

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

(1)

**Criminal Misc. No.M-19549 of 2016 (O&M)
Date of Decision: August 23, 2017**

Gagandeep Bansal

.....PETITIONER(s).

VERSUS

State of Haryana and another

....RESPONDENT(s).

(2)

Criminal Misc. No.M-36942 of 2016 (O&M)

Lalit Bansal

.....PETITIONER(s).

VERSUS

State of Haryana and another

....RESPONDENT(s).

(3)

Criminal Misc. No.M-34513 of 2016 (O&M)

Ajay Sharma

.....PETITIONER(s).

VERSUS

State of Haryana and another

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vaneet Kumar Sharma, Advocate
for the petitioner in CRM-M-19549-2016.

Mr. S.K. Garg Narwana, Senior Advocate with
Mr. Teevar Sharma, Advocate
for the petitioner in CRM-M-36942-2016.

Mr. P.S. Jammu, Advocate
for the petitioner in CRM-M-34513-2017.

Mr. Ashish Yadav, Addl.A.G., Haryana.

Mr. Karan Vir Jindal, Advocate
for respondent No.2-complainant.

SURINDER GUPTA, J.

All the aforementioned petitions have been filed under Section 482 Code of Criminal Procedure seeking quashing of FIR No.10 dated 30.01.2016 registered for the offence punishable under Sections 406 and 420 of Indian Penal Code, at Police Station Sector 20, Panchkula (wrongly mentioned as Police Station Sector 19, Panchkula) along with subsequent proceedings arising therefrom.

The case of the complainant Pawan Singh, in brief, is that petitioner Lalit Bansal (in CRM-M-36942-2016) was his client for the last many years and he has his office in the same premises in which office of complainant is situated. He (Lalit Bansal) came to the office of complainant with proposal intimated by his friend Gagandeep Bansal (petitioner in CRM-M-19549-2017) about some contract/tender for supply/distribution of pesticides floated by Uttarakhand Government, which his brother-in-law Ajay Sharma (petitioner in CRM-M-34513-2016), who had close links with Uttarakhand Chief Minister and top Congress Leaders in New Delhi, could get allotted to any party with sound financial track of partners. Lalit Bansal asked the complainant to arrange the interested parties so that the opportunity may be encashed as he himself could not arrange the funds because his money was lying blocked in property business.

Complainant thereafter contacted Lalit Bansal in his office, where his father Mohan Lal also confirmed about the work and insisted that needful should be done as early as possible. Complainant discussed this business opportunity with Kulwant Singh, Amar Singh (his relatives and clients). Lalit Bansal arranged their meeting with Gagandeep Bansal at Sector-20 Market, near Shahi Dhaba, Panchkula, held in Innova Car bearing Registration No.PB-10-DS-8769 owned by Lalit Bansal in which complainant travelled with Lalit Bansal from Ludhiana to Panchkula while Kulwant Singh Amar Singh came to Panchkula from village Kherian, Distt. Kangra (H.P.) in their own car. In the meeting, Lalit Bansal informed all modus operandi about the new business opportunity. Lalit Bansal and Gagandeep Bansal informed that as conveyed to them by Mr. Ajay Sharma, they were required to create a new firm with partners having good tract of old turnover and with capacity to contribute funds for making payment of earnest money/tender fee/security. During the meeting, Lalit Sharma made a call to Ajay Sharma on phone and after having talks with him informed that single value contract/tender of Utrakhand Government upto ₹15 crore can be allotted to their new firm. It was also conveyed by him that as per directions of Ajay Sharma, Gagandeep Bansal should be made partner in the proposed new firm without investment and signing authority of the cheques be given to him. In January, 2014, meeting of the complainant and others i.e. Kulwant Singh, Amar Singh and Hoshyar Singh was arranged with Ajay Sharma at his farm house in Chhattarpur (New Delhi) by Lalit Bansal and Gagandeep Bansal. Ajay Sharma asked the complainant and others to do the needful, as informed by Lalit Bansal earlier at Panchkula meeting. During

their meeting with Ajay Sharma at his farm house, they noticed that he was enjoying luxurious life style, security cover of 12-15 persons and some expensive cars were also parked in the farm house. During discussion, Lalit Bansal was also asked to be partner in the firm but he refused to be partner but insisted on making Gagandeep Bansal as partner, as desired by Ajay Sharma. However, he promised to be actively engaged in affairs of the newly formed partnership and informed them that he shall get his share of income from firm by sharing profit share of Gagandeep Bansal in the firm.

A partnership firm was formed on 07.02.2014 and on 13.02.2014, a sum of ₹25 lakh was given to the Gagandeep Bansal in the presence of complainant, Lalit Bansal, Kulwant Singh and Amar Singh in Sector-20 Market, Panchkula, near Shahi Dhaba. This amount was contributed by Parul Thakur (₹7.50 lakh), Hoshiyar Singh, brother of Kulwant Singh Amar Singh (₹17.50 lakh). As one of the partners of the firm S.Karanjit Singh of Ludhiana expressed his inability to contribute funds in the firm, a new firm under the same name and style i.e. Shree Ganesh Enterprises with its office at Shop No.2, Jain Market, over-lock road, Miller Ganj, Ludhiana was formed with partners Kulwant Singh, Amar Singh, Naresh Kumar Jain HUF, Harraj Sarada, Gagandeep Bansal and Parul Thakur on 18.02.2014. Lalit Bansal and Gagandeep Bansal informed them that they had discussed with Ajay Sharma who assured that documents are complete and their firm qualified for tender of ₹15 crore and had to arrange 10% amount as earnest money/tender fee etc. A further sum of ₹90 lakh was arranged by the partners and given to Lalit Bansal and Gagandeep Bansal on 25.09.2014 at Ludhiana in the office of complainant. Thereafter,

the investing partners did not get any response regarding tender/contract work from Lalit Bansal and Gagandeep Bansal and when they asked for the money, the matter was deferred on one pretext or the other and it was informed that the firm would get tender allotment after lifting of code of conduct for general elections. Even after the elections, no proper response was received regarding the tender process. Fed up with the false assurances, the investing partners conveyed to Lalit Bansal that they are no more interested in the tender work and Ajay Sharma should be asked to return the money paid. On 25.08.2015, complainant and other partners, along with Lalit Bansal and Gagandeep Bansal visited Mehroli Farm House of Ajay Sharma for refund of money but nothing was paid back. Ajay Sharma informed them they will get their money back at Ludhiana from Lalit Bansal and Gagandeep Bansal within one month in 3/4 weekly installments. After several communications, ₹8.2 lakh was handed over by Lalit Bansal and Gagandeep Bansal on 1st week of October, 2014 in cash to complainant in the parking of market in Sector-10, Panchkula where Gagandeep Bansal came in his Skoda car. At that point of time, complainant had travelled with Lalit Bansal in his car bearing Registration No.PB10-DS-8769 from Ludhiana to Panchkula. It was assured that Ajay Sharma had returned this amount and remaining was on the way. When the matter was pursued for return of balance amount, threatening calls to the sufferer parties were made by Lalit Bansal citing Ajay Sharma's close links with Panjab and Haryana Police officials, recording of which was retained by the complainant. On 22.01.2015, Ajay Sharma was arrested by Karnal Police in another case of cheating. The complainant along with other partners went there and met

DSP Karnal, who after hearing their grievance suggested them to contact Panchkula Police. The complainant then contacted Panchkula Police and got the FIR registered.

Learned counsel for the petitioner Gagandeep Bansal has argued that it is a case where the complainant has played smart. He initially reported the matter to Ludhiana Police through complaint (Annexure-P2) wherein, he has not alleged any part of cause of action at Panchkula. After inquiry was ordered to be filed vide report (Annexure-P3) of Assistant Commissioner of Police (Investigation), Ludhiana, the story of payment and meeting at Panchkula was later on propagated. The complainant had again represented to Ludhiana Police and when the inquiry was pending, he preferred to lodge the present FIR by concealing the factum of his first complaint to Ludhiana Police. Panchkula Police registered the case without any inquiry. The partnership deed dated 18.02.2014 was executed between Kulwant Singh, Amar Singh, Naresh Kumar Jain HUF, Harraj Sarda, Gagandeep Bansal and Parul Thakur. As per the terms of this partnership deed, the partnership was created to carry on work of any company, State Government(s), government undertakings, central government undertakings etc. and partners were always at liberty to start any other business in future with their mutual consent. It was as such a civil liability in between partners which was given a criminal tinge, wherein Lalit Bansal, who is not a partner and Ajay Sharma, who has no role in this case, have been falsely implicated. The story of meeting and payment at Panchkula was fabricated. Investigating Officer at Panchkula never tried to verify the contents of the complaint made by the complainant at Ludhiana and hurriedly recorded the

present FIR when the second inquiry was pending. FIR recorded in this case is a clear case of mischief by the complainant. There is no direct evidence against Ajay Sharma. He has been falsely implicated in this case being the relative of Gagandeep Bansal. In the initial complaint made to Ludhiana police, there is no recital that complainant or other partners of firm ever met Ajay Sharma at Delhi or made any payment to him. At the most, it was a business dealing between Lalit Bansal, Gagandeep Bansal and other partners, which creates no criminal liability.

Learned counsel for the complainant as well as learned State counsel have argued that it is a case where all the three petitioners have played smart. They have tried to enrich themselves by using a national disaster faced by Uttarakhand State due to *Kedarnath Tragedy* in June, 2013. The entire game was played by Ajay Sharma, who pretended his political influence in government circles at Delhi and Uttarakhand by using Gagandeep Bansal and Lalit Bansal. Lalit Bansal played smart and avoided to become a partner but remained actively associated. Ajay Sharma, in his confessional/disclosure statements recorded on 10.03.2016, 12.03.2016, 13.03.2016, 14.03.2016, 15.03.2016, 16.03.2016, 19.03.2016, 20.03.2016, 21.03.2016, 22.03.2016, 24.03.2016 has admitted to be a party to the entire conspiracy of defrauding the complainant and other partners of the firm of ₹1,15,00,000/-. Lalit Bansal in his disclosure statements dated 17.03.2016, 18.03.2016, 20.03.2016, 21.03.2016, 22.03.2016, 24.03.2016 had admitted the entire conspiracy. He rather played a victim and implicated Ajay Sharma and Gagandeep Bansal in the entire conspiracy. Even Ludhiana police in its report dated 29.03.2016 had indicted the petitioners and registration of FIR

against them was recommended.

On giving a careful thought to the submissions of learned counsel for the petitioners, learned State counsel and learned counsel for complainant, I find that it is not a case which call for quashing of the FIR at this stage. It is a case where the complainant has informed the Panchkula Police about the fraud played by the petitioners. Admittedly the first complaint was given to Ludhiana police and the same was ordered to be filed. Later on Ludhiana police again inquired into the matter and vide report dated 29.03.2016, by Additional Deputy Commissioner of Police (Investigation), Ludhiana, petitioner Gagandeep Bansal and Ajay Sharma were found involved in committing fraud of ₹1,15,00,000/-with the partners of firm M/s Shree Ganesh Enterprises. Ludhiana police, however, did not find mala fide intention of Lalit Bansal in the entire deal and did not recommend registration of FIR against him.

The first question raised in this petition is of jurisdiction of Panchkula police to register the FIR. In the report of Ludhiana police on complaint made to it, there is reference regarding meeting arranged by Gagandeep Bansal and Lalit Bansal with Ajay Sharma at New Delhi. A complaint to the police is not supposed to contain all the details. The complainant as well as the petitioners in their disclosure statements have disclosed about holding meeting at Panchkula. Active roles played by Lalit Bansal and Gagandeep Bansal, in the deal is otherwise apparent from perusal of the partnership deed. Gagandeep Bansal had not made any investment but as per term No.8 of partnership deed, the bank account of company was to be opened and operated under the signatures of Gagandeep

Bansal and any one of the two partners i.e. Kulwant Singh and Parul Thakur. Gagandeep Bansal was also entitled to 22% share in the profit and loss of the firm. All this shows that the other partners of the firm were under the instructions of Lalit Bansal and Ajay Sharma, to bestow financial benefits and share in profit to Gagandeep Bansal, who had not invested even a single penny in the firm. Lalit Bansal initially played victim before Ludhiana police but later on in his disclosure statements, admitted his role and fraud played by him in the entire conspiracy with Ajay Sharma and Gagandeep Bansal. The perusal of FIR and police investigation so far shows that a prima facie case is disclosed against the petitioners. The plea that Panchkula police had no jurisdiction to register FIR, has no basis at this stage as it is a matter to be looked into by trial Court on the basis of evidence produced on file. The allegations in FIR and police investigation prima facie reveal the active role of all the three petitioners in the plan to cheat partners of firm M/s Shree Ganesh Enterprises of a whopping sum of ₹1,15,00,000/-

Hon'ble Apex Court in *State of Haryana and others v. Ch.Bhajan Lal and others, AIR 1992 Supreme Court 604*, discussed and summarised law where this Court can exercise extra-ordinary jurisdiction/power under Article 226 of Constitution of India or inherent power under Section 482 Cr.P.C and laid certain guidelines which are reproduced as follows:-

“105. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary

power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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 F.I.R. 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.”

Instant case when tested on above parameters as laid down by the Apex Court do not call for exercise of inherent power of this Court under Section 482 Cr.P.C. to quash the FIR registered against the petitioners. Allegations against petitioners and documents on file rule out any observation or conclusion that the FIR registered against petitioners is misuse of process of law or Court.

As a sequel of my above discussions, these petitions have no merits.

Dismissed.

August 23, 2017
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***