IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No. M-28367 of 2016
Date of Decision: 15.09.2016

Prakash Radhey Shyam Mishra

...Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Krishan M. Vohra, Advocate
for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

Mr. B.R. Rana, Sr. Advocate with
Mr. Vivek Goyal, Advocate
for the complainant.

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HARI PAL VERMA J. (Oral)

Petitioner - Prakash Radhey Shyam Mishra has filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in FIR No.31 dated 27.01.2016 under Sections 406/420/506/120-B IPC registered at Police Station Butana, District Karnal.

Brief facts of the case are that M/s Bush Foods Overseas Pvt. Ltd. company was incorporated by one Vir Karan Awasty in the year 2005 and in the year 2013, 69.5% shares of the company were purchased by M/s Hassad Food Company owned by Qatar Investment Authority. Since M/s Bush Foods Overseas Pvt. Ltd. was running into losses, a company petition for winding up of the said company was filed in High Court of Delhi at New Delhi, wherein vide order dated 13.8.2014, directions were issued restraining the directors from selling, alienating, transferring or creating any third party interest/right in the movable and immovable assets of the said company (i.e. M/s Bush Foods Overseas Pvt. Ltd.). The petitioner being a specialized person in revival of stressed companies, was appointed as Non-Executive Additional Director in M/s Bush Foods Overseas Pvt. Ltd. w.e.f. 2.10.2014 by M/s Hassad Food Company, to revive the company from losses into profit.

The instant FIR was registered at the behest of the complainant - Sunder Lal, the proprietor of M/s Pawan Trading Company who is dealing in the business of Aadhat. It has been alleged that the complainant was cheated by accused including the petitioner. Accused – Vir Karan Awasthy and Vinod Kumar Sirohi had approached the complainant for supplying paddy to their company and the complainant was assured that their company will make the payment well within time. The complainant believed the representation of the accused and stood guarantor before the Market Committee against the liabilities of M/s Bush Foods Overseas Pvt. Ltd. The complainant received payments upto 2013, but all of a sudden, the Managing Director and Chairman of the Company did not make the payment. The complainant came to know that the directors of the company have sold 69.5% shares of the company for Rs.750/- crores to M/s Hassad Food Company. The complainant requested existing as well as retired directors to pay an amount of Rs.6,86,00,462/- which was found due against them, but nothing was paid to him, which resulted in registration of the instant case FIR.

Learned counsel for the petitioner has argued that the alleged transactions have taken place only upto the year 2013, whereas the petitioner joined the company on 02.10.2014 and was retired from the company i.e. M/s Bush Foods Overseas Pvt. Ltd. on 20.4.2016 and he had neither purchased any goods from the complainant either in cash or on credit basis nor placed any order to the complainant at any point of time, and therefore, the allegation that the petitioner was instrumental in committing the offence, as referred in the FIR, are incorrect. The petitioner has been dragged into litigation with ulterior motive. No offence is made out against the petitioner. The allegations levelled by the complainant are not only false, vague, frivolous or concocted, rather the same are motivated and highly defamatory.

Learned counsel for the petitioner has further argued that the FIR was registered against several persons alleging therein that the complainant had started to supply the paddy to the company since the year 2005 and the transactions continued smoothly till the year 2013. However, since the petitioner joined the company only on 2.10.2014, therefore, no transaction had been effected during the tenure of the petitioner, who ultimately retired from the post of Director on 20.4.2016. Moreover, the petitioner being merely a non-Executive Director, had no financial power to deal with the creditors. Since the liquidation proceedings started against the complainant, the Board of Directors was restrained from conducting any financial transaction. Further, the petitioner filed a petition before Allahabad High Court for quashing of FIR No.376 of 2014, wherein the arrest of the petitioner was stayed until and unless any credible evidence is collected against him. No credible evidence has come against the petitioner and he has falsely been implicated in the case. It was further submitted that the petitioner had no intention to commit the offences, as alleged.

On the other hand, Mr. B.S. Rana, learned senior counsel, appearing on behalf of the complainant has argued that in the case in hand, innocent firms have been duped, as no payment has been made to them. He further submitted that the plea of the petitioner that he joined on 2.10.2014 and resigned on 20.4.2016 runs contrary to the bank records. The petitioner is signatory to the bank account of company. The bank account has duly been operated by the petitioner. He has produced a photocopy of the account, showing statement of transaction from 1.3.2015 to 4.9.2015. Account No.01912320001871 is being operated by petitioner and he has signed the account based operating instructions.

I have heard learned counsel for the parties.

It cannot be disputed that the petitioner was Director of the company. No doubt, the petitioner might have joined the company on 2.10.2014, but the complainant has levelled specific allegations against him that he was managing the affairs of the company. The plea of the petitioner that he retired from the Directorship on 20.4.2016, is of no consequence for the reason that the FIR in question was registered on 27.01.2016 i.e. much prior to his retirement. The Bank details produced by learned senior counsel appearing on behalf of the complainant show that on the date of registration of the FIR, the account of the company was operational and the petitioner was duly operating the same. The allegations against the petitioner are serious, as huge amount is involved.

Therefore, this Court does not find any merit in this petition.

Dismissed.

September 15, 2016 **(HARI PAL VERMA)**
AK **JUDGE**

Whether speaking / reasoned? Yes / No

Whether reportable? Yes / No