IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.209

CRM-M-26050-2018
Date of decision : 03.08.2018

Madhu Bala and another ..... Petitioners

VERSUS

State of Punjab ..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Sunil Chadha, Sr. Advocate with
Ms. Swati Verma, Advocate, for the petitioners.

Mr. K.S. Sidhu, DAG, Punjab.

Mr. Anand Chhibber, Sr. Advocate with
Mr. Ashok Paul Batra, Advocate, for the complainant.

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SUDHIR MITTAL, J. (Oral)

A complaint dated 15.02.2018, was submitted by Gurmeet Singh son of Pritam Singh, whereupon FIR No.70 dated 06.04.2018, was registered at Police Division No.2, Police Commissionerate Ludhiana, under Sections 406, 420 and 120-B IPC against the petitioners.

Vide order dated 20.04.2018, the learned Addl. Sessions Judge, Ludhiana, declined the application for grant of anticipatory bail. Thereafter, the petitioners filed an application dated 02.05.2018, for conducting a fresh enquiry. The said application was rejected vide order dated 14.06.2018. Meanwhile, the present petition dated 13.06.2018, for grant of anticipatory bail was filed.

A copy of the FIR has been placed on record as Annexure P1 and the allegations therein are that petitioner No.2 used to fetch orders from abroad and would take material from the complainant on the responsibility of his mother and wife for supply and the responsibility to get the money was also his. Material worth Rs.75 lakhs has been supplied in the last four months, but no money has been paid by petitioner No.2. Now, they are extending threats and thus, they have committed cheating for which legal action be taken against them.

Learned senior counsel appearing on behalf of the petitioners argues that a perusal of the FIR would show that there was money dealing between the parties and there is a dispute on account of non-payment of money. Thus, the dispute is purely civil in nature and no criminal liability is attracted. This argument is sought to be buttressed with reference to document, Annexure P2, which is the statement of account of firm, namely, Shaktiman (India), owned by petitioner No.2 for the period 01.04.2017 to 31.03.2018 in respect of M/s Lovely Bolt House, which is a firm owned by the complainant, according to which, a sum of Rs.35.87 lakhs is due from the complainant to petitioner No.2. The submission is that if money was due from the complainant to petitioner No.2, there was no question of payment of Rs.75 lakhs by the petitioners to the complainant. It is, further submitted that according to the FIR, money has not been paid on account of supplies made in the last four months and working backward from the date of the complaint, money has allegedly not been paid in respect of supplies made after November, 2017 and after November 2017, the complainant has not exported any goods, thus, the allegations made in the FIR are patently false. Another argument made by the learned senior counsel is that invoice Annexure P3 shows that the complainant was dealing directly with the purchasers abroad and the purchaser would pay money directly into the account of the complainant with no role of the petitioners in the transaction. Thus, the petitioners were not involved in the dealings of the complainant and this also proves that the FIR has been registered on the basis of false allegations. Finally, it is submitted that petitioner No.2 had filed a complaint dated 28.11.2017, against the complainant, which is still being enquired by the police and the present FIR is a counter-blast to the said complaint.

Pursuant to issuance of notice of motion, the complainant has put in appearance and has filed reply. Re-joinder thereto has also been filed on behalf of the petitioners. Vide order dated 10.07.2018, interim protection had been granted to the petitioners and it is not in dispute that thereafter, the petitioners have joined investigation.

Alongwith reply of the complainant, documents Annexures R1 to R5 placed on record. Annexures R1 and R2 are dated 10.08.2016 and 17.09.2016, respectively, in which petitioner No.2 has assumed complete responsible for payment of goods supplied by the firm of the complainant. Annexure R3 contains transcript of some Whats-app communication between petitioner No.2 and the complainant. Annexure R4 is the transcript of a telephonic conversation between them and Annexure R5 is copy of a complaint dated 11.11.2017, submitted by the complainant against the petitioners.

With reference to the aforementioned documents, learned State counsel submits that in the Whats-app conversations as well as in the telephonic conversation, petitioner No.2 has admitted that he owes money to the complainant. On request dated 02.05.2018, another enquiry was conducted by ADCP-III, who opined vide his report dated 14.06.2018, on the basis of the aforementioned transcripts that there was no error in the registration of the FIR. In nutshell, his submission is that the petitioners have cheated the complainant and they do not deserve the concession of anticipatory bail.

Learned senior counsel appearing on behalf of the complainant submits that the documents, Annexures R1 and R2, conclusively show that goods were being exported by the complainant on the understanding that petitioner No.2 would ensure the receipt of payment therefor. Thus, the argument made on behalf of the petitioners that the complainant was dealing directly with the purchasers, has no legs to stand. It is not a pure and simple money dispute as is sought to be projected on behalf of the petitioners. The firm, namely, Shaktiman India was supplying goods to the complainant as is evident from document, Annexure P2. Since, the complainant was the holder of an export licence, the same goods were further exported on the assurance of petitioner No.2 as he was in contact with the purchasers abroad. There is no connection between the present transaction and the transaction reflected in the statement of account, Annexure P2. Goods were exported by the complainant on the assurance of petitioner No.2 and since money for the supply has not been received, a case under Section 420 IPC is clearly made out. Moreover, the stand of the petitioners is not consistent inasmuch as, on the one hand, it is stated that petitioner No.2 was not involved in the exports and on the other hand, the Annexures R1 and R2, have not been rebutted. Thus, the guilt of the petitioners flows through their pleadings.

From the documents placed on record by the parties, it is evident that there were ongoing business dealings between them. Relationship has soured on account of the fact that the complainant claims that some money is due to him, whereas the accused-petitioners claim otherwise. The truth would emerge during the trial of the case. At this stage, I am only concerned with the question whether the custodial interrogation of the petitioners is necessary or not?

It is settled law that the liberty of a citizen should be curtailed only if the offence complained of is very serious in nature or there is likelihood of the accused persons absconding from the law. Allegations and counter allegations have been made, but I do not wish to opine on them, lest my opinion prejudices the trial of the case. Suffice to say that in my opinion, keeping in view the fact that the petitioners have joined investigation as well as the fact that the evidence in this case, is entirely documentary in nature, I see no reason to grant the police, custodial interrogation of the petitioners.

Thus, the petition is allowed. It is directed that in the event of the arrest of the petitioners, they shall be released on anticipatory bail to the satisfaction of the Investigating Officer/SHO concerned, subject to their compliance of the conditions enshrined under Section 438(2) Cr.P.C. The petitioners shall appear before the investigating agency, as and when required by it and cooperate therewith. The Investigating Agency shall conclude the investigation expeditiously by taking into consideration all documents that may be provided by both the parties. Till the presentation of challan, the petitioners are directed to deposit their passports with the police/Investigating Agency.

(SUDHIR MITTAL)
JUDGE

03.08.2018
Ramandeep Singh

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