

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

(122)

CRM-M-7251-2016

Decided on: March 15, 2016.

Jatinder Kumar and another

.... Petitioners

Versus

State of Punjab and another

..... Respondents

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

Present: Mr. Surinder Thakur, Advocate, for the petitioners.

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

The petitioners are contractors who have allegedly committed financial fraud by misappropriating the public fund by receiving excess amount against the public works done at three different places at Dasuya for laying interlocking tiles instead of cement tiles.

The main grievance of learned counsel for the petitioners is that no offence of misappropriation or cheating is made out from the allegations and the material forming part of the report under Section 173 (2) Cr.P.C.

Learned counsel for the petitioners has inter alia argued that a notice had been issued to the petitioners on 07.11.2014 alleging that they had received excess payment of Rs. 2.63 lacs. They were directed to return the said amount within a period of 15 days but before the expiry of 15 days, the FIR was registered on 11.11.2014 on the basis of a complaint filed by

Administrator of the Nagar Council, Dasuya vide letter No.2739/MC dated 07.11.2014. Copy of the said complaint is part of the report under Section 173 (2) Cr.P.C. He has further argued that the petitioners have fulfilled the demand of refund of the amount by depositing a total sum of Rs.6.28 lacs with the Registry. While granting pre-arrest bail to the petitioner on 18.09.2015 it was observed by this Court that Registry may disburse the said amount of Rs. 6.28 lacs in favour of Municipal Council without prejudice to the right of the petitioners to recover the same by establishing their claim for work done or material used in accordance with law and the provisions of the contract between the parties.

With the assistance of learned counsel for the petitioners, I have gone through the report under Section 173 (2) Cr.P.C which stands already presented before the Illaqa Magistrate.

All the arguments raised by counsel for the petitioners revolve around the report under Section 173 (2) Cr.P.C already submitted and the document forming part of the same.

Learned counsel for the petitioners has argued that the ingredients of Sections 406 and 409 IPC are not made out against the petitioners as the petitioners on demand of the complainant have not only done the work as per the contract between the parties but have also returned the amount on demand having been raised by the complainant Municipal Council.

Since the trial Court has not framed the charges against the petitioners, it will be open to the petitioners to raise all the pleas taken up in this petition for seeking their discharge by satisfying the trial Court that prima facie no offence is made out under Sections 406 or 409 IPC.

The petition is disposed of as pre-mature at this stage with liberty to the petitioners to raise all the pleas taken up in this petition at the time of consideration of charges. The pleas raised by the petitioners will be taken into consideration by the learned trial Court. In case, any application for discharge is filed, the same may also be considered taking into consideration the pleas raised by passing a speaking order.

Disposed of as pre-mature at this stage with liberty to the petitioners to avail the abovesaid remedy before the trial Court without prejudice to the legal rights of the petitioners.

(M.M.S. BEDI)
JUDGE

March 15, 2016
harsha