IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-3830-2016 (O&M)
Date of decision: September 16, 2016.

Rakesh Kad and another

... **Petitioners**

v.

State of Punjab

... **Respondent**

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Shri Bipan Ghai, Senior Advocate with
Shri Vikas Mohan Gupta, Advocate for the petitioners.

Ms. Rajni Gupta, Additional Advocate General, Punjab.

Shri J.S. Bedi, Senior Advocate with
Shri Karandeep Sidhu, Advocate for the complainant.

A.B. Chaudhari, J. (Oral):

Heard Learned Counsel for the rival parties. This Court had made an interim order on 10.2.2016, which is reproduced herein-below for the sake of convenience and in order to understand the reasons given therein:-

"Present:- Mr. Bipan Ghai,Senior Advocate assisted by
Mr.Vikas Mohan Gupta,Advocate for the petitioners.

Prayer is for grant of anticipatory bail in case FIR No.379 dated 8.12.2015 under Sections 406,420,468,471 and 120-B IPC, PS Tripri Town,Patiala.

The dispute is between the partners of M/s Hindsons Private Limited, Patiala (for short Private Company). The Private Company had originally five shareholders to the extent of

20% each of the families of Jagdeep Singh,Anand Kumar Chopra,Rakesh Kad,Satish Garg and Swaranjit Singh.

Present complainant-Inderpal Saini on the death of his father-Jagdeep Singh succeeded the said share,whereas the co-accused Rajnish Singh on the death of his father-Swaranjit Singh has succeeded his share.

The allegation of the complainant-Inderpal Saini is that the Board of Directors in the year 2002 and 2004 have fraudulently sold of the properties at throwaway prices without there being proper authorization.

It is contended that firstly, the properties were sold of in the year 2002 and 2004 after passing proper resolution amongst the Directors comprising petitioners-Rakesh Kad, Satish Garg and Swaranjit Singh. Secondly, the properties were valued properly at the Collector's rate existing at that stage and,therefore, no loss was caused to the Private Company. Thirdly, the FIR has been lodged after a delay of almost 11/13 years and fourthly the present FIR has been lodged after a recovery suit was decreed by the trial court against the complainant and lastly it is submitted that dispute,if any,at all is of civil in nature and no offence is made out.

At this stage Mr.JS Bedi,Senior Advocate assisted by Mr. Gurbir Dhillon, Advocate for the complainant points out that FIR has been lodged after a thorough enquiry wherein it has been found that the resolutions of the Private company were passed by fabricating issuance of notices to shareholders as required by the procedure in the Memorandum and Articles of Association of the Private Company. It is further submitted that the entire sale proceeds were neither shown in the books of accounts of the Private Company nor distributed amongst shareholders, thus, depriving shareholders of their dues.

Notice of motion for 23.2.2016.

To be heard with CRM-M 1638/2016.

Till the next date, in the event of arrest, the petitioners shall be released on bail on furnishing adequate bail and surety bonds to the satisfaction of the Arresting/Investigating Officer/Trial Court.

Petitioners shall appear before the I.O., as and when called upon for investigation and shall also be bound by all the conditions stipulated in Section 438(2) Cr.P.C.

10.02.2016 **(Jaswant Singh)**
joshi **Judge"**

Shri J.S. Bedi, learned Senior Counsel appearing for the complainant, vehemently argued that the complainant came to know about the fraud only in the year 2015 and therefore the aspect of delay is just to be ignored. Learned Counsel for the State states that the petitioners though have joined the investigation, they have not supplied the original documents/notices etc. Looking to the facts quoted in the aforesaid interim order made by this Court, one thing is clear that the properties were allegedly sold pursuant to the alleged meeting of the Board of Directors of the Company way back in the year 2004 and the contention now raised by the complainant on the ground that now he came to know for the first time that the sales effected by the petitioners were fraudulent and the petitioners acted in breach of trust attracting the offence under Section 406 IPC also, does not appeal to me.

Having given a careful thought to the entire matter, I find prima facie that the nature of dispute between the Directors of the Company is of civil as well as criminal nature. But then, in so far as the aspect of delay is concerned, it is certainly of paramount importance in criminal cases. The same would be relevant to decide whether to vacate the interim order made by this Court or confirm the same. The only ground on which Learned Counsel for the State seeks vacation of the order is about non supply of the original documents of notices by the petitioners. The petitioners in that event shall appear before the Investigating Officer and produce the documents in original before the Investigating Officer who then may decide further course of action.

In so far as offence of breach of trust, as contended by Mr. Bedi learned senior counsel is concerned, I find that at this stage it is not just to deny the relief of grant of anticipatory bail order looking to the entire background of the case, namely, the dispute amongst the Board of Directors and the claims and counter-claims. In my opinion, the complainants are at liberty to pursue the issue for recovery of money or sale consideration before an appropriate forum. But then, there is no need to vacate the interim order made on 10.2.2016.

In the result, the interim order dated 10.2.2016 is made absolute.

The petition is disposed of.

[**A.B. Chaudhari**]
Judge

September 16, 2016.
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No