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

**CRM-M-5697-2016 (O&M)
Decided on: 08.02.2018**

Vijay Kumar and another

.... Petitioners

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Rahul Vats, Advocate
for the petitioners.

Mr. Kirat Singh Sidhu, DAG, Punjab.

Mr. Kushagra Mahajan, Advocate,
for respondent No.2.

SUDHIR MITTAL, J (ORAL)

The petitioners seeks quashing of FIR No.228 dated 30.12.2015 registered at Police Station 'E' Division, Amritsar City, under Section 420 IPC.

2. The allegations in the FIR are that the complainant used to supply gold to the petitioners and that they had misappropriated 812 gms of gold. Despite repeated demands, the said gold had not been returned and ultimately the petitioners have flatly refused to return it. On the contrary, they threatened to harm the complainant in case he demanded the gold from them.

3. Learned counsel for the petitioner contends that an enquiry was conducted by the police and a report dated 19.12.2015 was submitted, according to which the complainant and the petitioners had business dealings from 1995 onwards which came to an end in the year 2003. After

the cessation of business, 812 gms. of gold belonging to the complainant remained with the petitioners and they went to Bangalore. The report, therefore, opined that there were business transactions and that there was no fraudulent/dishonest intention from the year 1995 onwards. It is, thus, contended that the dispute is absolutely a civil dispute and no criminal liability is attached. It is further submitted that the FIR has been registered after a delay of 12 years. The FIR is an abuse of the process of criminal law and should be quashed.

4. Learned State counsel supported by the counsel for the complainant submits that during the course of investigation, statements of 4 more persons have been recorded, who have made similar allegations against the petitioners. He further submits that the investigation stood completed, final report has already been submitted and charge has been framed. Thereafter, one witness has also been examined. Charge has been framed under Section 406 IPC and at the time of framing of charge, the complainant had produced his ledger to show that 812 gms. of gold was outstanding towards the petitioners. He further submits that the order of framing of charge is under challenge in revision before the learned Sessions Judge. Thus, the contention is that the trial has already commenced and the order of framing of charge is under challenge by way of revision petition before the Sessions Judge, and quashing of FIR is not permissible under the law. Apart from this, since similar allegations have been made by four other persons, the FIR cannot be said to be an abuse of the process of law. Reliance has been placed upon judgement of Hon'ble Supreme Court in **Minakshi Bala vs. Sudhir Kumar 1994(4) SCC 142.**

5. I have heard counsel for the parties and with their assistance have gone through the record. It is not in dispute that the order of framing of charge is under challenge before the Sessions Court and therefore the judgment of Minakshi Bala (supra) is squarely attracted. Thus, this petition is not maintainable. That apart, there is evidence on record in the shape of ledger of the complainant and statements of witnesses, that the petitioners have misappropriated gold. Thus, the present FIR cannot be termed to be an abuse of the process of law. The effect of delay in lodging the FIR will be examined at the time of trial.

6. The petition is without merit and is dismissed.

(SUDHIR MITTAL)
JUDGE

08.02.2018
Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No