IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-14153-2016 (O&M)
Date of Decision: 1.12.2018

Rajdeep Singh Sandhu

..........PETITIONER(s).

VERSUS

U.T., Chandigarh and another

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. S.S.Narula, Advocate
for the petitioner.

Mr. R.S.Rai, Senior Advocate with
Mr. Gautam Dutt, Addl. P.P. UT, Chandigarh,
for respondent No.1.

Mr. A.S.Narang, Advocate,
for the complainant.

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RAJ SHEKHAR ATTRI, J.(Oral)

Through this petition under Section 482 of Code of Criminal Procedure (in short, “Cr.P.C.”), the petitioner is seeking quashing of FIR No.117 dated 9.10.2015 (Annexure P-2) registered under Section 420 of Indian Penal Code (in short, “IPC”) at Police Station Sector 3, Chandigarh along final police report under Section 173 Cr.P.C. (Annexure P-3) as well as order dated 7.1.2016 (Annexure P-4).

The allegations levelled in the FIR against the petitioner are that the complainant and the petitioner are having acquaintance for the last two decades. In October, 2012, the petitioner told and introduced the complainant to invest in solar hydro electric power projects because return from said projects would be highly remunerative. On his inducement, the complainant agreed to his proposal. At that time, the petitioner got signed five blank stamp papers and disclosed that those shall be handed over to his Chartered Accountant. It is also added in the FIR as under : -

> "For the purpose of setting up a company for solar power projects, Dr. Sandhu asked me to sign five blank stamp papers and represented that these had to be handed over to some C.A. So that the solar power projects never took off and the company for this purpose was never incorporated since the project had been abandoned. I requested Dr. Sandhu to hand over the blank stamp papers signed by me he said they are in safe custody with his CA and would be returned he also told me that he had blank cheques and stamp papers of so many of his VIP friends."

It has been further alleged in the FIR as under : -

> ".........After I had paid a sum of Rs.2.40 crores to Dr. Rajdeep Sandhu and hydro projects I asked Dr. Sandhu to execute some documents which would reflect me as a partner of shareholder in the aforesaid projects for this purpose I had given him my net worth details and pan card copy on his asking I also made inquiries about the returns since he had represented that tow of the three projects were running projects however till date I have not received a single penny by way of profits/returns I then requested Dr. Sandhu to at least show me the running project sites be would fix a date for the visit then postpone the visit on the night before we

were supposed to leave on some pretext or the other this carried on for several months finally I managed to get one address from him and visited the small project site in Dharamshala upon visiting the Dharamshala project in June, 2014.

I came to know that the project was 135 kw and not 235 kw as was represented by Dr. Sandhu on checking up the value of the project I got to know that the project is worth Rs.40-50 lakhs only and not Rs.2.80 crores as represented by Dr. Sandhu at this stage I realized that I had been cheated and defrauded by Dr. Sandhu thereafter I confronted Dr. Sandhu and asked him to the other two projects Dr. Sandhu told me that I MW project deal had not materialized and thus the project could not be purchased the long term project could not be purchased the long term project could not be purchased the long term project sites according to him were still at the initial clearance stage but no details have been given to me till date he postponed matters and said he would have discussion with his Delhi and Pathankot partners regarding return of my investment. Thus by making false representations and false promises Dr. Sandhu has received a large sum of Rs.2.40 crores from me for making me a partner in hydro projects whereas two of these projects do not exist in the thirds project at Dharamshala I am neither a partner nor a shareholder the money handed over by me has obviously not been investment in hydro projects and had been used by Sandhu for personal usage and perhaps making personal assets. As far as the small project at Dharamshala is concerned the same is being run by accompany called Dhauladhar Hydro Systems Pvt. Ltd. On checking up from the MCA portal site I have come to know that Dr. Sandhu himself is a director and shareholder in the company along with four other persons the directors are Rajdeep Singh Sandhu, Amar Singh, Puneet Saini, Raj Kumar and Leela Devi the shareholders are Rajdeep Singh Sandhu 50g and Puneet Saini 50g photo copy of the list of shareholders and directors of Dhauladhar Hydro System Pvt. Ltd. Is appended as annexure -D, thus after receiving the money from me for the aforesaid project at Dharamshala Dr. Sandhu has not made me a directed and a shareholder at my own level and found out even in RC hydro projects were I had transferred a sum of Rs. 35 lakhs by cheques/RTGS I have not been made a partner till date the partners of R.C. Hydro are Dr. Rajdeep Singh Sandhu, Sudesh Kumar and Ram Chand R.C. Hydro Projects even otherwise does not have any running project in its name, it is apparent that have been defrauded and cheated by Dr. Rajdeep Singh Sandhu as by making representatins of lucrative returns he induced me to deliver Rs.2.4 crores to him as my investment amounting to 25% in hydro power project according to his projected cost two of these projects do not even exist and in the third my name has been included as a partner shareholder director thus the money handed over by me to Dr. Sandhu has been misappropriated by him and no investment whatsoever has been made against my name on being confronted with these facts Dr. Sandhu has been promising me to return the amount of Rs.2.4 crore since August, 2014, I have held several meetings with him at my house as well as his house in Sector 8, Chandigarh where have been requesting him to return my money on one pretext or the other he has been post poning the matter and has not returned a single penny to me s far on 22nd January, 2015 Dr. Sandhu met me and my father at my house in Sector 8 Chd and undertook in writing to return the amount of Rs.2.4 crore to me he had further undertaken that on 30th January 2015 he would give us complete details as to how the money would be returned to me photocopy of the undertaking one can see that Dr. Sandhu has stated that I would be a partner in hydro power projects whereas I am neither a partner in nor a shareholder in any company/firm in these meeting I had also been requesting Dr. Sandhu to return the blank signed stamp papers handed over to him for the purpose of incorporating a company for solar power project after repeated requests Dr. Sandhu handed over two of these stamp papers on 10.1.2015 bearing Sr. Nos. 00AA813293 and 00AA813294 photo copies of these two stamp papers are appended as Annexure R Dr. Sandhu has purposely mutilated these stamp papers to hide details of the stamp vendor as well as the details on whose name these stamp papers were purchased. At the time of handing over these stamp papers to Dr. Sandhu the stamp papers contained only my signature however when to of these stamp papers were returned they also had signatures of Dr. Sandhu which seem to have been subsequently appended by him and later the signatures have been struck off three of these stamp papers are still with Dr. Sandhu and he has refused to hand over these three stamp papers. I apprehended that Dr. Sandhu will misuse these stamp papers against me even though in one of meeting Dr. Rupam Sandhu his wife had assured me that these stamp papers would not be misused by Dr. Sandhu I have no faith in him on his false representations I entreated him blank signed stamp papers which he has misappropriated and has committed criminal breach of trust. It is therefore respectfully prayed that an FIR be registered against Dr. Rajdeep Singh Sandhu and his accomplices under Sections 403, 406, 420 and 120B of Indian Penal Code and further action may kindly be taken against them in accordance with law including arresting the

> accused and effecting recovery of stamp papers and the cash handed over to Dr. Rajdeep Singh Sandhu.....”

After receipt of the said application, the police has conducted inquiry and found that the petitioner committed offence of cheating, as such, final police report was submitted. On hearing the petitioner, a charge sheet has been framed by learned Judicial Magistrate, 1st Class, Chandigarh on 7.1.2016 for offence under Section 420 of Indian Penal Code.

I have heard learned counsel for the parties and carefully gone through the record.

The petitioner has specifically admitted that he agreed to make the complainant partner in the project at village Rack, District Chamba (Himachal Pradesh) but he claimes that he joined one Gurpreet Singh with 74% share. The petitioner also admitted fact of receiving the amount as alleged by the complainant but he claims that amount was received in good faith. This Court would like to reproduce para 6 to 9 as under : -

> “6. That in order to set up the said projects and to purchase 25% share holding in the company M/s R.C. Hydro Projects for only the Hydro Projects qua the project to be set up at village Rack as detailed in the MoU between the petitioner and Gurpreet Singh (Annexure P-5), the complainant/respondent No.2 transferred a sum of Rs.35 lacs in the account of the Firm directly. The said Rs.35 lacs was

part payment for the said share holding as the actual cost that would be required for setting up the project including construction etc. was yet to be determined and as agreed, he would pay more money falling to his share, and be given 25% share holding which would stand documented when the firm was converted into the private limited as was the requirement for getting loans from the bank, financial institutions etc. Besides this, another sum of Rs.11 lacs by way of cheques was handed over to the petitioner for meeting initial expenses of getting projects cleared. The remaining amount was put in by the complainant/respondent No.2 in cash thereby making his total investment to be Rs.2 crores 30 lacs. While some amount was spent and utilized in the setting up projects etc., the remaining amount was kept in the common pool created by the petitioner and complainant/respondent No.2 for use of funds as and when required.

7. That in the meanwhile, property prices in India fell due to which the complainant/respondent No.2 who was dealing in Real Estate also suffered losses and failed to keep up his commitments. In order to make payments pertaining to real estate business, complainant/respondent no.2 withdrew a sum of Rs.1.30 crore from the money kept in the business joint pool by the petitioner and

complainant/respondent no.2, for taking over the Hydro Projects in Himachal Pradesh and setting up the Solar Project in Punjab.

8. That the complainant/respondent no.2 thereafter insisted on completely backing out from the joint business venture entered into with the petitioner. Despite money having spent for establishment of the projects, and in various preliminary requirements, setting up a firm, getting permissions, sanctions etc., he started demanding that his entire investment be returned. As money had already been invested, Rs.46 lacs (Rs.35 and Rs.11 lacs) by way of Bank Transactions, and Rs.54 lacs in cash, setting up the projects in other projects, and further, nothing would be actually payable due to the complainant backing out from the business dealings, yet taking into consideration their long standing friendship and association, the petitioner agreed to arrange for the entire investment made by the complainant, less the sum of rs.1.30 crore already withdrawn by him earlier. As there was no ill-intention in the mind of the petitioner, he executed a writing to this effect in good faith, which is being relied upon by the complainant/respondent No.2 himself and forms part of the challan. A true copy of the said writing is appended herewith as Annexure P-10. It was further agreed upon that the amount of Rs. 1 crore will

be arranged by liquidating the projects over a period of time.

9. That besides, the said writing and the matter being completely mutual and civil in nature, without there being any misrepresentation whatsoever, without even waiting for sufficient time for liquidation of the projects and money to be withdrawn by the complainant/respondent No.2, the complainant went ahead to level false and fabricated allegations against the petitioner and made a complaint to the police on 21.04.2015. A true copy of the complaint is appended herewith as Annexure P-11. As the complaint did not disclose the commission of any cognizable offence, the police initially did not take any action in the matter, but later on due to undue influence exerted by the complainant, FIR No.177 dated 9.10.2015 u/s 420 IPC was registered at Police Station Sector 3, Chandigarh (Annexure P-2)."

The petitioner has taken a specific plea regarding good faith. According to him, the transactions made by him with the complainant were in good faith. However, it is undisputed fact that the complainant was never joined as partner in the firm. This is his general defence and he has to prove it by leading evidence that he acted in good faith.

The Hon'ble Supreme Court in **State of Haryana and others** v. **Ch. Bhajan Lal and Ors.,** 1992 AIR (SC) 604 has made the following observations:-

"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 extraordinary 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. Whether 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. Whether, 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 F.I.R. 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."

In the instant case, serious allegations have been levelled against the petitioner with regard to cheating. To hold a person guilty of offence under Section 415 of the IPC, it is *prima facie* necessary to show that he had acted fraudulently or dishonestly at the time of making promise with an intention to retain the property.

To the mind of this Court, the allegations made in the FIR as well as the assertions of the petitioner require adducing of evidence. Therefore, the FIR and the charge sheet cannot be quashed at this stage.

However, the material collected during the trial is subject to judicial scrutiny. Its evidentiary value shall be considered by learned trial Magistrate at the appropriate stage of the trial.

To the mind of this Court, impugned orders do not suffer from illegality, irregularity and infirmity and no case is made out for quashing FIR (Annexure P-2), final police report (Annexure P-3) and order dated 7.1.2016 framing charge sheet (Annexure P-4).

While testing the matter in dispute on the touchstone of the parameters laid down by Hon'ble Supreme Court in **State of Haryana and others** v. **Ch. Bhajan Lal and Ors. (supra)**, this Court is of the view that no case is made out to quash the impugned FIR and order dated 7.1.2006.

Dismissed.

However, nothing expressed above shall have bearing on the facts of the case and the trial Court shall dispose of the matter on independent appraisal of the evidence adduced by both the parties.

(RAJ SHEKHAR ATTRI)
JUDGE

December 1, 2018
Paritosh Kumar

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No