IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-20397-2015 (O&M).
Decided on: February 5, 2016.

Ram Kumar Garg

..... Petitioner(s)

Versus

U.T. Chandigarh

..... Respondent(s)

* * *

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT Mr.Bipan Ghai, Sr. Advocate, with
Mr.Paras Talwar, Advocate, for the petitioner.

Mr.Anil Kumar Lamdharia, Addl. PP for U.T. Chandigarh.

Mr.Yogesh Goel, Advocate, for the complainant.

M.M.S. BEDI, J (ORAL).

Petitioner claiming himself to be the proprietor of M/s Laxmi Oil and Soaps Ltd., and projecting himself to be Director of M/s Accord Cotsyn Limited, under debt, undertook to pledge as security plot No.5 Industrial Area, Phase-I, Chandigarh, in favour of the complainant, but later on shifted the stand that he was partner and duped the complainant of more than Rs.6 crores which is a licensed money lender registered with R.B.I. A sum of Rs.2.5 crores was released as loan to the petitioner by the complainant for payment of debts of M/s Accords Costyn Limited to Bank of Baroda and in terms of tripartite agreement dated 27.11.2007, first charge of complainant was to be created for repayment of loan of Rs.6 crores. The cheques issued for repayment and discharge of liability were also dishonoured. The petitioner's intention to cheat from beginning of the transactions and the act of persuasion of the complainant to part with money on false premises is sufficient to prima facie attract the ingredients under Section 420 IPC. The petitioner seeking to evade his liability and raising a plea of matter being of civil liability, claimed pre-arrest bail.

Petitioner had been granted the concession of pre-arrest bail vide order dated 13.8.2013, by a Coordinate Bench of this Court by making following observations.

> *"A mere fact that in the agreement it is written as sole proprietor instead of partner does not constitute a criminal offence. Similarly, learned senior counsel for the petitioner has stated that at the time of execution of the agreement the title deed of plot No.5 was with the Bank which was to be redeemed after making the payment and on this ground also no criminal offence is made out."*

The complainant aggrieved by the said observations had approached Hon'ble the Apex Court. Hon'ble the Apex Court had set aside the order dated 13.8.2013 and remanded the matter back to this Court to decide the case independently without deciding the merits of the main case after issuing notice to the concerned parties including the complainant uninfluenced by the order passed by

Hon'ble the Apex Court.

Notice was issued to the State and the complainant.

Counsel for the complainant had vehemently opposed the application for pre-arrest bail contending that the petitioner had played a fraud with the complainant while taking the loan of Rs.6 lacs not disclosing that he was not the proprietor but was only a partner. However, he has admitted that the proceedings for recovery of the amount and for enforcement of legal rights on the basis of the contract between the parties and proceedings under Section 138 of the Negotiable Instruments Act have already been initiated against the petitioner.

On the request of State counsel the petitioner was required to give specimen signatures for comparison and by providing interim protection to the petitioner, he was directed to join investigation. The State should have completed the investigation and submitted report by now but petitioner seems to have influenced State agency.

State counsel on the instructions of SI Manjit Singh informs that original deed has been furnished by the petitioner during the course of investigation and that the petitioner has also given specimen signatures though there is no denial of factum of petitioner having signed the documents in accordance with law.

Counsel for the complainant has also contended that as per the loan agreement dated 18.12.2007, the petitioner has not created any charge in favour of the complainant. So far as grievance of the complainant in that context is concerned, it will always be open to the complainant to enforce his legal rights in accordance with law as a civil suit has already been filed by the complainant against the petitioner.

Merely because the complainant has been vigilant to safeguard his rights by filing civil suit and complaints under Section 138 of the Negotiable Instruments Act, it cannot be held that no criminal offence is made out. A Full Bench of A.P. High Court in ***2001 Cr. L.J. 1489, M/s OPTS Marketing Private Limited and others vs. State of A.P. and others,*** it was held that even after the introduction of Section 138 of the Negotiable Instruments Act, prosecution under Section 420 IPC is maintainable in case of dishonor of cheques or post-dated cheques issued towards payment of hand loan taken or in discharge of an antecedent debt, if the allegations exist that accused had dishonest intention not to pay even at the time of issuance of the cheque.

It is not a case of simple dispute where civil remedies have been taken to safeguard the interests of complainant. Initiation of civil proceedings and filing of complaint under Section 138 of the Negotiable Instruments Act, in present case will not absolve the petitioner of the criminal liability.

Apex Court in ***Lee Kun Hee and others Vs. State of U.P. 2012 (1) RAJ 259***, held that a person dishonestly deprived of his property by accused can file civil suit against guilty for recovery of property and can also initiate criminal proceedings for cheating.

Counsel for the petitioner has submitted, on asking of the Court, that petitioner is not ready to perform his obligation arising out of the agreement between complainant and petitioner. This fact is sufficient to form opinion regarding mala fide intention of petitioner. The petitioner though prima facie guilty of cheating cannot be sent behind bars, at this stage, because he has refused to repay the amount. The remedy for recovery having been availed against petitioner, he can be granted pre-arrest bail.

Taking into consideration, the above said circumstances and without expression of any opinion on merits, it does not appear to be a case of custodial interrogation.

The petition is allowed. It is ordered that in case of arrest of the petitioner, he shall be released on bail to the satisfaction of the arresting officer subject to the following conditions: -

i) that the petitioner will not tamper with the evidence or hamper investigation, in any manner;

ii) that the petitioner will not leave India without the permission of the Court;

iii) that the petitioner will not hamper the proceedings before the trial Court by adopting dilatory tactics, in any manner; and

iv) that the petitioner will not make any attempt to browbeat or threaten the witnesses, in any manner.

Nothing said in this order will prejudice the rights of the complainant in any other civil or criminal proceedings pending against the petitioner to enforce his legal rights.

(M.M.S. BEDI)
JUDGE

February 5, 2016.
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