124 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-40007-2018 (O&M)
Date of decision:13.09.2018

Neeraj Kakkar ...Petitioner

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Gursimran Singh Madaan, Advocate,
for the petitioner.

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RAJBIR SEHRAWAT, J. (ORAL)

The present petition has been filed seeking quashing of FIR No. 88 dated 29.05.2018 under Section 420 of IPC, registered at Police Station Navi Bharadhri, District Jalandhar on the ground that no offence, as alleged, has been made out and the dispute between the parties is of civil nature.

The allegations, as contained in the FIR, are that the petitioner is dealing in the crypto-currency / Bit-coins. In the month of April, 2017, the petitioner represented to the complainant that he was dealing in Bit-coins and he further made a representation to the complainant that if they purchase Bit-coin, then in a very short time, they can make huge gains. The complainant further discussed the matter with other complainants who are named in the FIR. Thereafter, in the last week of April, 2017, while giving more information qua the Bit-coins, the petitioner allured the complainants to invest in Bit-coins through him. The petitioner explained to the complainants the modalities of purchasing the Bit-coin. Believing the version of the petitioner, the complainant met him on 30th April, 2017 regarding the investment. During this meeting, the petitioner had assured the complainants that the petitioner himself shall be totally responsible for the payment made for purchase of Bit-coins by the complainants and assured him the return at the rate of 15% per month; consecutively for 15 month; for the investment made by the complainant. Due to all these representations made by the petitioner, complainant-Parun Sondhi gave an amount of Rs.3 lacs to the petitioner on 02.05.2017; for the purchase of 3.1 bit coins @ 96,774/- per coins. Another complainant-Bhuvan Sondhi gave the petitioner another sum of Rs.7 lacs on 04.05.2017; for the purchase of 7.1 Bit coins @ 98591/- per Bit coin. Both these payments were made to the petitioner in the presence of Kiranpal Singh. Further allegation is that the 3rd complainant- Ritesh Duggal gave a cash amount of Rs.5,50,000/- on 23.06.2017 to the petitioner; for purchase of 3.1 Bit coin @ Rs.1,77,419 per Bit coin. Still further, the 4th complainant-Vishal Madan gave cash amount of Rs.55,000/- to the petitioner, for the purchase of 0.9 Bit coins on 16.08.2017 and by making transfer blockchain for the purchase of 1.1 Bit coin @ Rs.2,75,000/- per Bit coin. The said payment was also made in the presence of Kiranpal Singh. Thereafter, the petitioner again represented to the above said complainants that their money has been invested in the form of Bit-coins and their identity has been created on 27.06.2017 by the petitioner himself.

After this stage, the complainants received some returns on the investment from the petitioner. But after about two months, the petitioner against started showing tantrums and showed his inability to give the returns at the promised rates. It is alleged that the rate of the Bit-coins increased from June, 2017 to October, 2017 about 5 times and the petitioner, with the malafide intention, did not give the promised returns to the complainants. The complainants had purchased a total of 14.4 Bit-coin from the petitioner but the petitioner has in total returned only 6.83 Bit-coin to the complainants, whereas, as per the market rates, the total value of the investment of the complainants, as per promised returns by the petitioner, amounts to 19.9 Bit coins. Therefore, it was alleged that the petitioner has taken money from the complainants and has used the same for his own gains, by making false promise and assurances to the complainants. The complainants made several requests to the petitioner to return their money. However, the petitioner refused to return the money, received by him from the complainants with a dishonest intention. With these broad allegations, the FIR was lodged against the petitioner, although, there are subsequent details of the transactions as well.

Counsel for the petitioner contends that the transactions of money between the petitioner and the complainants were for the purpose of investment only, therefore, it is purely a civil dispute. No criminal aspect can be read into the transactions. Counsel further contends that, in fact, the digital codes in the form of Bit-coins were provided to the complainants in lieu of the amount received. There was no malafide intention in the matter because the complainants has received returns on their investment. It is further contended that; it is not the responsibility of the petitioner, if the complainants have not received more returns as expected by them.

Counsel for the petitioner further contends that for purchasing Bit coins, there can be only online payment. Therefore, there is no reason or occasion for the petitioner to involve himself in the investment made by the complainants. Counsel for the petitioner has relied upon the judgment passed by this Court reported in ***1996 (3) R.C.R. (Criminal) 708; Amarjit***

Singh Vs. State of Punjab, to contend that where the transactions involved are predominantly of civil nature, the FIR cannot be sustained against one of the party.

Having heard learned counsel for the petitioner, this Court does not find any substance in the arguments raised by learned counsel for the petitioner.

It is clear from the allegations levelled in the FIR that the petitioner has received cash from the complainants; in the presence of a witness. Although the argument of learned counsel for the petitioner is that the complainants have received the returns on the amount and therefore, no dishonest intention can be read in the transaction, however, this Court finds that what the petitioner has received from the complainant is the hard cash in Indian currency. What the petitioner is claiming to have returned is not a tangible and legally valuable security. At the best, what is claimed to be given by the petitioner, can be categorized as a digital code, which if executed in its own way, may bring some returns. However, it is not the sufficient to legally justify the receipt of the amount which was charged from the complainants. Since the petitioner had nothing tangible and legal to offer to the complainants, and he induced them to pay hard cash to the petitioner, therefore, the intention to cheat on the part of the petitioner is clearly made out. He knew it fully well that he was not providing to the complainant, in return, any legally value article/ material.

The argument of learned counsel for the petitioner that it is the investment transaction, involving civil rights of the parties, is also not sustainable in law. What the petitioner received from the complainants is the cash Indian currency. What he promised to the complainant is only a digital code which the petitioner describes as a crypto-currency/Bit-coin. However, the fact remains that no such currency is recognized or approved by the Government of India. Hence the purpose of obtaining money by the petitioner from the complainants is not a lawful purpose. Therefore, the parties cannot seek remedies under the law of contract. Hence, no civil rights or liabilities can be said to have been created through the transactions of receipt of money by the petitioner. Needless to say that the FIR does not say that there was the written agreement with any specified contract. The FIR is pure and simple, to the effect that the petitioner promised the return @ 15%, obtained from the complainants, and he subsequently refused to return the same.

The next argument of the counsel; that since for purchase of Bit-coins, the money has to be paid only to two specified companies; who were managing the Bit-coins; and these payments can be made only online, therefore, the petitioner is not involved in the chain at all, is also liable to be considered and rejected. It is the positive case of the complainants that the petitioner had received cash money from the complainants; in the presence of the witness. There is nothing in the FIR to suggest that it were the complainants; who made the payment to the above said companies. Rather, the allegation is that the petitioner himself had created IDs for the complainants and invested the money.

The petitioner cannot find solace even in the fact; that the complainants have admitted having received some returns out of their investments. Even if the transactions are considered to be the investments, then, also the allegation is that as per the prevalent rate, the complainant should have got 19.9 Bit coins, whereas, the complainants have got only

6.83 Bit coins. The allegation in this regard also is against the petitioner that he was manipulating the operation of the Bit-coins of the complainants. Otherwise also, even if the complainants, at subsequent stage, have received some benefit, which can be converted in terms of money, that is only through illegal means. May be for adopting those illegal means, the complainants also have invited some consequences, however, that does not absolve the petitioner of his responsibility and his liability which he has incurred under Section 420 of IPC at the initial stage itself, by making the complainants to pay him the amounts, by promising them investment in something, which is non-existent as per the Indian law.

In view of the above, since there are specific allegations against the petitioner and there is a witness cited by the complainants in the presence of whom the money is received by the petitioner, therefore, it cannot be said that the FIR does not disclose a cognizable offence. Further, by any means, the transaction involved cannot be deemed to be a legal civil transaction, as per law of contract. Therefore it cannot be said that the dispute is predominantly of civil nature. So the FIR cannot be quashed.

Hence, finding no merits in the present petition, the same is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

13.09.2018
Hemlata

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No