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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(CRL) 1724/2016

LOVELY SALHOTRA & ANR.

..... Petitioner

Through: Mr. Kaushal Yadav and Mr. Nandlal Mishra, Advocates

versus

STATE NCT OF DELHI & ANR.

..... Respondent

Through: Ms. Richa Kapoor, ASC
Mr. Narender Sharma for R-2

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

% **19.12.2016**

The petitioners have preferred the present petition to seek the quashing of FIR No.520/2015 u/s 494/420/506/34 IPC registered at PS Mianwali Nagar and the proceedings arising therefrom. The FIR in question came to be registered upon the passing of an order u/s 156(3) Cr PC by the learned Magistrate, Tis Hazari (W) in CC No.29/1/15 on the complaint of the complainant Aman Chitkara. As per the said order dated 28.07.2015 passed u/s 156(3), the learned Magistrate directed registration of FIR against accused no.1, namely, Madhvi Khurana, and the two petitioners in the present case. So far as the other accused, namely, accused nos.2, 3, 4 and 6 in the application u/s 156(3) are concerned, the learned Magistrate had opined that no offence is made out against them prima facie. However, the SHO was granted liberty to conduct investigation in all aspects against the said respondents.

The crux of the case made out against the accused in the said FIR is that accused no.1 Madhvi Khurana was the legally wedded wife of the complainant. As per the complainant, he was running his business under the name and style A.M. Fashions. He claimed that all the passbooks, cheque books, blank signed cheques, blank signed documents used to be kept in the custody of accused no.1 Madhvi Khurana. He alleged that his wife Madhvi Khurana developed relations with accused no.6 Nitish Handa, to which he objected to. He alleged that on 01.12.2014, his wife Madhvi Khurana went away from the house along with valuables like cash, documents, blank signed cheques, cheques books, passbook etc., and she married accused no.6 on 22.02.2015 during the substance of his marriage with Madhvi Khurana.

According to the complainant, he received a legal notice from the petitioner no.1 alleging that the complainant had taken a loan from him and issued two cheques towards repayment of the said loan. He alleged that the petitioner no.1 was threatening him repeatedly. He alleged that accused no.1 had committed bigamy, while the remaining accused persons had committed offence of theft, criminal breach of trust, cheating, fraud etc.

The submission of counsel for the petitioner is that on a reading of the FIR, no offence is made out against the petitioners. Learned counsel for the petitioner submits that the FIR has been registered u/s 420/494/506/34 IPC. It is not even alleged in the FIR that the petitioner has in any manner cheated the complainant, or that he has committed bigamy. So far as the offence u/s 406 IPC is concerned, the submission is that there was no entrustment of the said cheques with the petitioner, even according to the allegations made in the FIR. He had also argued that there is no allegation of the petitioner having issued any threats to the complainant.

Learned counsel submits that despite the fact that, according to the complainant, his wife had ran away with, inter alia, the blank signed cheques, passbooks, blank signed documents etc. on 01.12.2014, he did not inform either his bank or the police with regard to the said incident. The complaint was filed by the complainant Aman Chitkara only after the petitioner had issued a legal notice u/s 138 of the Negotiable Instrument Act upon dishonour of the cheques in question.

Counsel for the petitioner has placed reliance on the judgment of the Supreme Court in ***Amit Kapoor v. Ramesh Chander & Anr.***, (2012) 9 SCC 460 and in particular para 27.2 of the said decision:

> "*27.2 The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere*".

On the other hand, learned ASC has argued that the allegations made in the complaint/FIR clearly point to the conspiracy between the petitioners and Madhvi Khurana. The allegation in the complaint/FIR, inter alia, are that the complainant used to keep the blank signed cheques, passbooks, blank signed documents etc. in the custody of his wife Madhvi Khurana and that she had fled on 01.12.2014 with one Nitish Handa taking away the said valuables and securities. According to the complainant, few of those cheques have been misused by the accused. The same had been filled up in the name of petitioner no.1, while the petitioner no.2 has appeared as the attorney of petitioner no.1 in a complaint u/s 138 of Negotiable Instrument Act being CC No.310/4/2015 initiated by petitioner no.1 against A.M. Fashions, the complainant Aman Chitkara, and Madhvi Khurana. Learned ASC points out that petitioner no.1 was called for his interrogation and he could not disclose as to when the cash loan of Rs.15 lacs was advanced to the complainant. He also did not specifically answer as to how the said amount in cash was arranged by him.

The FIR in question has been registered by invoking several provisions of the IPC, which allege commission of cognisable offences. Merely because all of those offences may not be relevant qua the petitioners – who are only two of the named accused, is no ground to quash the same. It is the substance of the FIR/ complaint which has to be seen, and if the same discloses the commission of a cognisable offence, the same cannot be quashed on the strength of the defence that the accused may have at the trial.

The submission of counsel for the petitioners is that the complainant did not report the loss of cheques and did not stop payment of the cheques on or about 01.12.2014, when the said cheques allegedly went missing. The aforesaid cannot lead to the conclusion that the complaint/FIR does not disclose the commission of a cognisable offence. The complainant has clearly alleged that the said cheques/ documents relating to his business were placed in the custody of his wife Madhvi Khurana. Petitioner no.1 is a distant co-brother of the complainant. Undoubtedly, he is related to Madhvi Khurana. According to the complainant, he learnt of the misuse of the two cheques upon receipt of notice u/s 138 of the Negotiable Instrument Act from petitioner no.1. Counsel for the complainant has pointed out that even before the complaint u/s 138 of Negotiable Instrument Act was filed by petitioner no.1 the complainant had, without any delay, lodged his complaint, inter alia, against the petitioners.

In the light of the aforesaid, it cannot be said that on a reading of the FIR, prima facie, no cognisable offence is made out against the petitioners. Even otherwise, the FIR cannot be quashed at this stage of investigation and that too in part, since there are other accused including accused no.1 Madhvi Khurana against whom the case is under investigation.

For the aforesaid reasons, I find no merit in this petition. Dismissed.

VIPIN SANGHI, J

DECEMBER 19, 2016

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