IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-33804 of 2017
Date of Decision: July 24, 2018

Rajan Nagpal and another

......Petitioners

versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

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Present: Mr. J.S. Bedi, Sr. Advocate with
Mr. S.S. Brar, Advocate
for the petitioners

Mr. D.R. Singla, DAG Haryana

Mr. Sunil Panwar, Advocate with
Mr. Dhananjay Singh, Advocate
for the complainant

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Sudhir Mittal, J.

The petitioners are husband and wife. They are accused of criminal mis-appropriation, cheating, forgery and use of forged documents vide FIR No. 70 dated 31.01.2017 registered at Police Station Central Faridabad. The said FIR has been registered specifically under Sections 406, 420, 467, 468, 471, 120-B IPC.

2. The FIR came to be registered on the complaint of one Rajat Puniany. He submitted a complaint dated 19.12.2015 to the SHO, Police Station Sector-12, Central Faridabad. According to the contents thereof, the petitioners had approached the complainant on behalf of one Chander Kaul son of D.N. Kaul and asked for Rs. 20 lacs as the said Chander Kaul wanted to purchase some property. It was stated that in case the deal did not go through, the amount would be returned.

A signed cheque issued by Chander and a blank agreement signed by Chander was also given as security. Thereupon, the complainant paid Rs. 20 lacs to the petitioners. On the demand of the complainant for return of money, it was assured that the money would be paid within few days. However, the money was not returned and some days later the complainant got news that petitioner No. 1 had absconded after duping different people of Rs. 3-4 crores. The complainant thereafter called aforementioned Chander and he was told that said Chander had never issued any cheque and that his name was actually Chander Kant Rastogi. Consequently, the complainant presented the cheque issued by Chander which was dishonored and on contacting the Bank, he realized that infact the account was of petitioner No. 1. Thus, it was alleged that the petitioners have committed the offences of breach of trust, cheating and forgery. This was followed by another complaint dated 21.12.2015 submitted by one Deepti Dhull, in which it was alleged that she had paid a sum of Rs. 73 lacs to petitioner No. 2 as she needed money for business. The money was not returned but a cheque for a sum of Rs. 73 lacs was given which was dishonored. Reference was also made to the earlier complaint filed by Rajat Puniany and registration of an FIR was sought. The police did not take any action upon the aforementioned complaints and thereafter a reminder dated 03.01.2017 was submitted. In this reminder, it is alleged that the petitioners owe the complainants a total sum of Rs. 1.36 crores. Ultimately, the aforementioned FIR was registered incorporating additional details regarding money lent by the complainants and issuance of cheques by the petitioners for return of the amount due which were ultimately dishonored. In sum and substance, the allegation against the petitioners is that money was taken by them with the promise that it would be returned alongwith interest within a short while but the same was not returned. Instead some cheques were issued for return of part of the money but the same were dishonored and thereafter petitioner No. 1 attempted to flee.

3. Alongwith the petition, the petitioners have filed a balance sheet of the year 2011-2012 showing that the complainants had been advanced a sum of Rs. 60.5 lacs. A private complaint dated 25.02.2016 preferred by petitioner No. 2 against the complainants has also been placed on record alleging that the respondents therein had ransacked the office of the petitioners and had taken important documents from there including blank cheque books and property documents. The alleged incident took place on 30.10.2015 and the private complaint was necessitated because the police did not take any action upon the complaint submitted by the father of petitioner No. 1. The order by which the complainants and others in the present case, were summoned has also been placed on record. Letters dated 26.01.2016 as well as 26.04.2016 submitted by some police officials recommending filing of the complaints submitted by the complainants on the ground that the dispute was a civil dispute, have also been annexed. A blank cheque drawn on IDBI Bank signed by one Chandra Kant Rastogi has also been relied upon.

4. The complainants have filed an affidavit whereby a compromise dated 01.05.2018 has been placed on record alongwith a representation dated 21.05.2018 for taking action against the petitioners for violation of the compromise.

5. In rebuttal thereto a representation dated 05.05.2018 has been referred to by learned senior counsel appearing for the petitioners to submit that the compromise dated 01.05.2018 was arrived at under duress and the police had been, accordingly, informed.

6. Learned senior counsel appearing for the petitioners has submitted with reference to the balance-sheet of the year 2011-2012 that money was due to the petitioners from the complainants and not vice versa. With reference to letters dated 26.01.2016 and 26.04.2016 written by some police official, it has been contended that on investigation the dispute has been found to be of civil nature and no

criminality is involved. With reference to criminal complaint dated 25.02.2016, it is submitted that the complainants have stolen cheque books and other important documents relating to property from the office of petitioner No. 1 and certain cheques have been misutilized by them to falsely implicate the petitioners. Moreover, complaints under Section 138 of the Negotiable Instruments Act, 1881 have already been filed and, thus, registration of the present FIR is an abuse of the process of law. An offer has also been made to pay back a sum of Rs. 39 lacs received by the petitioners from the complainant side through RTGS as the submission is that this is the only amount received by the petitioners and they are willing to refund the same to show their bonafides.

7. Learned State counsel submits that the investigation till date shows that the petitioners have committed a fraud upon the complainant side. They have forged signatures of third persons on cheques relating to their own account and have committed breach of trust by misappropriating money given to them by the complainant side in good faith. Thus, the petitioners do not deserve to be granted anticipatory bail.

8. The complainant side is also represented through counsel. The counsel reiterates the allegations made in the FIR. He also submits that petitioner No. 1 had tried to abscond as is evident from letter dated 30.10.2015 submitted before the police by the father of petitioner No. 1, based upon which FIR No. 632 dated 30.10.2015 had been registered under Section 365 IPC. The story regarding ransacking the office of petitioner No. 1 is false and is an attempt to derail the investigation against the petitioners. The complainant side has been granted anticipatory bail in the said complaint. Reference has been made to compromise dated 01.05.2018, wherein it is recorded that the petitioners are bound to pay a sum of Rs. 92.5 lacs to the complainant side to submit that in case money was due to be paid from the complainant side, the petitioners would never have agreed to pay a

sum of Rs. 92.5 lacs.

9. It is not in dispute that the complainant side is in possession of certain cheques issued on account of the petitioners, which have been dishonored. This in itself shows that money was due to the complainant side. It also lends credence to the arguments of the learned counsel for the complainant that the petitioners induced the complainant side to part with money with fraudulent intention. The fact that the petitioners compromised the matter with the complainant side vide compromise dated 01.05.2018 and agreed to pay a sum of Rs. 92.5 lacs also shows that the petitioners owe money to the complainant side. If a party receives money with the intention of not returning it and also issues cheques just to delay the matter and with fraudulent intention, it can not be said that registration of an FIR under Section 420 IPC is an abuse of the process of law simply because a complaint under Section 138 of the Negotiable Instruments Act, 1881 has also been filed. The facts and circumstances of each case would show intention of the accused persons and that would be the relevant factor for determining the applicability of Section 420 IPC. Thus, I do not agree with the arguments of leaned senior counsel representing the petitioners that the registration of the present FIR is an abuse of the process of law. Further, merely because some police officer has made a report that the dispute between the parties is civil in nature, the same is not conclusive of the issue. The facts of this case show that it is not a case of simpliciter lending of money and return thereof. The facts bring forth the intention of the petitioners and, thus, criminality is involved in their conduct. Findings himself trapped petitioner No. 1 attempted to abscond but then returned probably because good sense prevailed. The offer of payment of Rs. 39 lacs is also neither here nor there.

10. Keeping in view the seriousness of the allegations against the petitioners and the facts and circumstances of this case, discussed hereinabove, I do not deem it to be an appropriate case for grant of anticipatory bail.

11. The petition is, accordingly, dismissed.

12. However, anything stated hereinabove shall not be construed to be an expression of opinion on merits of the case.

July 24, 2018 **[SUDHIR MITTAL]**
reena **JUDGE**

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