

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

CRM-M No.7272 of 2016 (O&M)
Date of decision: 29th November, 2017

Vijay Pal Singh

... Petitioner

Versus

UT Chandigarh & another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Kanwaljit Singh, Senior Advocate with
Mr. Ajaivir Singh, Advocate for the petitioner.

Mr. A.S. Virk, APP UT Chandigarh
for respondent No.1/State.

Mr. Pradeep Virk, Advocate for respondent No.2.

FATEH DEEP SINGH, J.

Petitioner Vijay Pal Singh, who also happens to be the accused in case got registered by way of FIR No.4 dated 04.01.2014 under Sections 406, 420 IPC at Police Station Sector 3, Chandigarh (Annexure P9), has invoked jurisdiction of this Court under Section 482 Cr.P.C. seeking quashment of the FIR and all consequential proceedings arising therefrom.

Upon hearing Mr. Kanwaljit Singh, Senior Advocate assisted by Mr. Ajaivir Singh, Advocate for the petitioner; Mr. A.S. Virk, APP UT Chandigarh representing respondent No.1/State and Mr. Pradeep Virk, Advocate on behalf of respondent No.2 and on perusal of the records.

As the famous saying goes '*everything is fair in love and war*' and what permeates and crystallizes from the submissions of the two sides, undisputedly brings forth that the petitioner and the complainant side at one point of time in their lives were close and well acquainted with each other and it is the money for which they have fallen apart and become sworn foes. As is there and is very well elicited even by the records and so is in the lengthy submissions of the two sides, complainant Sarabdeep Singh Virk at one point of time happened to be the Director General of Police and had made complaint that the present petitioner accused in the case Vijay Pal Singh (also referred to as alias Dimpy) who also happened to be resident of Chandigarh and claims to work as a real estate consultant, entered into a dealing with him. It was on account of acquisition of 4 acres of land of the complainant family he had received compensation and on the pretext of facilitating purchase of suitable piece of agricultural land for this money it is alleged that the accused took a cheque of Rs.50.00 lacs (Annexure P6) but subsequently nothing materialized and the complainant asked for return of his money and which request was put off on one pretext or the other by the accused and as a consequence of which the present case was got registered.

Upon completion of investigations as is there on the records, challan against the accused was presented before the concerned Judicial Magistrate on 11.06.2014 and it was through orders dated 16.09.2014 the Court of learned Judicial Magistrate 1st Class, Chandigarh framed

charges against the accused under Section 420 IPC and in the alternative Section 406 IPC to which the accused pleaded not guilty and claimed trial.

It is much thereafter during the trial the present petition has come about in the year 2016, after almost 2 years. It is by no means put to question nor could be facilitated from the records that the said order of framing of charge was ever assailed by the accused till date. As is there, the prosecution has examined 6 prosecution witnesses in all and closed its evidence and the matter is fixed for statement of the accused under Section 313 Cr.P.C. It is worthwhile to refer here that during the course of trial as is there on 29.08.2016 both sides have attempted to effect a compromise by drafting a compromise deed dated 11.08.2016 (Annexure P10) but it is disputed that the said deed was ever given effect to as the complainant never signed the same, though in-between it is stated that the amount in question stood paid back by virtue of a cheque (Annexure P11) which is dated 16.04.2014, much prior to the framing of charge and which fact was not agitated before the trial Court and therefore over-runs the submissions of learned Senior Counsel Mr.Kanwaljit Singh that the matter stands compromised as the amount has been paid back, and rather what comes before this Court by the own document of the petitioner (Annexure P13) which is an order dated 16.09.2014 by the Court of learned Judicial Magistrate 1st Class was only to facilitate allowing of the bail application to the petitioner and it was consequent upon the

application moved by the accused/petitioner order (Annexure P13) was passed. The Court has adequately given reasons for framing of charge and therefore even by that means such an argument, if any, has been rendered otiose since it was never agitated after passing of the orders on 16.09.2014, satisfactorily rebuts the submissions of learned senior counsel for the petitioner and therefore cannot wriggle out of this computation of income filed with the income tax return by the petitioner where this amount has been shown to have been paid back reflected in Annexure P7. However, it needs to be remarked here that there has been no bona fide efforts for compounding of the offence by virtue of moving an application under Section 320 Cr.P.C. by any of the sides, makes such an argument highly untenable and fallacious. Furthermore, by virtue of Sections 101, 102 and 103 of the Evidence Act since it is the stand of the accused in his defence, the onus certainly shifts upon him to bring about burden of proof to have been effected that the matter either stood compounded or the settlement has been brought about with the concurrence of the two sides and which is not forthcoming to the satisfaction of this Court from the side of the petitioner, nor there could be any presumption as envisaged in Section 114 of the Evidence Act. Learned counsel for the petitioner could not convince this Court how such a stand would in any way bring about into operation the “principle of promissory estoppel” as laid down in Section 115 of the Evidence Act and there is no concrete substantial evidence or stand taken up in the

petition before this Court that there was some sort of representation from the side of the complainant which would form basis of operation of such an estoppel or by any means drawn from the conduct of the complainant side. Even to the specific query of the Court, Mr.Kanwaljit Singh, learned senior counsel for the petitioner could not bear out how the complainant side has either expressly or by necessary implication waived its right to sue the petitioner and therefore such a doctrine becomes inapplicable to the case of the petitioner.

Though it is sought to be assailed on behalf of the petitioner that it was a pure civil dispute for which no criminal case lies and FIR is misuse of the process and civil remedy was the only recourse, does not impresses the Court, and that too at his juncture when it was by virtue of Section 154/190 of the Code of Criminal Procedure resort had been taken to by the Court of law. Though on behalf of the complainant side an effort is sought to be made by their counsel to bring about the fact that there is wrong averment brought about by the petitioner in his petition by stating that the cheque was issued by the wife of the complainant and that rather it was the complainant who had issued it from his joint account with his wife and that the same is not a question to be decided by this Court at this stage.

The other semblance of submissions that the complainant has reflected such a payment in his income tax return or that there is initial fraud, deceit and cheating by the petitioner, are matters which cannot be

commented upon at this juncture since trial is nearing completion and it is within the realm of the trial Court to adjudicate upon the same. The reliance sought to be placed by learned counsel for the petitioner on **‘Sandip Somany v. State of Haryana & another’ 2016(2) Law Herald 1305; ‘Maninder Kaur v. Gurinder Singh Dhillon’ 2008(2) RCR (Criminal) 314; ‘Satish Gathwal v. State’ 1999(1) RCR (Criminal) 59; ‘Ravinder Kumar Kohli & others v. State of Punjab & another’ 2011(5) RCR (Criminal) 20, and ‘Raj Kumar & others v. State of Punjab & another’ 2016(1) RCR (Criminal) 60** do not come to the aid of the petitioner on account of material factual disparity.

On behalf of the complainant as well as State, reliance is sought to be placed on **‘Manjula Sinha v. State of U.P. & others’ 2007(3) RCR(Criminal) 778, and ‘Dr.K.K. Locham v. State of Punjab & others’ 2013(4) SCT 281** to bear out the fact that since trial is almost over, quashment at this juncture would be uncalled for and unnecessary, certainly does come to the aid of the complainant, when the matter is already listed for defence evidence as well as arguments.

Though not argued, this Court seeks support from **‘State of Haryana and others v. Ch.Bhajan Lal and others’ 1992 AIR SC 604** where their Lordships of the Hon’ble Supreme Court though have discussed not only comprehensively but illustratively the eventualities when this Court can put to exercise the principles of law to bring about

exercise of powers under Section 482 Cr.P.C. and which are being reproduced as below to lay emphasis:

- (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.

Learned counsel for the petitioner to the specific query could not satisfy the Court how case of the petitioner falls under any of such eventualities for invocation of inherent powers of this Court. More so, since trial has already concluded and the petitioner throughout from the stage of framing of charge to dismissal of his compounding application, has not chosen to challenge the same before any higher Court and at this belated stage certainly would be too preposterous a step when the trial Court is almost on the verge of giving a final effect to this imbroglio.

In the light of what has been detailed and discussed above and the fact that provisions of Section 482 Cr.P.C. are to be sparingly used in rarest of the rare cases to meet the ends of justice and which none of the eventualities have come up before this Court to show indulgence. The petition being hopelessly without any merit stands dismissed. Records be sent back immediately.

(FATEH DEEP SINGH)
JUDGE

November 29, 2017

rps

Whether speaking/reasoned	Yes/No
---------------------------	--------

Whether reportable	Yes/No
--------------------	--------