IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CRM-M-11300 of 2014 (O&M)
Date of decision: March 02, 2016

K.N. Manvi & others ...Petitioners

Versus

State of Punjab & others ...Respondents

CORAM: **HON'BLE MR. JUSTICE RAJAN GUPTA**

Present: Mr. R.S. Rai, Senior Advocate with
Mr. Gautam Dutt, Advocate for the petitioners.
Mr. Shilesh Gupta, Addl. Advocate General, Punjab.
Mr. G.S. Punia, Senior Advocate with
Ms. Harveen Kaur, Advocate for respondents No.2 & 3.

Rajan Gupta, J.

Petitioners have impugned FIR No.48 dated 22.02.2014, under sections 420 and 120-B IPC, registered at Police Station Focal Point, Ludhiana.

Mr. Rai, learned senior counsel for the petitioners has contended that ingredients of offence under section 420 IPC are not made out. Alleged transaction was way back in the year 2004. FIR has been registered in the year 2014. Thus, there are serious doubts about the complaint made by the private respondents. He has asserted that petitioner No.1 was posted in Kenya Branch in April, 2006. By that time, the transaction was over. Thus, he has been unnecessarily arrayed as an accused. Besides, complainant is a defaulter of the bank and has lodged the complaint only to pressurize the bank officials. He has relied upon the judgment reported as ***Mrs. Priyanka Srivastava and Another Vs. State of U.P. and Others, 2015 (2) Cri. C.C. 713***.

Prayer has been opposed by the State counsel. According to him, ingredients of the offence are made out. The goods were sent by complainant to Kenya. Same were to be released by the bank after receipt of payment. However, the bank officials released the consignment without receiving the payment. The matter in this regard needs to be investigated.

Learned counsel for the complainant has made submissions on similar lines. He has vehemently opposed the prayer for quashing of FIR. According to him, from the documents on record, role of the accused including petitioner No.1 is clearly made out. Petitioner No.1 wrote certain letters, which show that he was conniving with other accused. According to him, the entire issue can be gone into only by the investigating agency. However, due to the stay operating in the case, investigation has not made any progress.

I have heard learned counsel for the parties and given careful thought to the facts of the case.

A complaint was lodged by Gautam Mahajan, M/s Karan Bike (India), Ludhiana. He stated that he was running an export oriented unit in the name and style of M/s Karna Bikes. He has a flourshing business and contributing a lot towards the National Industrial production and for earning foreign exchange. Petitioner has been dealing in export of bicycles, its parts, sweing machines and nuts, bolts etc. He was having an account with Bank of Baroda, S.S.I. Branch, Focal Point, Ludhiana.

He exported bicycles parts, sewing machines, nuts and bolts to M/s Techno Enterprises Ltd. P.O. Box 44303, Nairobi, Kenya vide bill of lading no.030252, container No.TNU 2483689, detail of which are given in the FIR. In all the transactions, which took place, the bank officials released the goods to M/s Techno Enterprises Ltd. without receiving payment. As per records shipping company informed that goods had been released on 26.6.2004. Petitioner No.1, Managing Director of the Bank wrote a letter dated 11.04.2006 to General Manager, Bank of Baroda that bill of lading no.krqz 01573 for an amount of USD 18885.00 Bank of Baroda reference no.420141, Bank of Baroda Kenya reference UBE 51/012, returned "UNPAID" to Bank of Baroda forex branch on 25.08.2005. When he learnt about the aforesaid facts, he approached Bank of Baroda Forex Branch, Chaure Bazaar, Ludhiana and demanded documents for USD 18885.00, the bank officials told him that they had not received any such documents and are not even aware of it. Thereafter, I approached Mr. Talwar Singh, Chief Manager, Bank of Baroda, S.S.I. Branch, Focal Point, Ludhiana to give him the payment or complete documents, but he failed to do so. Thereafter, he matter was referred for investigation to the Director, Central Bank of Kenya (Supervisory Bank), who submitted his report dated 24.06.2009 to the Permanent Secretary, Ministry of Finance, Naroby Kenya confirming the fact that documents were returned to Bank of Baroda, India as unpaid. Thus, from letter dated 11.4.2006 as well as investigation report dated 24.06.2009, it emerged that documents were returned to Bank of Baroda, India. The complainant neither received the documents nor the payment of USD 18885. Similar other transactions have also been referred to in detail in the FIR.

After registration of FIR, a preliminary enquiry was conducted. According to affidavit of Balwinder Singh, Assistant Commissioner of Police (South), Ludhiana, complainant never instructed the bank to release the goods without payment. According to said affidavit, a preliminary enquiry was conducted in the matter. Thereafter, instant FIR was registered. Besides, matter is still under investigation.

Keeping in view facts and circumstances of the case, I am of the considered view that no case for quashing of FIR is made out. In the preliminary enquiry it transpired that on the basis of bill of lading, the goods were to be released by the bank after receipt of payment from the buyer. However, they dishonestly and fraudulently released the goods in connivance with the buyer causing huge financial loss to the complainant. The judgment in *Priyanka Srivastava's case (supra)* is not applicable to the facts of the instant case. In the said case, challenge was to the order passed by the court under section 156 (3) Cr.P.C. The court dwelt upon the scope of Section 156 (3) Cr.P.C. It found that despite a 'one time settlement' between a defaulter and the bank, the court had directed investigation in exercise of powers under section 156 (3) Cr.P.C. However, instant case has been registered by the investigating agency after a thorough enquiry by Additional Deputy Commissioner of Police, Ludhiana. The factual pleas raised before the court cannot be gone into at the stage of investigation. The exact nature of crime, if any, can be unraveled only during investigation. However, investigation has not made any progress as same was stayed vide order dated March 31, 2014, passed by a coordinate bench. The petition is, thus, without any merit and is hereby dismissed.

(RAJAN GUPTA)
JUDGE

March 02, 2016
'Rajpal'