IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.205

CRM-M-14992-2018
Date of decision : 13.12.2018

Jatinder Kaur and another ..... Petitioners

VERSUS

State of Punjab ..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. DN Ganeriwala, Advocate, for the petitioners.

Mr. K.S. Sidhu, DAG, Punjab

Mr. Ashish Aggarwal, Advocate, for the complainant.

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SUDHIR MITTAL, J. (Oral)

The petitioners seek regular bail in case FIR No.30 dated 27.3.2018, registered at Police Station Raja Sansi, District Amritsar, under Sections 420/120-B IPC.

The allegations in the FIR are that the petitioners were running a 'Committee' and that the members thereof have been defrauded by the refusal of the petitioners to make payments in accordance with the rules of the 'Committee'.

Learned counsel for the petitioners submits that the 'Committee Business' was being run by the mother-in-law of petitioner No.1. After her death, the business was taken over by her father-in-law. Now, even he has passed away. The petitioners are residing on the first floor of the residence and they are not involved with the aforementioned business, in any manner. Petitioner No.2 is working as a taxi driver and earns his living from the said job. Further, at the appropriate time, petitioner No.2 was in judicial custody and thus, it cannot be said that he was involved in 'Committee Business'. It is also argued that 'Committee Business' is banned by the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 and accordingly, an agreement between the parties for running a 'Committee Business' is hit by Section 23 of the Contract Act, 1872, as the object of the agreement was illegal. An illegal agreement cannot be enforced in law and thus, the prosecution of the petitioners for various offences under the Indian Penal Code, 1860 (for short 'IPC'), is bad in law. Finally, it is argued that Section 420 IPC is not attracted in the facts and circumstances of this case as the offence of cheating is not made out.

Learned State counsel as well as counsel for the complainants submit that admittedly, the running of 'Committee Business' is illegal and therefore, the petitioners can be proceeded against not only for violation of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978, but also for violation of the general criminal law, i.e. IPC. If, an act is not actionable under the civil law, it does not mean that criminal liability is also not attracted. Regarding the argument that Section 420 IPC, is not attracted in this case, it is submitted that this can only be decided by the trial Court after the parties have led evidence because it is only thereafter that the state of mind of the parties would be revealed. The petitioners would be required to show that there was no inducement on their part and that the complainant side voluntarily parted with money.

In this petition, I am required to examine whether in the facts and circumstances of this case, the petitioners are entitled to discretionary relief of anticipatory bail. The allegations against the petitioners, as mentioned hereinabove, are of dis-honestly defrauding the members of the 'Committee'. Whether, the petitioners were or were not involved in the said business is a question of evidence and I cannot opine thereupon in this petition. Similarly, I cannot opine on the involvement of the petitioner No.2 on account of being in judicial lock-up, at the relevant time, as argued. The argument of the learned counsel for the petitioners that the contract between the parties being void on account of violation of Section 23 of the Contract Act, 1872 and thus, criminal liability not being involved, is also not acceptable. If an agreement is void, a person aggrieved by violation thereof, may not be able to enforce a civil remedy, but surely he can be prosecuted for having committed an illegal act. Even according to the counsel for the petitioners, the act complained off is illegal and therefore, no immunity can be available to such a person. It is also settled that if an action is violation of a particular statute, not only can he be prosecuted under the said statute, he can also be prosecuted for violation of the general criminal law. These proceedings are not recovery proceedings and the petitioners cannot hide behind the contention that the contract was illegal.

This brings us to the argument of the counsel for the petitioners that Section 420 IPC, is not attracted in the facts and circumstances. Section 420 IPC, provides for punishment for committing the offence of cheating. Cheating means dis-honestly inducing a person to part with property and thus, causing loss to him. In this case, the complainants have been deprived of their money and loss has thus, been occasioned. Whether, there was dishonest inducement or not, is a question of fact and the same can only be decided after examination of evidence. At this stage, I am not in a position to opine one way or the other and therefore, the argument is liable to be rejected. The petitioners have allegedly not paid off a large number of persons and thus, they are not entitled to grant of discretionary relief under Section 438 Cr.P.C.

The petition is accordingly, dismissed.

(SUDHIR MITTAL)
JUDGE

13.12. 2018
Ramandeep Singh

Whether speaking / reasoned Yes / No

Whether Reportable Yes/ No