

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

Crl. Misc. No. M-41944 of 2016 (O&M)

Date of decision: September 25, 2018

Baljit Singh and others

.. Petitioners

Versus

State of Punjab and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ashish Gupta, Advocate
for the petitioners.

Mr. Sandeep Kumar, D.A.G. Punjab.

None for respondent No.2.

SURINDER GUPTA, J.(Oral)

The petitioners have filed this petition under Section 482 Code of Criminal Procedure (for short, 'Cr.P.C.') seeking quashing of FIR No.18 dated 06.02.2014 (Annexure P-1), registered for offences punishable under Sections 420, 406 read with Section 120-B of Indian Penal Code (for short 'IPC') at Police Station City Sri Muktsar Sahib, along with order dated 04.06.2016 vide which they have been charge-sheeted by learned Chief Judicial Magistrate, Sri Muktsar Sahib.

FIR in this case was registered on the complaint of Jagroop Singh son of Mukhtiar Singh, wherein he has stated that the petitioners are his relatives. While Baljit Singh is running agency of insurance company, Jagjit Singh is having transport business. Ramandeep Kaur @ Bobby is wife of Baljit Singh. Son of complainant namely Sukhwinder Singh was in search of job and petitioners on coming to know about the need of the complainant, contacted him and told him that his son Sukhwinder will be

employed in Punjab Agro Department on payment of ₹7 lakhs. The complainant apprised the petitioners that his son is not a graduate at which they assured that his certificate of graduation will be arranged by them on payment of ₹70,000/-. When the complainant apprised the petitioners that he is not having money, they asked him to sell gold chain which his son was wearing. Complainant gave gold chain to them and after one month, sold his one acre land for ₹4 lakh and arranged the remaining amount from his relative Dara Singh resident of Kapurthala. Baljit Singh was intimated that money as demanded had been arranged. On 24.01.2011 petitioner Ramandeep Kaur @ Bobby along with her husband Baljit Singh came to the complainant in a new car and took ₹7 lakhs with the assurance that job for his son will be arranged within two months. When the job was not arranged after two months, complainant contacted the petitioners but they assured that the job for his son will be arranged within six months as Government has stopped recruitment.

Thereafter, petitioners started misguiding son of complainant, who was having intimacy with a girl named Dimple, resident of Sri Muktsar Sahib. They incited Sukhwinder Singh to run away with that girl and assured all type of help to him. Sukhwinder Singh got allured and on 19.09.2011 during mid-night, Sukhwinder Singh was taken from his home in their car. Gold and silver jewellery of the family was also found missing. When the complainant expressed his doubt on Baljit Singh, he took oath in the name of his children in Gurudwara Sahib. The gold and silver jewellery taken by Sukhwinder Singh was kept by petitioner Baljit and his wife with the assurance that whenever the matter got settled, they will return his 25 tolas of gold, half kilogram of silver, ₹1 lakh cash and a computer set.

However, later on they refused to return the above articles and cash. On 25.05.2013, complainant with his son and Dara Singh went to the petitioners and demanded his money back at which petitioners got annoyed and frankly told the complainant that their intention was to cheat him (complainant) and threw him out of their house.

The police after investigation, presented challan against the petitioners for the offence punishable under Sections 420, 406 read with Section 120-B IPC.

Learned counsel for the petitioners has argued that it is a case of false implication of the petitioners. FIR was got registered after 3 years of alleged payment of ₹7 lakhs. The falsity of the claim of complainant is proved from the complaint filed by him under Section 138 of Negotiable Instruments Act, 1881, wherein he alleged that a cheque bearing No.003801 dated 02.04.2014 was issued by Baljit Singh under a compromise. The compromise was discarded by the Court and the complaint was dismissed. This shows that all the allegations levelled against the petitioners are false. It is unbelievable that complainant, who has paid hefty amount of ₹7 lakhs will wait for three years before lodging the complaint to the police.

Learned State counsel has argued that prosecution has already examined 9 out of 18 witnesses before the trial Court. The allegations levelled by the complainant were duly investigated and found to be correct. Compromise dated 10.02.2014 between the parties strengthens the plea of the complainant that petitioners had taken money from him as per the allegations in the FIR. The cheque issued by him and the compromise was discarded by the Court on the ground that compromise was not without coercion or undue influence as the petitioner Baljit was in police custody at

the time of alleged compromise. Though the complaint filed by the complainant under Section 138 of Negotiable Instruments Act, 1881 was dismissed but this fact is proved that complainant had issued a cheque of ₹4 lakhs under the compromise, which prima facie shows truthfulness of the allegations levelled in the complaint.

Admittedly, the complaint under Section 138 Negotiable Instruments Act, 1881 filed by the complainant on the basis of cheque of ₹4 lakhs issued by petitioner Baljit Singh was dismissed by learned Magistrate, Sri Muktsar Sahib. The petitioner had not denied the issuance of cheque No.003801 for a sum of ₹4 lakhs. However, learned Magistrate discarded the compromise with the observation that the compromise and cheque were obtained by duress and coercion as the petitioner Baljit was in police custody at the time of compromise.

Now the question which arise for consideration is as to whether the allegations in the FIR registered against the petitioners can be termed as misuse of the process of Court merely on the sole ground that complaint filed by the complainant under Section 138 Negotiable Instruments Act, 1881 has been dismissed. This fact find reference in the judgment of learned Magistrate while dismissing the complaint that present FIR had been registered against the petitioners and the police had taken him in custody in that case. The allegations levelled by the complainant in the FIR cannot be rejected on the face of it. These can be proved by leading evidence before the trial Court. Keeping in view the nature of allegations and the fact that these were investigated by the police and found to be correct, I find no reason to reach the conclusion that FIR in question is baseless or false on the face of it.

In a case reported as *State of Haryana Vs. Bhajan Lal and others, 1992 Suppl (1) SCC 335*, some of the categories of cases where this Court can exercise its inherent power to quash the criminal proceedings were enumerated as follows:-

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.
5. Where the allegations made in the FIR or complaint 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 the accused.
6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, provid-

ing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

It is well settled proposition of law that this Court can exercise its inherent power to quash the proceedings where it manifestly appears that there is legal bar against the institution of continuation of proceedings for want of some legal defect e.g. want of sanction, where the allegations in the First Information Report or the complaint taken at its face value and accepted in its entirety, do not constitute the offence alleged or where the allegations constitutes an offence but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge. In this case, the complainant, despite dismissal of his complaint under Section 138 of Negotiable Instruments Act, can prove the incident prior to filing of complaint to prove the charge framed against the petitioners.

In view of the facts and circumstances of the case and settled legal position as discussed above, I find no reason to quash the impugned FIR (Annexure P-1) or order dated 04.06.2016 (Annexures P-3 and P-4) passed by learned Chief Judicial Magistrate, Sri Muktsar Sahib. This petition has no merits.

Dismissed.

(SURINDER GUPTA)
JUDGE

September 25, 2018
Sachin M.

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No