IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.22268 of 2013
Date of decision: 25th September, 2017

Gurulingappa Edravi & others

… Petitioners

Versus

State of Haryana & others

… Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Vineet Jain, Advocate for the petitioners.

Mr. Munish Sharma, Asstt. Advocate General, Haryana for respondent No.1/State.

Mr. S.S. Khurana, Advocate for respondents No.2 and 3.

FATEH DEEP SINGH, J.

This is a petition under Section 482 of the Code of Criminal Procedure (in short, 'the Code' or 'Cr.P.C.') whereby petitioners namely Gurulingappa Edravi, Udaya Kumar, Smt.Rathnamna Edravi and Anil Kumar Upadhyay, who also happen to be accused in case bearing FIR No.428 dated 20.10.2012 under Sections 420/406/506/120-B IPC pertaining to Police Station Model Town Rewari, District Rewari, have sought quashment of the FIR and the proceedings arising thereon.

Before venturing into the finer aspects of the imbroglio inter-se between the parties, it is writ large on the records and is part of the submissions, that petitioner No.1 Gurulingappa Edravi is the Secretary and petitioner No.2 Udaya Kumar happens to be the Vice President of Employees Welfare Fund Hindustan Aeronautics Ltd. HAL (BC)

Bangalore (in short, 'the Society') whereas petitioner No.3 Smt.Rathnamna Edravi happens to be wife of petitioner No.1 and petitioner No.4 Anil Kumar Upadhyay is consultant of the Society. Complainant respondent No.3 Mukesh Soni claims to be the Managing Director of respondent No.2 M/s Maya Developers & Infrastructure Pvt. Ltd. (in short, 'the Company').

The brief allegations that stem out from the written complaint of complainant Mukesh Soni are that the complainant is carrying on township development works in the district of Rewari and accused petitioner Anil Kumar Upadhyay had come into contact with the complainant and during the course of meetings had been repeatedly visiting the office of the complainant in Rewari and represented himself to be a land broker and offered the complainant scope for expanding his business in south India and undertook to provide additional business to his Company and showed him lucrative plans to this effect. It was on the representation of the accused side, the complainant went to Bangalore in the month of February 2009 along with accused Smt.Rathnamna Edravi petitioner No.3 who is acquaintance of accused Anil Kumar Upadhyay along with accused Gurulingappa Edravi and Udaya Kumar, who all carried a conspiracy inter-se between themselves and enticed the complainant with an intention to deceive him and representing themselves to be the functionaries of the Society offered business collaboration for sale of land situated in Hosakote Taluk, Bangalore. It is alleged that as a consequence of this fraudulent misrepresentation, which the accused knew well inter-se between themselves, they demanded upfront fees of Rs.1.00 crore from the complainant to enable him to sign service agreement with them so that they are in a position to enter into the agreement with the Society in the presence of the accused and after repeated telephonic conversation between them, the complainant is alleged to have sent RTGS of Rs.5.00 lacs from his account on 02.07.2009 through HDFC Bank Rewari which led to execution of an agreement and thereafter the accused demanded more money and Rs.11.00 lacs were paid and as a gesture to induce the members of the Society to accede to this agreement the accused in connivance with each other managed to secure Rs.2.00 lacs in cash and 3 LCD TVs were also given to the accused. The collaboration was entered into on 11.07.2009 which was also signed on behalf of the accused and thus, an amount of Rs.18.00 lacs was dubiously taken by the accused side but subsequently, it transpired that it was a pure fraud and the accused persons had already duped a number of persons and when they refused to return the amount or to proceed ahead into the arrangement, led to filing of the present case.

Learned counsel for the petitioner Mr. Vineet Jain, Advocate has laid much stress on the fact that initially complaint under Section 138 Negotiable Instruments Act, 1881 has been filed by the petitioners accused and thus, the present case is a counterblast, and secondly that the complainant has slept over the matter for three years and subsequently has lodged the FIR in question. The same is opposed with much vehemence and submissions by the learned State counsel Mr. Munish

Sharma, Asstt. Advocate General, Haryana assisted by Mr. S.S. Khurana, Advocate representing respondents No.2 and 3 on the grounds that all the contentions are matter of evidence, which cannot be appreciated at this juncture.

Going through the submissions of the two sides, it is there in the stand of the State in their reply that during the course of investigations it has come to light that the petitioners acting dishonestly in collusion with each other have duped the complainant of a sum of Rs.19.00 lacs and that after due investigations of the matter, the accused have been found to be guilty and has supported the stand of the State to this effect.

By now, it is settled proposition of law for which reference can be taken note of the ratio laid down in **'State of Haryana and others v. Ch. Bhajan Lal and others' 1991(1) RCR (Criminal) 383** where their Lordships of the Hon'ble Supreme Court of India have laid down categories of cases which are merely illustrative and not exhaustive where the courts to prevent abuse of the process of law and to secure the ends of justice can exercise their powers under Section 482 of the Code which are enumerated as below:

> *"(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."

It was further cautioned for the Courts below that such a power to quash criminal proceedings should be exercised very sparingly with circumspection and that too, in the rarest of the rare cases, and the Court is not supposed to embark upon the enquiry as to the reliability or genuineness or otherwise of the allegations.

Similar view was expressed by their Lordships of the Hon'ble Apex Court in the case of **'Som Mittal v. Govt. of Karnataka' 2008(1) RCR (Criminal) 880,** where reliance was placed on Ch. Bhajan Lal's case (ibid) further holding that the very principal object of exercise of inherent powers under Section 482 Cr.P.C. is to meet the exceptional circumstance and to secure the ends of justice and are not intended to scuttle justice at the very threshold.

To the very specific query of the Court, learned counsel for the petitioners could not convince how carrying on with the trial in the present case would unnecessarily be a harassment when apparently prima-facie there are allegations of deception, dishonest intention at the very initiation of the interaction between the two sides, or how it is necessitated to prevent abuse of the process of any Court or resort to judicial process. The Court at this juncture is not supposed to go into the very reliability and credibility of the evidence which is impermissible. Furthermore, in another view of the Hon'ble Supreme Court in **'Central Bureau of Investigation v. K.M. Sharan' 2008(4) SCC 471,** it was very well laid down by their Lordships after relying upon a catena of case law that at the exercise of powers under Section 482 Cr.P.C., the Court is not supposed to embark upon the enquiry whether the allegations in the FIR and the charge sheet were reliable or not and thereafter to render definite finding about the truthfulness or veracity of the allegations and which are matters which can be examined by the concerned Court after entire material is produced before it on a thorough investigation and evidence led thereon.

The mere fact that the complainant has come about in this FIR after three years of the alleged occurrence, are matters which can be appreciated only at the trial as by now it is a settled proposition of law that mere delay in lodging of the FIR is no ground for quashing of the same and it is for the prosecution to explain how the same has been occasioned, satisfactorily answers the query of the Court. Reliance placed on **'Supdt. of Police Karnataka Lokyukta & another v. B. Sirinivas' 2008(4) RCR (Criminal) 47**. Furthermore, the other leg of submissions that the complainant has already been convicted in a complaint under Section 138 of the Negotiable Instruments Act, 1881 by the petitioners, is a matter of defence. Under what circumstances there had been transactions inter-se between them, are matters of investigations and evidence which cannot be gone into at this very juncture when, as is the admitted stand in the reply of the State that the matter is still under investigations and the Court should not venture into such an aspect of the matter when the investigating agency is still probing the allegations and it is till the conclusions of the investigations there could be a reasonable stand of the petitioners for invoking jurisdiction of this Court under the inherent powers.

In the light of what has been detailed and discussed above, the present petition is nothing but pure and pure misuse of the process of the Court not only to delay but dilly-dally the investigations and prosecution for convenience of the petitioners to remain away from attending the hearings in a Court of law and thus, cannot be allowed to circumvent and short-circuit the same. The petition being wholly devoid of any merit, stands dismissed.

(FATEH DEEP SINGH)
JUDGE

September 25, 2017
rps

Whether speaking/reasoned Yes/No
Whether reportable Yes/No