IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH.

CRM M-42328 of 2016

Date of Decision: December 21, 2016

Ram Kumar Garg

…..Petitioner

Vs.

UT Chandigarh

…..Respondent

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

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Present:- Mr. J.S. Bedi, Sr. Advocate with
Ms. Diya Sodhi, Advocate
for the petitioner.

Mr. Gautam Dutt, Advocate for UT Chandigarh

Mr. Vinod Kumar, Advocate
for the complainant.

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M.M.S. BEDI, J.

Petitioner claiming himself the proprietor of M/s Laxmi Oil and Soaps Limited and projecting himself to be the Director of M/s Accord Cotsyn Limited, under debt, had undertaken to pledge plot No.5, Industrial Area, Phase I, Chandigarh, as security in favour of complainant M/s Alchemist Holdings Limited and duped the complainant for an amount of Rs.6 crores which had been given as loan to him. A sum of Rs.2.5 crores, as loan, was released to the petitioner by complainant for payment of debts of M/s Accord Cotsyn Limited to Bank of Baroda by virtue of a tripartite agreement dated November 27, 2007, annexure P-4, appended with the present petition. As per the said agreement, first charge of the complainant was to be created for re-payment of loan of Rs.6 crores. The cheques issued for repayment and discharge of liability were dishonoured. The petitioner's intention to cheat from the beginning of the transactions and his act of persuading the complainant to part with loan amount with false promise constituted offence under Section 420 IPC. The petitioner had projected himself is Director of M/s Accord Cotsyn Limited but later on shifted the stand that he is merely a partner and refused to re-pay the amount.

Petitioner had been granted concession of pre-arrest bail vide order dated August 13, 2013 passed by a Coordinate Bench of this Court. The following observations were made by Coordinate Bench while granting pre-arrest bail to the petitioner:-

> "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 filed a petition in the Hon'ble Supreme Court which had set aside the order dated August 13, 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 party including the complainant, uninfluenced by the order passed by the Hon'ble Supreme Court, vide order dated February 5, 2016, this Court had expressed prima facie opinion that the petitioner had dishonestly deprived the complainant of his property as such the complainant had no doubt right of filing civil suit for recovery besides initiating criminal proceedings for cheating. He was granted concession of pre-arrest bail by making following observations:-

> "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."

The Hon'ble Supreme Court had set aside the order passed by this Court by passing the following order:-

"1. Leave granted.

2. We have heard the learned counsels for the parties. The High Court in its order has held that the accused respondent (petitioner before the High Court) had acted with the mala fide intention and is prima facie guilty of cheating.

3. In view of the aforesaid finding recorded by the High Court, we do not see how the order of grant of anticipatory bail could have followed. We, therefore, set aside the order of the High Court and allow this appeal."

Pursuant to the setting aside of the order granting anticipatory bail to the petitioner, the petitioner opted to file another petition for pre-arrest bail as CRM M-38460 of 2016 but it was withdrawn on October 27, 2016 informing that the petitioner had been arrested.

In view of above circumstances, the petitioner filed an application for regular bail before the Additional Sessions Judge, Chandigarh. Taking into consideration the conduct of the petitioner, the application for regular bail was dismissed on November 10, 2016. The petitioner has now sought concession of regular bail by approaching this Court. In order to wriggle out of the civil and criminal liability, the petitioner has come out with a plea that loan agreement was no doubt entered on November 28, 2007 and a sum of Rs.6 crores vide cheque drawn on HDFC Bank, Panchkula was paid in favour of Consortium of Banks in the account of M/s Accord Cotsyn Limited and loan agreement was entered into which contain following important clause:-

> "It is further agreed that IInd party shall have first charge on industrial premises 5, Industrial Area, Phase I, Chandigarh measuring 4592.25 sq. yards situated in Industrial Area, Chandigarh after the same has been released by the State Bank of India/ Bank of Baroda/ Dena Bank. The Ist party confirms that there is no other charge/ encumbrance etc. created on the subject premises. **Through this agreement the Ist party authorized the IInd party to get the charge registered in its favour as soon as the same is released by the aforesaid banks**. A copy of this agreement be submitted with Estate Office/ appropriate authority on execution, for creation of first charge immediately on its vacation by the aforesaid banks. No other charge to be created before creation of first charge in favour of the IInd party other than charges existing as on the date of this agreement. Original letter to be set by first party to Estate Office for obtaining permission for creation of charge/ mortgage on the said property in favour of the second party is also enclosed."

The rule of estopple is sought to be applied against the complainant with all documents of partition were shown to the complainant and after verifying the fact that in the Estate Office the property i.e. Plot No.5 was shown in the name of sole proprietor and not partners, the complainant had entered into the agreement. It is claimed by the petitioner that in pursuance to the loan agreement and its terms, the letter dated December 29, 2007 was submitted to the Estate Office, Chandigarh for creating the charge over the property at Plot No.5, Industrial Area, Chandigarh and the agreement was duly complied with, vide annexure P-5. A plea has been taken that subsequently pursuant to the arrangement to develop the industrial plot into commercial, as per the understanding between the parties, the complainant Company and the accused had scribed a collaboration agreement where, the complainant was termed as developers and vide Clause 3 (b) of the agreement, the complainant Company was to deposit Rs.91,84,500/- being the 10% of the total conversion amount. Pursuant to the said agreement, the complainant Company deposited the conversion amount. When confronted as to how the agreement for joint venture has not been signed, the petitioner has taken up the peal that taking benefit of his close friendship and faith, though the agreement for joint venture was finalized and sent to the complainant Company, but the same was not returned after proper signatures. It is claimed by the petitioner that the complainant wanted to pressurize him to sell the plot instead of complying with the terms and conditions of the joint collaboration agreement.

There is no force in the said fresh plea taken by the petitioner after a period of 9 years. Besides this, admittedly no collaboration agreement has been signed by the complainant as such the defence plea taken for not returning the sum of Rs.6 crores with interest despite civil proceedings having been initiated for recovery are indicative of the intention to cheat from the very beginning.

I have considered the facts and circumstances of the case which clearly reflect that the liability of the petitioner is a combination of civil and criminal liability. The victim/ complainant has been deprived of sum of Rs.6 crores. No doubt steps have been taken for recovery of the amount and proceedings under Section 138 of the Negotiable Instruments Act have been launched but the evasive approach of the petitioner to return a single penny to the complainant despite all out efforts having been taken by the complainant and disinclination of the petitioner to return even a single penny is, on the face of it, not only unreasonable but an apparent proof of malafide and fraudulent intention of the petitioner.

Since this Court is of the opinion that it is a case of combination of civil as well as criminal liability and the person who has been deprived of his property dishonestly, is entitled to avail all the legal remedies available to him on civil as well as on criminal side, as per the judgment in **Lee Kun Hee and others Vs. State of UP and others,** (2012) 3 SCC 132 and striking a balance between the right of liberty of the petitioner and the right of the complainant to be not deprived of his property without legal authority, I deem it appropriate in the interest of justice to grant bail to the petitioner subject to a condition that he will hand over a bank draft for a sum of Rs.3 crores which is half of the amount of the original liability, without prejudice to the rights of the parties in the civil proceedings as well as the criminal litigation pending subject to the final decision of the adjudication of the rights by the Courts of competent jurisdiction. The conduct of the petitioner has been considered by the Apex Court in declining relief of pre-arrest bail to the petitioner by setting aside the orders passed by this Court under Section 438 Cr.P.C. twice.

No doubt while granting bail under Section 439 (1) (a) Cr.P.C. a Court may impose any of the conditions mentioned in Section 437 (3) Cr.P.C. but the provisions of Section 437 (3) (c) Cr.P.C. also enables a Court to impose any other condition, if it considers necessary in the interest of justice. Taking into consideration the peculiar circumstances of this case the petitioner has been granted regular bail subject to a condition that he would furnish a bank draft in the name of the complainant Company for sum of Rs.3 crores without prejudice to the rights of the parties subject to his furnishing bail bonds/ surety bonds to the satisfaction of the trial Court with an additional condition that a bank draft, as mentioned hereinabove, in the name of the complainant Company for a sum of Rs.3 crores will be furnished along with the bail bonds/ which would be handed over to the complainant by issuing notice to it. In case the bank draft is presented before the trial Court, the same may be released to the complainant Company through its authorized agent on furnishing an undertaking in writing that the amount will be adjustable at the time of final determination of civil rights and in case the complainant is found not entitled to the amount by any Court of competent jurisdiction, the said amount will be returned to the petitioner with interest at the rate of 6% per annum.

Petition is allowed in the aforesaid terms.

December 21, 2016 (M.M.S.BEDI)
sanjay JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether Reportable:	Yes/No.