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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CRM-M-32288-2016 [O&M]
Date of Decision:- August 10, 2017

N.D. Prashar ....Petitioner

Versus

State of Haryana and another ....Respondents

2 CRM-M-13299-2017

Mehar Chand Prashar and another ....Petitioners

Versus

State of Haryana and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. P.S.Ahluwalia, Advocate,
for the petitioner in CRM-M-32288-2016.

Mr. Mohan Sharma, Advocate,
for the petitioners in CRM-M-13299-2017

Mr. Munish Dev Sharma, AAG, Haryana

Mr. Rahul Dev Singh, Advocate for
Mr. Rakesh Gupta, Advocate,
for respondent No.2.

SHEKHER DHAWAN, J.

The above mentioned two petitions under Section 482 of Code of Criminal Procedure [Cr.P.C.] are for quashing of FIR No. 257 dated 31.12.2015(Annexure P/1) registered under Sections 406, 420 and

120-B IPC at Police Station, Sector 14, Panchkula and all consequential proceedings arising therefrom. Therefore, both the petitions are being disposed of by this common order. For facility of reference, facts are being taken from CRM-M-32288-2016.

2. Facts relevant for the purpose of decision of these cases; that Canara Bank submitted a complaint that M/s Globe Enterprises had taken a loan and in lieu thereof had hypothecated the entire stock with the bank and the said hypothecated stock was disposed of in clandestine manner with a view to cause loss to the bank. In fact, the present FIR relates to a dispute out of loan account whereby M/s Globe Enterprises had approached the complainant bank for grant of financial assistance and limit of Rs.2.00 Crores was sanctioned and the same was utilized by M/s Globe Enterprises. Besides mortgaging their immovable property, stocks of the firm were also hypothecated as a security for repayment of loan amount. At the time of visit of bank officials to the premises of M/s Globe Enterprises, it was discovered that the entire stocks which were hypothecated with the bank, had been removed and the factory premises were lying vacant and that was done by the accused persons to defeat the securities of the bank. Plant and machinery, which was installed at the factory site, was also found missing.

3. Petitioners have sought quashing the the FIR on the grounds viz:-

i). that the investigating agency had not taken into consideration the fact that petitioner N.D.Prashar had retired from the firm in September, 2014 vide retirement deed, Annexure P/2. In fact, the present petitioner is covictim with the complainant bank as N.D.Prashar had been cheated and defrauded by his own brother and family members. He himself has filed a complaint (Annexure P/3) for cheating, theft and embezzlement against his brother on 18.8.2015;

ii). That nothing survives in the case as the brother of the petitioner, through his family members has repaid the entire loan amount qua M/s Globe Enterprises which had led to the registration of the FIR in the present case and the said fact is also reflected from the order (Annexure P/4) passed by learned Sessions Judge, Panchkula.

Iii). That on the basis of entire facts, no offence punishable under Section 406 IPC is made out against the petitioners.

4. In the reply filed by the State, contention was raised that the FIR No. 257 dated 31.12.2015 (Annexure P/1) under Sections 406, 420 and 120-B IPC was registered against the present petitioners and co-accused Deepak Prashar. Final report under Section 173 Cr.P.C. was submitted on 29.11.2016. As per bank records, loan amount was paid and bank account of M/s Globe Enterprises was closed. However, while replying on merits, the State took the plea that there are serious allegations against the petitioners and they are not entitled to invoke the inherent jurisdiction of this Court under Section 482 Cr.P.C. as the petitioners have violated the conditions of loan agreement and after securing the loan from the bank, they removed the entire stock from the premises of the factory to defeat the security of the bank. N.D. Prashar, petitioner never informed the bank with regard to his retirement from M/s Globe Enterprises. However, repayment of loan amount by the family

members of the petitioner cannot absolve them from their criminal liability as the petitioners disposed of the property hypothecated with the bank and prayed that the present petition be dismissed.

5. At the time of arguments, learned counsel for the petitioners submitted that the allegations against the petitioners are regarding misappropriation of hypothecated goods. However, as per judgment of Hon`ble Supreme Court in **M/s Indian Oil Corporation Vs. M/s NEPC India Ltd. and others, 2006(3) R.C.R. (Criminal)** 740, such an act does not amount to misappropriation or cheating and no offence can be said to have been committed by the petitioners under Sections 406 and 420 IPC.

6. Learned counsel for the petitioners further contended that in the present case also, if at all the allegations of the complainant are taken to be correct, the ownership and possession of the hypothecated property was never transferred to the bank and as such, it was not a case of misappropriation or cheating at any stage. On the basis of these facts, the liability, if any, towards the bank is a civil liability and not a criminal liability. More so, if at all, the entire version of FIR is taken into consideration, no offence under Section 420 IPC is made out as there are no allegations of the complainant – bank that intention of the present petitioners was dishonest to cheat the bank at the outset. On this point, reliance was placed upon judgment of this Court in **Pardeep Kumar Vs. State of Haryana, 1996(2) R.C.R. (Criminal) 791**.

7. While arguing on these points, learned State counsel as well as learned counsel for complainant-bank (respondent No.2) submitted that such like cases of misappropriation of hypothecated property involving

dishonest intention on the part of loanee, result into economic offence and there are no grounds for quashing of criminal proceedings. On this point, reliance was placed on the judgment of Hon`ble Supreme Court in **State, Rep. by Inspector of Police Central Crime Branch Vs. R. Vasanthi Stanley and Anr.**, **2015 AIR (SCW) 5375** and **Central Bureau of Investigation Vs. Maninder Singh**, **2015 (4) R.C.R. (Criminal)** 190.

8. Learned counsel for the respondents also submitted that petitioner – N.D. Prashar had given in writing to the Superintendent of Police, SAS Nagar, Mohali that they had constituted two separate firms and the entire business was being looked after, controlled and managed by him and M.C.Prashar and his wife Sunita Rani and in fact, the loan amount raised from the bank account was siphoned to different accounts and cheating was done by the petitioners and now they cannot take the plea that no offence has been committed. They further submitted that the matter is otherwise pending before the Court below for arguments on charge and these please can at the best be taken by the petitioners before the trial Court, but it does not make out a case for quashing of FIR.

9. Having considered the submissions made by learned counsel for the parties and appraisal of record and facts of this case, this Court is of the considered view that undisputedly, loan facility was sanctioned in favour of M/s Globe Enterprises and that facility was actually availed by the petitioners. The properties of M/s Globe Enterprises were hypothecated with the bank as security and that way, the same was entrusted-property with the bank. At the time of visit by the officials of the bank to the factory premises of M/s Globe Enterprises, it was found that

the entire hypothecated stock was missing and even plant and machinery was missing and on that basis, present FIR was registered.

10. Now, question comes for consideration is whether disposal of hypothecated property by the loanee would be a case of misappropriation and cheating and whether that can be made the basis for registration of FIR and continuation of criminal proceedings?

11. Learned counsel for the petitioners had placed reliance upon the judgment in **M/s Indian Oil Corporation's case (supra)**. However, the facts of the present case are entirely distinguishable from the facts of the cited case. In that case, M/s Indian Oil Corporation had taken re-course to civil remedies and filed two civil suits for recovery of the amount and also initiated proceedings for winding up of M/s NEPC India Limited and the Court observed that those facts established that civil remedies were available in law and IOC had taken recourse to such remedies. Moreso, Hon`ble Apex Court observed that the defence, that may be available or facts/aspects when established during the trial, may lead to acquittal are not grounds for quashing the complaint at the threshold and that at this stage, the Court was only concerned with the question whether the averments in the complaint spell out the ingredients of a criminal offence or not. The facts of the case are also distinguishable from the facts of M/s Indian Oil Corporation's case (supra), as in that case, aircrafts were continued to be stationed at Chennai and Coimbatore Airports; that the two engines of VT-NEK through removed from the aircraft were still lying at Madras Airport; the two DART 552 TR engines of VT-NEJ were dismantled for the purpose of overhauling/repairing; they

were fitted to another Aircraft (VT-NEH). The facts of the present case do not indicate any such circumstance.

12. As regard to the view taken by this Court in **Pardeep Kumar's case (supra),** again the facts of the case in hand are quite at variance from the facts of cited case because in **Pardeep Kumar's case (supra)**, the loanee had taken a loan of Rs.25000/- from Punjab National Bank in March, 1984 and the loan amount was repaid with interest at the agreed rate in 72 installments. The loanee had been paying the installments upto 17.9.1994 and thereafter, he had not paid the balance amount. On the basis of FIR, only allegations were that he had violated the terms of agreement entered into between him and the bank and that was the reason and basis for quashing of FIR in that case.

13. However, similar matter regarding quashing of FIR involving economic offence was before Hon`ble Supreme Court in **R. Vasanthi Stanley's case (supra)** and it was observed by the Apex Court that offence that has the potentiality to create a dent in the financial health of the institutions is not to be quashed on the ground that there is delay in trial or the principle that when the matter has been settled it should be quashed to avoid the loan on the system.

14. Similar view was taken by the Apex Court in **Janta Dal Vs. H.S.Chowdhary, (1992) 4 SCC 305,** wherein it was observed as under:-

> ".. the inherent power Under Section 482 Code of Criminal Procedure though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist."

15. Hon`ble Apex Court in **Maninder Singh's case (supra)** while dealing with such like cases involving dishonest intention on the part of the loanee after availing loan from the bank or settling the loan amount by making the repayment, observed as under :-

(i). Development in means of communication, science & technology etc. have led to an enormous increase in economic crimes viz. phishing, ATM frauds etc. which are being committed by intelligent but devious individuals involving huge sums of public or government money. These are actually public wrongs or crimes committed against society and the gravity and magnitude attached to these offences is concentrated at public at large.

(ii). In economic offences, court must not only keep in view that money has been paid to the bank which has been defrauded but also the society at large.

(iii). On the ground that the accused has settled the amount with the bank would be a misplaced sympathy.

(iv). If the prosecution against the economic offenders are not allowed to continue, the entire community is aggrieved."

16. In this case, the allegations against the petitioners are of 'forgery', 'breach of trust', 'cheating' and 'embezzlement of public money'. After facing such serious charge of forgery, the petitioners want the proceedings to be quashed on account of some settlement with the bank.

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17. Hon'ble Supreme Court, while dealing with such like matters for quashing of FIR and criminal proceedings in exercise of inherent power under Section 482 Cr. P.C., in **Maninder Singh's case (supra)** , concluded as under:-

> "11. The inherent power of the High Court Under Section 482 Code of Criminal Procedure should be sparingly used. Only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the Court if such power is not exercised, Court would quash the proceedings. In economic offences Court must not only keep in view that money has been paid to the bank which has been defrauded but also the society at large. It is not a case of simple assault or a theft of a trivial amount; but the offence with which we are concerned is a well planned and was committed with a deliberate design with an eye of personal profit regardless of consequence to the society at large. To quash the proceeding merely on the ground that the accused has settled the amount with the bank would be a misplaced sympathy. If the prosecution against the economic offenders are not allowed to continue, the entire community is aggrieved."

18. It is well established principle of law that inherent power

conferred on this Court under Section 482 Cr.P.C. has to be exercised sparingly with circumspection and in rare cases and that too to correct patent illegalities of when some miscarriage of justice is done. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are initiated illegally, vexatiously or without jurisdiction and where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not *prima facie* constitute the alleged offence and make out a case against the petitioner. Such a view was taken by Hon`ble Apex Court in **Union of India Vs. Bajanlal, AIR 1992 SC 604.** However, in the present case, if the contents of the FIR and the material available on the file and relevant provisions of law, referred to by learned counsel for the parties, are taken into consideration in the light of the above observations, it is not a case where *prima facie* case is made out or there is sufficient material available on the file to quash the present FIR.

19. Resultantly, the present petitions seeking quashing of the FIR and consequential proceedings arising therefrom, lack merit and stand dismissed.

20. Any observations made hereinabove shall not be construed as an expression of opinion on the merits of the case and shall have no bearing on trial.

August 10, 2017 **(SHEKHER DHAWAN)**
som **JUDGE**

Speaking/Reasoned Yes
Reportable Yes