

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

122

CRM-M-22193-2018

Date of Decision : 09.08.2018

Divya Sethi and others

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE P.B.BAJANTHRI

Present: Mr. SPS Sidhu, Advocate,
for the petitioners.

P.B. BAJANTHRI, J.(ORAL)

In the instant petition, petitioners seek quashing of FIR No. 378 dated 27.12.2016 under Sections 420, 406, 120-B of Indian Penal Code registered at Police Station Focal Point, Ludhiana, District Ludhiana as well as consequential proceeding arising therefrom.

2. Learned counsel for the petitioner in support of his prayer stated that allegations relating to rent deed is that it is a forgery and not disputed having regard to the statement made by the owner. There is sufficient material to show that machineries which were with the old firm shifted into the newly created firm. In this regard necessary material are available to prove that after creation of a new firm, they have purchased machineries. Insofar as allegations of accounts in dispute between the partners like petitioners and complainant, it is not a matter relating to criminal proceedings. It is also contended that civil suit has been filed seeking a declaration to the extent dissolution of partnership deed between the petitioners and complainant and the matter is pending consideration.

Apart from the report of Assistant Commissioner of Police, Crime-cum-E.O. Wing, Ludhiana dated 03.08.2016 which was prepared after enquiry has not been taken into consideration before filing FIR.

3. Heard learned counsel for the petitioner.
4. Undisputed facts are that petitioners and complainant have entered into partnership firm. They were running business relating to sale and purchase of steel and iron castings sanitary items etc. The complainant has made allegation that when the petitioners have created a new firm dealing with the same items, it would be contrary to particular condition in partnership deed to the extent that none of the partners should establish any firm relating to ownership in the respect of hardware steel and other items, which has been dealt by the firm where the complainant is one of the partner. Thus, petitioners have created new firm called M/s Acero Metelwerke, when the partnership firm M/s Acero Technik is existing.
5. That apart allegations made by the complainant is non-giving account for the reasons that petitioners are stated to have shifted the materials from old firm to new firm. So also forging certain documents, these are all serious allegations made against the petitioners, which are required to be examined in the investigation. Such petition can be entertained only if the investigation is over and thereafter if any insufficient materials are produced to interfere.
6. The relevant paragraphs of Hon'ble Supreme Court Judgment in State of Orissa and another vs. Saroj Kumar Sahoo, 2005, 13 SCC 540 are as under:-

“11. As noted above, the powers possessed by the High Court under [Section 482](#) of the Cr.PC. are very wide and the very plenitude of the power requires great caution in its exercise.

Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage.

12. *The above position was again re-iterated in [State of Karnataka v. M. Devendrappa](#) and [State of M.P. v. Awadh Kishore Gupta](#).*

13. *In [Jehan Singh v. Delhi Administration](#), while considering a case under [Section 561-A](#) of the Code of Criminal Procedure, 1898 (in short the 'Old Code') corresponding to [Section 482](#) of the Cr.P.C, it was observed as follows :*

"Where at the date of filing the petition under [Section 561-A](#), no charge sheet or a complaint has been laid down in Court and the matter is only at the stage of investigation by Police, the Court cannot, in exercise of its inherent jurisdiction under [Section 561-A](#), interfere with the statutory powers of the Police to investigate into the alleged offence and quash the proceedings. Even assuming that the allegations in the FIR are correct and constitute an offence so as to remove the legal bar to institute proceedings in Court, the Court cannot at that stage appraise the evidence collected by the Police in their investigation. Any petition under [Section 561-A](#) at such a stage is, therefore, premature and incompetent."

14. *It is to be noted that the investigation was not complete and at that stage it was impermissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial. While exercising jurisdiction under [Section 482](#) of the Cr.P.C., it is not permissible for the Court to act as if it was a trial Court. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. In [Chand Dhawan \(Smt.\) v. Jawahar Lal](#), it was observed that when the materials relied upon by a party are required to be proved, no inference can be drawn on the basis of those materials to conclude the complaint to be unacceptable. The Court should not act on annexures to the petitions under [Section 482](#) of the Cr.P.C., which cannot be termed as evidence without being tested and proved.”*

7. In the present case, only FIR is registered and investigation is yet to be complete. The defence of the petitioner cannot be considered at this juncture. It is not that reading of the FIR fails to disclose commission of any offence. Prima facie petitioners have not made any case to inference under Section 482 Cr.P.C to quash FIR. Accordingly, petition stands dismissed.

8. The above observation, if any, may not be construed as a decision on merit.

09.08.2018

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(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasoned?

Yes/ No