

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 244

Criminal Miscellaneous No.M-9359 of 2014 (O & M)

Date of Decision: May 20, 2016

Anil Kumar & another

..... PETITIONERS

VERSUS

State of Punjab

..... RESPONDENT

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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PRESENT: - Ms. Dhivya Jerath, Advocate, for the petitioners.

Mr. J.S. Sekhon, Assistant Advocate General,
Punjab, assisted by Mr. Kanwaljit Singh,
Senior Advocate, with Ms. Gurdeep Kaur,
Advocate, for the complainant.

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Jaspal Singh, J

1. The instant petition under Section 482 Cr.P.C. has been preferred by petitioners Anil Kumar and his wife Neelam Sharma for quashing FIR No.83 dated September 11, 2013

(Annexure P-1) registered at Police Station, Bhadson, District Patiala under Sections 406, 420, 120-B and 506 IPC alongwith consequent proceedings.

2. The instant FIR was got registered at the instance of Baghail Singh son of Kashmir Singh, resident of village Jatiwal Bhadson, District Patiala. As per the allegations contained in the FIR, complainant had advanced certain amount of money to petitioner No.1 – Anil Kumar during the period of April 17, 2006 to April 24, 2007 by way of three cheques totaling Rs. 25 lac. It has been alleged that when the cheques were presented by the complainant for clearance, the same were dishonoured on account of insufficient funds. The complainant informed about the dishonourment of cheques to accused Anil Kumar on July 24, 2013 but he gave an assurance that the cheques be presented again for encashment and accordingly, the cheques were presented on July 27, 2013 but the same were again dishonoured “for want of sufficient funds”. It was only thereafter, complainant lodged a complaint with Police under Sections 406, 420, 465, 467, 506, 120-B IPC. Even the complainant also served a legal notice under Section 138 of the Act read with Section 420 IPC but while lodging the FIR, complainant succeeded in lacking material improvements. After

registration of the FIR, matter was investigated and finding sufficient evidence to establish the allegations, report under Section 173(2) Cr.P.C. was presented in the court of jurisdictional Magistrate.

3. Contention of learned counsel for the petitioner is that just to put pressure upon the petitioner to make payment of the amount in question, a false story has been concocted by the complainant. Though, the cheques in question were issued by petitioner No.1 Anil Kumar, but petitioner No.2 has no role to play who is none else but wife of petitioner No.1 She has been dragged in this criminal litigation just being his wife. Otherwise, she has nothing to do with any of the transactions which have been taken place between petitioner No.1 and complainant. Moreover, after dishonouring of cheques in question, complainant neither made any endeavor to lodge a complaint under Section 138 of the Act nor filed any suit for recovery as he is fully aware of the fact that the amount in question being time barred is not recoverable. Thus, by concocting a false story and roping in petitioner No.2 unnecessarily, succeeded in lodging the FIR which is nothing but an abuse of process of law. None of the cheques, which are subject matter of the instant lis, bear the signatures of petitioner No.2. The receipt(s), if any, are

also under the signatures of petitioner No.1 – Anil Kumar and not that of petitioner No.2. So, the above said facts clearly expose the malafide intention of complainant and FIR, which has been lodged by complainant, being actuated with malice, is not sustainable in the eyes of law and as such, is liable to be quashed.

4. On the other hand, learned senior counsel for the complainant has contended that instant FIR has been registered by the police after a thorough enquiry which was conducted by Deputy Superintendent of Police (Detective), Patiala and approved by the Senior Superintendent of Police, Patiala. A glance at the aforesaid enquiry report is suggestive of the fact that there are serious allegations of conspiracy in between petitioners inter-se and even petitioner No.2 – Neelam Sharma also extended threats to the effect that she would involve the complainant in police case after tearing her clothes. Moreover, after completion of investigation, challan has already been presented and there being a *prima facie* evidence appearing in the report and document(s) annexed with it, petitioners have been chargesheeted to face trial under Sections 406, 420, 120-B, 506 IPC vide order dated May 18, 2015. Not only this, even a criminal revision preferred against the aforesaid order dated

May 18, 2015 passed by the Judicial Magistrate First Class, Nabha, also stands dismissed vide order dated January 28, 2016. The trial before learned Magistrate is now listed for prosecution evidence. So, in such circumstances, the petition is otherwise not legally maintainable.

5. This Court has given an anxious thought to the rival submissions made by learned counsel for the parties and has perused the record.

6. It is undisputed fact that FIR was registered after due enquiry conducted by DSP(D), Patiala and during investigation of this case, the allegations contained in the FIR were *prima facie* substantiated. It was only due to said reason, report under Section 173(2) Cr.P.C. was presented in the court of jurisdictional Magistrate at Nabha who is at present seisin of the matter. The petitioners have been chargesheeted to face trial under Sections 406, 420, 120-B, 506 IPC. Undoubtedly, revision petition preferred by them challenging the order whereby they were chargesheeted, has already been dismissed vide order dated January 28, 2016. Now the case is fixed for prosecution evidence. Order dated January 28, 2016 has now become final and conclusive as the said order has not been challenged before any court of competent jurisdiction.

Moreover, this Court is of the considered view that the points raised in the instant petition are disputed questions of facts as to whether amount has been re-paid or that there was malafide intention on the part of petitioners at the time they took loan. It is well settled that disputes questions of facts cannot be gone into while exercising discretionary powers under Section 482 Cr.P.C. which are otherwise required to be exercised sparingly, carefully and cautiously and only when such exercise is justified.

7. In the light of what has been discussed above, this court does not find any merit in the instant petition. As such, the same is dismissed. However, it is made clear that any observation made in this order shall have no bearing on the merits of the main case and further that the petitioners shall be at liberty to take all the pleas taken in this petition during trial before the Magistrate.

May 20, 2016
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(Jaspal Singh)
Judge