car in question has already been delivered to respondent No.2, it cannot be said that petitioner has dishonestly misappropriated or converted it for his own use. Similarly, no offence under Section 420 IPC also can be said to be made out as there is no deception from the inception of the transaction to sell away the car to respondent No.2. The possession of car was lawfully delivered to respondent No.2 alongwith all the relevant documents. There is nothing on record even to *prima facie* establish that the petitioners forged any valuable document or the same was used during any proceeding. Moreover, transaction is purely of civil nature and just to put pressure upon petitioners to recover the amount, civil dispute has been intentionally converted into criminal. The car in question is in possession of respondent No.2 but with malafide means, he has retransferred the same in the name of petitioner No.1 in order to evade the investigation being conducted by DRI and other custom authorities. Since no case is made out, FIR is liable to be quashed.

5. On the other hand, learned State counsel as well as learned counsel for respondent No.2 have vehemently argued that petitioner No.2 is an authorized car dealer of imported cars and is an income tax payee at Delhi. Petitioner No.1, through petitioner No.2, sold Ferrari Car for a consideration of ₹ 1,85,00,000/- out of which a sum of ₹ 5 lac was retained by petitioner No.2 as his commission and balance amount of

₹ 1,80,00,000/- were deposited in the bank account of petitioner No.1. Infact, registration card in question was never handed over to respondent No.2 as it was a case property in some criminal case pending investigation with DRI. Neither the car in question is with respondent No.2 nor amount of ₹ 1,85,00,000/- has been returned by petitioners. Thus, cognizable offences are made out against the petitioners and as such, there is no question of quashment of FIR.

6. After bestowing due consideration to the rival submissions made by learned counsel for parties and scrutinizing the documents available on file, this Court is of the considered view that no case is made out for quashing the FIR in question.

7. The category of cases where extraordinary powers under Section 482 Cr.P.C. can be exercised by the High Court either to prevent the abuse of process of any Court or otherwise to secure ends of justice, guidelines have been highlighted by Hon'ble Apex Court in case **State of Haryana & others vs. Bhajan Lal & others, 1992 Suppl. (1) SCC 335**. It would be appropriate to reflect that relevant part of the judgment. The same reads as under:-

> "The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482 CrPC can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:
>
> (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 FIR 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 15(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 make 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 or 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 and with a view to spite him due to private and personal grudge."

8. Now, it is to be seen whether allegations made in the FIR even if they are taken at their face value and accepted in their entirety do *prima facie* constitute any cognizable offence justifying an investigation by the police under Section 156(1) Cr.P.C.

9. Adverting to the facts of the case, undisputably, car was sold by petitioner No.1 who is the third owner through petitioner No.2 for a consideration of ₹ 1,85,00,000/- and the amount was paid to them. Though the keys as well as car are statedly handed over to respondent No.2 by petitioners but one thing is evident from the averments in the

petition itself that the car has been retransferred in the name of petitioner No.1, thus, he cannot be said to be in possession thereof. Even there is nothing on the record to suggest that registration of the car has been got incorporated in the name of respondent No.2. Neither respondent No.2 is in possession of the car nor an amount of ₹ 1,85,00,000/- has been returned. The car was also required in some proceedings pending before DRI at Delhi when it was sold to respondent No.2. So, in such circumstances, it cannot be said that no case is made out for commission of any cognizable offence.

10. In the light of what has been discussed above, this Court finds no merit in the instant petition. As such, the same is dismissed.

(Jaspal Singh)
Judge

July 22, 2015
avin