

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No.41682 of 2014

Date of decision: 5th May, 2016

Ashok Kumar Kalia

... Petitioner

Versus

UT Chandigarh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Sanjeev Pandit, Advocate
for the petitioner.

Mr. J.S. Toor, APP UT Chandigarh
for respondent No.1.

Mr. Daman Dhir, Advocate
for respondent No.2.

FATEH DEEP SINGH, J.

Petitioner Ashok Kumar Kalia through this petition preferred under Section 482 Cr.P.C. has sought quashment of FIR No.212 dated 29.11.2014 under Sections 420/466/467/468/471/120-B IPC pertaining to Police Station Sector 3, Chandigarh (Annexure P9) as well as all subsequent proceedings arising thereof.

The brief background which led to registration of the present case is that the present petitioner was engaged as a counsel in an execution application arising out of the judgment and decree dated 01.02.2000 of learned Additional Chief Judge (Senior Division), Dasuya and in which the petitioner had filed objections on behalf of JDs Murari

Lal and Vidya Sagar. It is thereafter the JDs Murari Lal and others filed a revision petition arising out of some order of the Executing Court through one Shri Amit Sharma, Advocate. It was on 31.03.2014, on behalf of the JDs Murari Lal and Vidya Sagar, a certified copy of an order dated 11.03.2014 purported to have been passed in Civil Revision No.1785 of 2014 titled 'Murari Lal etc. v. Satish Chander' by this Court was presented. The opposite party verified the antecedents of this order and it was revealed that the said Civil Revision No.1785 of 2014 was in fact of a proceeding between one Meena Kumari and others v. Meena Rani and others, and thus had no relevance to the case in question and thus, it was revealed that the said order of stay dated 11.03.2014 was in fact forged and fabricated.

After adopting due process of holding inquiry, this Court got lodged the present FIR (Annexure P9). The same is being sought to be quashed by the petitioner who happens to be one of the accused therein.

Heard at length Mr. Sanjeev Pandit, Advocate for the petitioner; Mr.J.S. Toor, APP UT Chandigarh for respondent No.1 and Mr.Daman Dhir, Advocate representing respondent No.2 and perused the records of the case.

The exercise of powers under Section 482 Cr.P.C. has been well laid down by the Hon'ble Supreme Court in the case of '**State of Haryana and others v. Ch.Bhajan Lal and others**' 1992 AIR SC 604, wherein following eventualities have been provided for:

- (1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;
- (2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;
- (4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings

and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

Though learned counsel for the petitioner has sought to contend that the petitioner was never engaged as a counsel in the High Court nor has any connection with the orders in question which have been placed before the Executing Court by the parties themselves and has sought to wriggle out of the same, however the same has been stoutly opposed on behalf of the respondents submitting that the very role of the petitioner is questionable as he has engaged Anil Sharma, his co-accused before this Court and it is out of the criminal conspiracy that the orders in question have been procured and filed by the petitioner before the Executing Court and thus, it is only after completion of the investigations and at the trial the Court would be in a position to determine the culpability.

Appreciating the submissions, it is by now well entrenched position of law reference of which can be taken note of the ratios laid down in **‘Hridaya Ranjan Pd. Verma and others v. State of Bihar and another’ 2000(2) RCR (Criminal) 484; ‘Mahavir Prasad Gupta**

v. State of National Capital Territory of Delhi’ 2000(4) RCR (Criminal) 480; and ‘State of Bihar v. Shri P.P. Sharma and another’ 1991 AIR (SC) 1260; wherein it has been held and so in **Ch. Bhajan Lal’s case (ibid)** that the courts in the exercise of these inherent powers under Section 482 Cr.P.C. need to desist from appreciating the evidence and it is beyond the ambit of powers of this Court. Furthermore, the investigations are still at crucial state and the Investigating Officer still, as has been pointed out on behalf of the State, is collecting evidence into the very role of each of the accused named therein, and thus the investigations cannot be stifled at this juncture by such a recourse which is sought to be prayed for by learned counsel for the petitioner. Moreover, the courts should normally keep their hands off from interfering in the investigations which apparently do not spell out any malice.

In the present case this Court had already conducted a fact-finding-inquiry into the matter and after being satisfied that there has been preparation and fabrication of an order of this Court and which has been subsequently used as genuine before the Executing Court are thus, matters which cannot be taken lightly as it has its adverse impact on the administration of justice and faith of public at large. Learned counsel for the petitioner could not convince this Court as to how there has been miscarriage of justice or there was imminent requirement of exercise of powers to meet the ends of justice. What one can adduce from this effort

of the petitioner, is nothing but an attempt to subvert the due course of justice to achieve a motivated cause. Thus finding no merit, the petition stands dismissed.

(FATEH DEEP SINGH)
JUDGE

May 5, 2016
rps