IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-41286 of 2018 (O&M)
Date of decision: 10.10.2018

Ankit Aggarwal and others .... Petitioners

Versus

State of Haryana and another .... Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.S. Cheema, Sr. Advocate with
Mr. Aalok Jagga, Advocate
for the petitioners.

SURINDER GUPTA, J.

Petitioners have sought quashing of FIR No. 114 dated 27.04.2018, registered at Police Station Civil Lines, Rohtak for offences punishable under Sections 406 and 420 of Indian Penal Code (for short 'IPC') on the complaint of respondent no. 2-Satyawan Dahiya.

2. As per allegations in the FIR, Kamal Mittal, dealer of Mittal Maruti Suzuki Showroom and Hero Motors apprised the complainant in the year 2014 that petitioners, who are dealers of Yuva Motors, Faridabad intended to sell their showroom as they were in need of money. A meeting of petitioners was arranged with complainant. Girdhari Lal Goyal, Finance Manager of petitioners also accompanied them. During the meeting at Rohtak, a deal was settled for sale of Yuva Motors, Faridabad for ₹9 crores. ₹25 lakhs were given to petitioners as earnest money, who kept on coming to Kamal Mittal from time to time and took ₹3,50,00,000/-. Petitioners apprised Kamal Mittal and complainant about the receipt of amount. After sometime complainant asked petitioners to execute an agreement at which they tried to put off the matter on the pretext that they being

businessmen, complainant should have faith on them. Thereafter, Kamal Mittal remained in contact with petitioners on telephone and also sent messages to them (namely, Raunak Aggarwal and Girish Aggarwal), who were also responding to messages, details of which were attached with FIR. Thereafter, neither petitioners sold the showroom nor returned the amount of ₹3.75 crores taken by them from the complainant.

3. Learned counsel for petitioners has argued that allegations in the FIR are vague as no time, day or date of payment of ₹3.75 crores has been given. There is no receipt of payment of this amount and very strangely, the entire amount is alleged to have been paid in cash. The version put-forth by complainant is grossly improbable and absurd and nowhere indicates that the petitioners had any guilty intention at the time of the alleged deal. This FIR has also been registered after lapse of a period of four years of the payment.

4. While referring to observations of Hon'ble Apex Court in case of ***State of Haryana and others vs. Bhajan Lal and others, 1992 Supp (1) SCC 335,*** he has argued that even if allegations in the FIR be believed at their face value no offence is disclosed against petitioners. These allegations are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against accused. Learned senior counsel has also referred to observations of Hon'ble Apex Court in case of ***State of Karnataka vs. L. Muniswamy and others, (1977) 2 SCC 699,*** wherein it has been observed as follows:-

> "7. *..........In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the*

> *structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the, ends of mere law though justice has got to be. administered according to laws made by the, legislature. The compelling necessity for making these observations is that without a proper realisation of the object and pur- pose of the provision which seeks to. save the inherent powers of the High Court to do justice between the State and its. subjects, it would be impossible. to appreciate the width and contours of that salient jurisdiction."*

5. Admittedly, allegations levelled by complainant are not supported by any documentary evidence but the question which arises for consideration at this stage is as to whether there is any reason to discard the statements of complainant and Kamal Mittal about the payment made to petitioners from time to time? The matter is still under investigation and complainant has every opportunity available with him to produce evidence regarding payment of amount to petitioners as per his allegations in the FIR. The allegations levelled in the FIR cannot be termed as either improbable or absurd to the extent that no ground is made out to proceed against petitioners. The complainant has specifically alleged the payment and has cited witness in whose presence the payment was made. Hon'ble Apex Court in case of ***Madhavrao Jiwajirao Scindia and others* vs. *Sambhajirao Chandrojirao Angre*, (1998) 1 SCC 692** has observed that when a prosecution is asked to be quashed at initial stage, the test to be applied by

the court is as to whether the uncontroverted allegations, as made, prima facie establish the offence.

6. The allegations in this case as levelled by complainant made out *prima facie* case for the investigating agency to proceed further. The complainant has alleged the deal with petitioners and payment of amount of ₹3.75 crores to them. Allegations in the FIR indicate that petitioners had intention to cheat the complainant, which could be corroborated by producing evidence before the investigating officer/Court.

7. Keeping in view the facts as discussed above, I do not find registration of FIR against petitioners as misuse of process of Court. Observations in citations referred by learned counsel for petitioners are not helpful to advance the case of petitioners.

This petition has no merit and the same is dismissed.

October 10, 2018 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No