

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-8766-2018(O&M)
Date of decision: 06.12.2018

Rajinder Mohan ...Petitioner

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. R.S.Cheema, Sr. Advocate with
Ms. Tanu Bedi, Advocate for the petitioner.

Mr. Deepak Sabharwal, Additional Advocate General, Haryana.

Mr. N.S.Shekhawat, Advocate
for respondent No.2.

RAJBIR SEHRAWAT, J. (ORAL)

This petition under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.) has been filed for quashing of FIR No.0687 dated 22.11.2017 registered under Sections 120-B, 416, 419, 420, 467, 468, 471, 472 of the Indian Penal Code, at City Police Station Yamuna Nagar, District Yamuna Nagar.

Before proceeding further, it would be pertinent to have reference to the contents of the FIR, which is attached as Annexure P-1 with the petition and which reads as under:-

“First Information Contents

At this time a complaint No.1136 dated 02.03.2017 was received in the police station from Subodh Parkash, which is as under:

To,

The Superintendent of Police,
Yamuna Nagar.

Subject: For registration of FIR against (1) Rajiv Gaddh son of Sh. Krishan Lal Gadh R/o 189 Shastri Colony, Yamuna Nagar (2) Rajinder Mohan S/o Sh. Krishan Lal Gaddh, 120, Golf Link, New Delhi (3) The then Regional Manager Jammu & Kashmir Bank (4) The then General Manager of Jammu and Kashmir Bank Ltd., Ansal Plaza, New Delhi under Sections 416, 419, 420, 467, 468, 471, 472 and 120-B of IPC.

Respected Sir,

The complainant most respectfully submits as under:-

1. That the complainant is a permanent resident of 57, Professor Colony Yamuna Nagar and he is a sole proprietor of M/s Astha Trading Company, Yamuna Nagar.
2. That the complainant was having very cordial relations with accused No.1 and 2.
3. That in the year 2005, the accused No.1 and 2 approached the complainant and told him that there is one property situated at Hoshiarpur (Punjab) and the same is mortgaged with the bank of accused No.3 and 4 against the loan account of M/s Parbhat General Agencies, Mumbai and they told him that the account of M/s Parbhat General Agencies had become NPA and stricken and they also told that the bank of accused No.3 and 4 is going to auction this property under SARFAESI Act, 2002.
4. That the accused no.1 and 2 taking the advantage of cordial relations with the complainant made him convinced that he should invest his money for purchasing above said property and at that time, the accused No.1 and 2 also told the complainant that he will definitely get a good appreciation whenever he will sell the same. Keeping in view the cordial relation with

accused No.1 and 2, the complainant came in there allurements and agreed to invest his money for purchasing the properties going to be sold by the bank of accused No.3 and 4.

5. That the accused No.1 and 2 in connivance with each other made the complainant to bid for purchasing the above mentioned property and during that course the accused No.1 deliberately with malafide intention in his mind posed himself to be the sole proprietor of M/s Ashtha Trading Company and signed all the documents with bank for purchasing the property in the capacity of proprietor M/s Ashtha Trading Company without the consent of complainant. It is also pertinent to mention here that it was very well in the knowledge of accused No.3 and 4 that accused No.1 has nothing to do with the Aastha Trading Company and it was also in the knowledge that the complainant i.e. Mr. Subodh Parkash is the sole proprietor of M/s Aastha trading Company who has offered bid for the purchase of above said property, even then the accused No.3 and 4 did all the correspondence regarding issue of sale certificate of said property with accused No.1 in the capacity of proprietor of Aastha Trading Company deliberately and knowingly.
6. That initially for purchasing the above said property Mr. Subodh Parkash Proprietor of M/s Aastha Trading Company had transferred the amount of ₹1.00 crore to the bank as initial/earnest money out of the bid amount, of ₹4.00 crores.
7. That after this taking the advantage of faith of the complainant accused No.1 and 2 without bringing anything in the knowledge of complainant the accused No.1 float one company in the name of M/s JMD Special Steel Pvt. Ltd. and became its director along with the complainant. After this the accused No.1 manipulate the things as per his evil design in connivance and

collaboration with accused No.2 and sent a letter to the bank through one person namely Bharat Gupta whose identity is till date not known to the complainant and this person wrote one letter dated 24.10.2005 to the bank in the capacity of authorized person of M/s Aastha Trading Company and by virtue of this letter the said Bharat Gupta requested the bank to issue the sale certificate for 2/3rd part of property in the name of JMD Special Steel Pvt. Ltd and 1/3rd part of property in the name M/s Vikramaditya Associate Pvt. Ltd. It is pertinent to mention here that the company named as Vikramaditya Associates is a pocket-borrow company of accused No.1 and 2 because accused No.2 along with his wife are directors of Vikramaditya Associates. These sale certificates in the favour of M/s JMD Special Steel Pvt. Ltd. and Vikramaditya Associates were executed by the accused No.3 and 4 only on the pretext of one letter written by one person namely Bharat Gupta alleging himself to be the authorized signatory of Aastha Trading Company and the accused No.3 and 4 even did not bother to cross check the authenticity of letter written by Bharat Gupta from the complainant because they were hands in glove with each other.

8. That the property was purchased for ₹4.00 crores and approximately ₹3.28 crores were paid by the complainant and only a merger amount of 62 lacs was paid by the accused No.1 accused No.2 and his wife and by defrauding the complainant they became the owner of the property to the extent of its 2/3rd share.
9. That the accused persons did not confine themselves to only this fraud but even afterwards in one litigation which was decided by the Hon'ble Punjab and Haryana High Court in respect of the same property in CWP No.19164 of 2005 the accused No.1 in connivance with accused No.2, 3 and 4 posed himself as proprietor of

Aastha Trading Company and not only signed the documents in this case but even filed an affidavit before the Hon'ble Punjab and Haryana High Court posing himself to be the proprietor of Aastha Trading Company.

It is therefore respectfully prayed that keeping in view the above stated facts a stringent action should be taken against the accused persons and FIR under Sections 416, 419, 420, 467, 468, 471, 472 and 120-B of IPC should be registered against them and they be prosecuted in accordance with law. Sd/- Subodh Parkash Complainant Subodh Parkash S/o Sh. Kesho Dass R/o 57 Professor Colony Yamuna Nagar.”

To support his claim for quashing of the FIR, learned counsel for the petitioner has submitted that the petitioner has not committed any crime as has been alleged against him in the FIR. Rather, it is the admitted case of the complainant that Properties of one M/s Parbhat General Agencies, Mumbai was put to sale by Jammun & Kashmir Bank (for short 'J & K Bank'), its loan having been declared as NPA. The Company of the complainant, namely, M/s Aastha Trading Company decided to purchase those properties; which included moveable as well as immovable properties. Accordingly, a letter dated 09.05.2005 was written on behalf of the said M/s Aastha Trading Company. Their auction bid was highest and was for an amount of ₹4.00 crores. Therefore, M/s Aastha Trading Company enclosed a cheque for an amount of ₹5.00 lacs and as per the terms; undertook to pay the balance of the initial amount within three days of acceptance of the offer by the J & K Bank. The offer of the M/s Aastha Trading Company having been accepted by the J & K Bank; therefore, another amount of ₹95.00 lacs was paid by M/s Aastha Trading Company on 6th July, 2005. This cheque was signed by the complainant-Subodh Parkash himself. Still, another

amount of ₹50.00 lacs was paid for purchase of properties from the J & K Bank. However, this amount was paid from account of another Company M/s JMD Special Steel Private Limited, in which, the complainant and the brother of the present petitioner, namely, Rajiv Gaddh were the shareholders and the only owners. However, since the complainant or his company were not having a requisite funds to make the entire payment of ₹4.00 crores for purchasing the said properties from the J & K Bank, therefore, the petitioner was approached to share the purchase of properties and to make the payment accordingly. As a result, the petitioner paid an amount of ₹1.20 crores from the account of his own Company, namely, M/s Vikarmaditya Associates Limited. This payment was made by the petitioner on 31st October, 2005. On the same day, the balance amount of ₹1.30 crores was also paid by the complainant from the account of M/s JMD Special Steep Private Limited, through a cheque signed by Rajiv Gaddh. This completed the sale price of the property, which was being purchased under the aegis of M/s Aastha Trading Company from J & K Bank.

However, since the petitioner had been involved in the payments and the payments were actually made by the petitioner, therefore, a request was sent from M/s Aastha Trading Company to apportion a part of the property in the name of the present petitioner as well, in proportion to the payments made by him. As a result, the sale certificates were issued by the J & K Bank on 21.10.2005, which mentioned only the respective shares of parties, which were proposed to be conveyed through a separate conveyance deed. Accordingly, as desired by M/s Aastha Trading Company two separate sale certificates were prepared qua the properties sold by J & K Bank. One sale certificate was prepared by Jammu & Kashmir Bank only in

favour of M/s Aastha Trading Company, qua the moveable properties worth ₹35.00 lacs. So far as, the immovable property is concerned, on the same day, i.e. on 25th October 2005, another sale certificate was issued, whereby 1/3rd share was shown to be sold to M/s Vikarmaditya Associates Private Limited, belonging to the petitioner and 2/3rd share of immovable property was shown in the name of M/s JMD Special Steel Private Limited, which was owned by the complainant and Rajiv Gaddh, the brother of the petitioner. It is submitted that upto this stage, the petitioner had no connection, whatsoever, with the company named M/s JMD Special Steel Private Limited, to which 2/3rd share of the immovable property was proposed to be conveyed. Upto this stage, the petitioner had got only 1/3rd share in the immovable property worth ₹3.65 crores since he had paid 1/3rd of sale consideration i.e. ₹1.20 crores for the said immovable property. So far as the movable properties being sold by the J & K Bank are concerned, those had gone to M/s Aastha Trading Company exclusively and the petitioner had no concern with those properties.

However, on 2nd July, 2008, the complainant proposed to transfer his share in the company M/s JMD Special Steel Private Limited to the present petitioner. It was represented to the petitioner that the entire investment in M/s JMD Special Steel Private Limited was made only by the complainant and that Rajiv Gaddh had not made any investment in the said Company, although Rajiv Gaddh had been introduced by the complainant as partner in the Company to the extent of 50%. Therefore, since the complainant was leaving the Company, hence, he would be required to be reimbursed with the entire amounts available with the Company as on the date when the petitioner was proposed to be introduced in the Company-M/s

JMD Special Steel Private Limited. It is the contention of the learned counsel for the petitioner that on 28th July, 2008, the petitioner purchased 50% shares in the Company M/s JMD Special Steel Private Limited, which stood in the name of the complainant and accordingly, paid the value of the shares, amounting to ₹50,000/- . However, this transaction only settled the share- holding aspect. But since the complainant had claimed to have invested the entire amounts in M/s JMD Special Steel Private Limited, therefore, he was required to be reimbursed with the entire amount standing in the account of M/s JMD Special Steel Private Limited. As a result, the petitioner paid the total amount of ₹2.45 crores to the complainant, through the company M/s JMD Special Steels Private Limited accounts; on 13th August, 2008 and 20th August, 2008. This amount had duly been transferred in the personal account of the complainant from the account of M/s JMD Special Steel Private Limited. Thereafter, the complainant had resigned from the Company M/s JMD Special Steel Private Limited on 11th August 2008. The necessary intimation to the Registrar of the Company was also sent on 3rd September, 2008. This finally severed the connection of the complainant with the Company named M/s JMD Special Steel Private Limited.

Accordingly, it is submitted by the counsel that the petitioner has effectively paid the entire sale consideration for purchase of immovable property, i.e. ₹3.65 crores (1.2 + 2.45 crores) and as a result thereof, the petitioner has got the said immovable property, which had come from J & K Bank i.e. 1/3rd share in his own Company's name and 2/3rd share in the name of M/s JMD Special Steel Private Limited, in which, the brother of the petitioner was already inducted as a partner to the extent of 50% by

complainant only. It is further submitted by the counsel that, so far as the movable properties which had come to M/s Aastha Trading Company from J & K Bank are concerned, those were separately purchased by the petitioner through his still another Company, namely, KEC Industries Limited and separate payments were made for that purchase. That transaction is not even in dispute.

So far as, the immovable properties coming from J & K Bank are concerned, learned counsel for the petitioner has vehemently contended, that the petitioner has rather paid for more than what he has got in return, because he has been made to pay the entire sale consideration of ₹3.65 crores for immovable property, whereas, he has got only $2/3^{\text{rd}}$ ($1/3^{\text{rd}}$ + 50% of $2/3^{\text{rd}}$) share in the immovable property. Besides this, the petitioner had also to pay an amount of ₹50.00 lacs towards labour dues of the company workers of the M/s Prabhat General Agency, as per the undertaking given by the M/s Aastha Trading Company, at the time of the purchasing the auction. Still further, it is contended that so far as the dealings of the Company, namely, M/s JMD Special Steel Private Limited are concerned, the petitioner had no concern, whatsoever, directly or indirectly, with the affairs of this Company before the year 2008. It was being exclusively owned and managed by the complainant and Rajiv Gaddh; independently. Therefore, the petitioner has not committed any offence so far as the movable and immovable properties purchased from J & K Bank in the said auction are concerned. Rather he has been made to pay for much more than what he has got from or through the complainant.

It is further contended by the learned counsel for the petitioner that although the transactions involved in the case are of the year 2005 and

2008, however, the FIR has been fabricated by the complainant in the year 2017. There is absolutely no explanation for this huge delay of about 12/9 years. It is further contended by the counsel that, in fact, it appears that some business dealing between the complainant and Rajiv Gaddh had gone wrong and just to settle scores with Rajiv Gaddh, who happens to be brother of the petitioner, the FIR has been got lodged against the petitioner as well; for malafide reasons and as an arm twisting modality. Still further, it is contended by the counsel that the same effort, against the petitioner, was made by the complainant earlier also when the name of the petitioner was sought to be involved in another FIR No.567, dated 11th September, 2014, registered under Sections 406, 420, 467, 468, 471 of IPC at Police Station City Yamuna Nagar against brother of the petitioner, Rajiv Gaddh. The police had sought to summon and involve the petitioner in that case also, although the petitioner had no concern with that FIR. As a result, the petitioner had to file CRM-M-45229-2016, before this Court, praying therein that the petitioner should not be harassed in connection with that case. Ultimately, at the time of hearing of that criminal miscellaneous petition, the police had made a statement that the petitioner was not required or involved in that case. Accordingly, the petition filed by the present petitioner was disposed of on 19.07.2017 as having become infructuous. However, the effort of the complainant to rope in the petitioner, some how or the other, continued and as a result, the present FIR has been concocted against the petitioner.

It is further contended by the counsel for the petitioner that a bare perusal of the FIR shows that there is no offence made out against the petitioner from the contents of the FIR. Otherwise also, the complainant has

given totally wrong facts to the police for the purpose of registration of the case against the petitioner. Counsel has further contended that; in the FIR, it is wrongly mentioned; against the record; that the petitioner had paid only an amount of ₹62.00 lacs towards the purchase of property from J & K Bank. This fact is against even the own record of the complainant and he knows it fully well. Still further, it is contended that; finding no other method of roping in the petitioner, in a criminal case, the complainant has taken a turn-around in the retrospect and has started saying that the proceedings of purchase of property from J & K Bank were undertaken by Rajiv Gaddh without any authorization from the complainant. Even this assertion of the complainant, that Rajiv Gaddh was participating in the process of purchase of properties from J & K Bank without any authority, is against the facts on record. Counsel for the petitioner has referred to the proceedings initiated by M/s Prabhat General Agencies, before DRT Mumbai, wherein the complainant had given an affidavit dated 14th December, 2005 (Annexure P-9) before DRT, Mumbai, in which he has entirely owned the conduct of process of purchase of property by Rajiv Gaddh and he has verified the entire transaction of purchase of the property; jointly; by M/s Vikramaditya Associates Private Limited and M/s JMD Special Steel Private Limited. Not only this, the said M/s Prabhat General Agencies had challenged the order of DRT, Mumbai before DRAT, Mumbai. In those proceedings also, the complainant had filed a reply, under his own signature, in his capacity as Proprietor of M/s Aastha Trading Company and as a Director of M/s JMD Special Steel Private Limited. In this reply also, the complainant had submitted that the J & K Bank had rightly issued the sale certificates, qua movable property; as per prior agreed

terms, to M/s Aastha Trading Company, and qua immovable property in favour of M/s JMD Special Steel Private Limited, to the extent of 2/3rd share and in favour of M/s Vikramaditya Associates Limited to the extent of 1/3rd share. Still further, it is contended by the counsel that the fact that the complainant had filed this reply before DRAT, Mumbai, is admitted even in the reply filed to the present petition as well. Therefore, it is contended that the entire proceedings of purchase of property; jointly in the name of M/s JMD Special Steel Private Limited and M/s Vikramaditya Associates Private Limited; were duly carried out; with due authorization from the complainant himself. The complainant is only trying to find out some offence in the retrospect, somewhere, in the process of purchase. Therefore, he has levelled false allegation that the said Rajiv Gaddh was not authorised to act on behalf of M/s Aastha Trading Company or M/s JMD Special Steel Private Limited. Hence, the contention of the counsel for the petitioner is that the present FIR has been lodged for totally malafide reasons and is only a misuse of the process of the law. Therefore, the same deserves to be quashed. Counsel for the petitioner has relied upon the judgments rendered in *(1972) 2 SCC 699, State of Karnataka vs. L.M. Munishwamy & others;* *(1988) 1 SCC 692, Madhavrao Jiwaji Rao Scindia and another Vs. Sambhajirao;* *AIR 1960 SC 866, R.P.Kapur Vs. State of Punjab;* *1992 Supp.(1) SCC 335, State of Haryana Vs. Bhajan Lal;* *(1998) 5 SCC 749, Pepsi Food Limited and another Vs. Special Judicial Magistrate and others;* *(2005) 3 SCC 670, Suresh Vs. Mahadevevappa Shivappa Danannava;* *(2006) 6 SCC 736 Indian Oil Corporation Vs. NEPC India Limited and others;* *(2007) 13 SCC 107, B Suresh Yadav Vs. Sharifa Bee and another,* to support his contention.

On the other hand, learned counsel for the complainant submits that if the language of the FIR is read as such, then the ingredients of offence of fraud are duly made out. The petitioner has raised all questions of disputed facts; which cannot be gone into in a petition under Section 482 Cr.P.C. While referring to the contents of the FIR, counsel for the complainant has submitted that there is a specific assertion in the FIR that Rajiv Gaddh was not authorized to act on behalf of M/s Astha Trading Company. Despite that, he kept on writing letter after letter, giving instructions on behalf of M/s Astha Trading Company and M/s JMD Special Steels Private Limited. Not only that, even one Bharat Gupta, whose existence is not known even till today; was introduced by the petitioner and his brother; to write to the J & K Bank that some share of the immovable property be transferred to M/s Vikramaditya & Associates Pvt. Ltd. as well. It is contended by the counsel for the complainant that even the letters written by the alleged Bharat Gupta (Annexures R-2/5 and Annexure R-2/8) were created and fabricated by the petitioners because even the signatures of the said Bharat Gupta are not tallying on these two documents. It is contended by the counsel that there is no document on record to show that Rajiv Gaddh, or for that matter the said Bharat Gupta, was ever authorized to act on behalf of M/s Astha Trading Company or M/s JMD Special Steels Ltd. The counsel further contended that the said letters, forged in the name of Mr. Bharat Gupta, has even been owned by the petitioner and his brother Rajiv Gaddh; because they have received the share in the property; as mentioned in those letters. Hence, the petitioner is guilty of forging the documents as well. Counsel for the complainant has further submitted that even the photostat copy of the sale certificate (Annexure P-6) is a forged

document because this contains the signatures of the complainant on it, whereas, the original of this document, which has been sent by the J & K Bank to the complainant shows that these signatures are not there.

Continuing his effort to deny everything, learned counsel for the complainant has also submitted that even the reply filed before the DRT does not contain the signatures of the complainant. These signatures have been forged because, the complainant has never filed any reply before DRT. So far as the reply filed before DRAT is concerned, it is contended by the counsel that the signatures of the complainant were obtained on the same, by Rajiv Gaddh, fraudulently, although the counsel has not elaborated how these signatures were actually obtained.

Learned counsel for the complainant has further submitted that the facts prevalent between the parties from the year 2008 till 2014 have been concealed by the petitioner while filing the present petition. During this period, the parties were negotiating the dispute between them. Even the petitioner had been part of that negotiation process, qua the loss caused to the complainant. The petitioner and his brother Rajiv Gaddh both had assured the complainant to compensate for his loss. To substantiate his quantum of loss, the counsel for the complainant has submitted that the complainant had paid an amount of ₹5.00 lacs on 9th May, 2005 to the J & K Bank. Another cheque of ₹95.00 lacs was given to J & K Bank on 11th July, 2005. Thereafter, the complainant had transferred a sum of ₹38.00 lacs and ₹17.00 lacs from M/s Astha Trading Company to the account of M/s JMD Special Steel Private Limited. Still another amount of ₹1.4 crores and ₹50.00 lacs were transferred to the account of M/s JMD Special Steel Private Limited from the account of another firm of the complainant,

namely, Citizen Red Lines. Hence, a total of ₹2.45 crores (38 Lacs + 17 Lacs + 140 Lacs + 50 Lacs = 2.45 crores) was transferred by the complainant to the account of M/s JMD Special Steel Private Limited. Hence, it is contended by the counsel for the complainant that the complainant has made a total payment of ₹3.45 crores (1 crore directly to J & K Bank and ₹2.45 crores to the account of JMD), whereas the complainant had got only a moveable property worth ₹35.00 Lacs and 1/3rd share in immovable property worth ₹1.22 crores (50% of 2/3rd share of ₹3.65 crores; the total value of immovable property). Accordingly, it is contended by the counsel for the complainant that the complainant had received property only worth ₹1.57 crores whereas, he had made payments of ₹3.45 crores during the process of purchase of the properties. It is contended by the counsel that, in terms of investment of money, the complainant had paid a total sum of ₹2.45 crores to M/s JMD Special Steel Private Limited, part of which has gone towards sale consideration of the immovable properties purchased from J & K Bank; and an amount of ₹1.00 crore which was paid separately to J & K Bank from the companies of the petitioner. Therefore, the complainant has invested a total amount of ₹3.45 crores, whereas, the complainant has received only a sum of ₹2.45 crores back from JMD at the time of leaving the company and the movable property from J & K Bank worth ₹35.00 lacs. Therefore, the complainant had got back invested value only to the extent of ₹2.8 crores. Hence, the complainant has been put to loss of ₹65.00 lacs in total.

It is further contended by the counsel for the complainant that, in fact, the parties were negotiating to settle the disputes between them, where the petitioner and his brother Rajiv Gaddh had assured the

complainant to compensate him for the above said loss. To support his argument; learned counsel for the complainant has referred to the document Annexures R-2/13, which is the MOU, though signed by Rajiv Gaddh only, but which relates to the properties purchased from the J & K bank as well. Still further, it is contended by the complainant that even the son of the petitioner had sent e-mails and messages to the complainant regarding assurance to settle the dispute and to compensate the complainant. Counsel has further submitted that in all these meetings, even the petitioner was present. The presence of the petitioner in these meetings is made evident by the fact that the petitioner had himself made a complaint to the police on 1st July, 2014, alleging that in one of such meetings, the complainant had misbehaved with the present petitioner. Relying upon these arguments, counsel for the complainant has submitted that, in fact, the petitioner and his brother Rajiv Gaddh are one and the same thing, and they are acting in collusion. Therefore, the entire fraud has been committed by them in collusion with each other and with an intention to defraud the complainant. Counsel has referred to the letter dated 9th November 2005, wherein, Rajiv Gaddh had written to the J & K Bank that he was dealing with the Bank on behalf of himself, M/s JMD Special Steel and M/s Astha Trading Company as well as M/s Vikarmaditya Associates Pvt. Ltd. Therefore, it is submitted that the petitioner and Rajiv Gaddh, both the brother are working in unison and in collusion. Counsel has further referred to CWP No.19164-2005; which was filed by Rajiv Gaddh jointly on behalf of M/s JMD Special Steel Limited, M/s Astha Trading Company Limited and M/s Vikramaditya Company, regarding registration of the sale certificate issued by the J & K Bank. In the end, it is submitted by the counsel for the complainant that the

entire story in the present petition is nothing but concoction and based upon false facts. The petitioner has concealed the relevant documents and made an attempt to mislead the Court. Counsel for the complainant has relied upon the judgments rendered in **2004 (1) R.C.R. (Criminal) 233, State of Madhya Pradesh Vs. Awadh Kishore Gupta and others; 2009 (7) R.C.R. (Criminal) 718, Mohd. Nizam @ Nizamuddin Vs. M/s Sky Lark Hatcheries Private Limited and others; 2001 (8) SCC 649, State of Rajasthan Vs. Vimalchand and others; 1999(2) R.C.R. (Criminal) 160, Rajesh Bajaj Vs. State NCT of Delhi; 2001(4) R.C.R. (Criminal) 129, S.M.Datta Vs. State of Gujarat; 2009 (3) R.C.R. (Criminal) 717, Mahesh Choudhary Vs. State of Rajasthan and another; 2015 (2) R.C.R. (Criminal) 999, Kamlesh Kumari and others Vs. State of U.P. and another**, to support his contentions.

Learned State counsel, being instructed by ASI Suresh Kumar, had submitted that the petition is premature. The investigation is at the initial stage. Since the disputed questions of the facts are involved in the case, therefore, unless a proper investigation is carried out by the police, the veracity of the facts, as claimed by the respective parties, cannot be taken on its face value. Counsel for the State has further submitted that the police would have done a significant progress in the investigation by now, however, the investigation has already been stayed by Haryana Human Rights Commission, vide order dated 2nd June, 2018, on a petition filed by the brother of the petitioner, Rajiv Gaddh. Still further, it is submitted by the counsel for the State that the order passed by the Haryana Human Rights Commission has been challenged by the complainant before this Court vide a separate petition i.e. CWP No.15765-2018, in which, notice of motion has

been issued. However, the learned State counsel has not pointed out any other proceedings pending before this Court, qua the FIR involved in the present petition for quashing of the FIR. In the end, counsel for the State has submitted that it would not be appropriate to quash the FIR at this stage. The police should be given ample opportunity and time to investigate the matter, so as to arrive at an appropriate conclusion.

As a rebuttal to the argument of the counsel for the complainant, learned counsel for the petitioner has supplemented his arguments by submitting that the entire allegation that Rajiv Gaddh was acting without authority from the complainant; in the process of purchase of property from the J & K Bank, is a total concoction and is an after thought. In fact; the documents of the complainant himself show that it was on the instructions of the complainant only that Rajiv Gaddh was undertaking the process of purchase of properties from the J & K Bank. To support this contention, learned counsel for the petitioner has relied upon a legal notice dated 13th May, 2015 (Annexure P-25) to submit that in the said legal notice, served by the complainant upon the petitioner as well as his brother Rajiv Gaddh, it has been specifically written by the complainant himself that; since M/s Astha Trading Company and JMD Special Steel Limited were not having sufficient funds to purchase the property from J & K Bank, therefore, it was 'decided' that the petitioner be also associated in the process of purchase of the said properties, and therefore, funds be got invested from the present petitioner as well. Accordingly, it is contended that the entire process for involving the petitioner in the investment qua the purchase of the property from the J & K Bank, as well as, the proceedings undertaken by Rajiv Gaddh were part of a conscious decision taken by the complainant.

As an after thought, the complainant has now turned around to allege lack of authority with Rajiv Gaddh; only for malafide reasons.

In the same vein, learned counsel for the petitioner has also referred to the statement made by the present complainant, in another complaint filed by him under Section 138 of the Negotiable Instruments Act against the Rajiv Kumar Gaddh, wherein, he has specifically admitted that he had given an authority to Rajiv Kumar Gaddh to complete the documentation regarding purchase of property from J & K Bank and it is further admitted in that cross-examination that at the time when process of purchase of property from the J & K Bank was under way, the complainant had not raised any dispute at any point of time. In this cross-examination, it is further admitted by the present complainant that at the time of auction purchase of the aforesaid property from the J & K Bank, signatures were made by the said Rajiv Gaddh under the authority which the complainant had given to him. Still further, it is further admitted in the said cross-examination that M/s Vikramaditya & Associates Ltd. is also stake holder in the land purchased from J & K Bank, as per the letter issued by M/s Astha Trading Company. The complainant has further admitted that he had resigned as Director of M/s JMD Special Steel Limited because he was given a due amount towards settlement of his share; and that he had not raised any dispute thereafter regarding that settlement; before any authority at any stage.

Learned counsel for the petitioner has also referred to the reply filed by the complainant in the present petition, to submit that in this reply, the complainant has admitted the reply filed by him before DRAT, Mumbai on 12.01.2007. Therefore, the argument of the counsel for the complainant

that the reply before DRAT is fake, stands demolished.

Referring to the subsequent attempt of the alleged settlement, in which, the present petitioner is also alleged to have participated, the learned counsel for the petitioner has submitted that since Rajiv Gaddh still happens to be 50% share holder of the M/s JMD Special Steel Private Limited as was already inducted by the complainant himself, therefore, by default and irrespective of the choice of the petitioner, he continues to be the owner of 50% share of 2/3rd of the immovable property received from J & K Bank through M/s JMD Special Steel Private Limited. Therefore, if Rajiv Gaddh is having some negotiation with the complainant regarding that share in property then it is not anything extraordinary or any evidence to show that the petitioner and his brother Rajiv Gaddh are acting in collusion. Even the MOU signed by Rajiv Gaddh with the complainant; refers only to the share of Rajiv Gaddh. It is further contended that in the reply to the present petition, the complainant has made a misleading averment to the effect that the petitioner was also signatory to the alleged MOU, although the same is signed by only Rajiv Gaddh and the complainant. So far as, the issue of sending messages by the son of the petitioner and the petitioner participating in the process of reconciliation between the Rajiv Kumar Gaddh and the complainant is concerned, it is contended by the counsel for the petitioner that since the petitioner was also concerned about his share in the same property, therefore, as a natural consequence, he was interested to see if any settlement takes place between Rajiv Gaddh and the present complainant. However, it is submitted that, Rajiv Gaddh was acting independently and he had independent rights and liabilities, so far as his inter se relation with the complainant is concerned. So far as the present

petitioner is concerned, he has absolutely no dispute of any payment with the present complainant, as per any document, as such.

In the end, counsel for the petitioner contends that although the petitioner has got only 2/3rd share in the property worth ₹4.00 crores purchased from the J & K Bank, however, he has actually ended up paying ₹4.5 crores in the entire transactions. Counsel for the petitioner has also referred to the balance sheet of M/s JMD Special Steel Private Ltd. to show that, in fact, on 31st March, 2007 the amount shown as advanced against purchase of the abovesaid property, which in turn was taken as in the deemed balance in the account of the company, was ₹1.80 crore and on 31st March, 2008, the total amount shown as advance against share capital of the company was ₹2.45 crores. Therefore, it is contended that, this shows that an amount of ₹65.00 lacs have been added to the account of JMD Special Steel Private Ltd., somewhere, between 31st April, 2007 to 31st March, 2008, that is, after the said properties had already been purchased from the J & K Bank in the year 2005. Since in the year 2008, the total amount standing as invested by the complainant in M/s JMD Special Steel Private. Ltd., including above said ₹65.00 Lacs, was reflected only ₹2.45 crores, therefore the same was paid-up by the petitioner, as is reflected in the Bank accounts statement of the Company, at Annexure P-14/B. Hence, the perception of the complainant that he has lost ₹65.00 lacs is also without any substantial basis. Therefore, it is contended by the counsel that, since the complainant was not otherwise able to substantiate any loss caused to him by the petitioner, therefore, he has mentioned only the amounts credited to the M/s JMD Special Steel Private Ltd or to the J & K Bank without mentioning any dates of deposit or date of any cheque transferring the funds to the account

of M/s JMD Special Steel Private Limited. The learned counsel for the petitioner has submitted that it is well-established law, as pronounced by the judgments of the Hon'ble Supreme Court, that when malafides are writ large on the face of it, then for the purpose of quashing of the FIR even the facts, as reflected from the documents, can very well be considered by the Court. Hence, it is contended that since the FIR is malafide and misuse of the process of law, hence the same deserves to be quashed.

Having heard learned counsel for the parties; this Court finds that the FIR got lodged by the complainant is a crude combination of truths, half-truths and untruths. The truth involved in the case is only; that properties were purchased during bank auction from the J & K Bank. The half-truth involved in the FIR is that; there was no authority with Rajiv Gaddh to deal with the process of purchase of properties during the dais auction or to sign the documents, and the untruth is that the petitioner had invested only Rs.62 lacs and took away the entire property. This assertion is totally against the record and even against his own documents and arguments of the complainant. After hearing the learned counsels for the parties and perusing the entire record, the FIR appears to have been got lodged as an attempt to build an edifice of some criminal 'offence' against the petitioner in the hindsight, after a long period of 12 or 9 years, as would be clear from the the succeeding paragraphs of this judgment. It appears that there is some other business dealing going wrong between the complainant and Rajiv Gaddh, the brother of the petitioner; in their *inter se* business relation; and only as an arm-twisting tactics the petitioner has been sought to be involved in the present FIR; just to settle some other score by the complainant against the brother of the petitioner. There goes a lighter

vein saying in the legal profession: when you are strong on law - hammer out the law as much as you can, when you are strong on facts - hammer out the facts as much as you can, and if you are strong on none - then hammer the table as much as you can. Likewise, the present attempt of the complainant is also in the nature of hammering the table only; and he fails to substantiate, even prima facie, the assertions in the FIR; either from the documents or from the point of view of the legalities of the transactions. Hence, the entire emphasis of the counsel for the complainant is that since the ingredients of offence of fraud and forgery are disclosed in the FIR, therefore, the same cannot be quashed.

The learned counsel for the respective parties have relied upon the judgments of the Hon'ble Supreme Court; as well as of this Court, to support their respective contentions; qua the powers of this Court while considering a petition for quashing of the FIR. As is clear; from the judgments relied upon the parties as well; the legal position regarding scope of Section 482 Cr.P.C. qua the quashing of the FIR, is no more *res integra*. A bare reading of the judgments relied upon by both the sides; collectively, would make the position clear that in a case where the ingredients of the offence are disclosed in the FIR and the assertion in the FIR include the disputed questions of fact then the High Court should not, normally, interfere at the stage of investigation and should not quash the FIR. However, this is only a maxim of caution and not an absolute proposition of law. Therefore, the judgments further clarify the legal position that if the FIR is otherwise misuse of process of the Court or it is initiated as a malafide exercise; with oblique motives, then High Court need not countenance the attempt of the complainant; by refusing to quash the FIR

and thereby permit the complainant to misuse the process of the law. Still further, even if the assertions as made in the FIR do disclose some offence, but if seen in view of admitted, undisputed or un-denied documents, or in view of the documents; the veracity of which is decipherable without any further proof of anything, the FIR is found to be misuse of the process of the court, then the High Court should not be a mute spectator. Simply because the complainant has availed the draftsmanship of a legal wizard to ensure the inclusion of ingredients of some offence in the FIR, that cannot be seen as a clog upon the power of the High Court available under section 482 Cr.P.C. for quashing of the FIR. In that situation; if the court comes to a conclusion, based on reasonable grounds, that the FIR is a misuse of the process of the Court and it would otherwise defeat the ends of justice; then to secure the ends of justice, the High Court should step in and quash the FIR. In view of this so clarified legal position, this Court does not concur with the argument raised by the counsel for the complainant/respondent that, in any case, the FIR cannot be quashed at the initial stage, by exercising power under Section 482 Cr.P.C., if the ingredients of some offence are disclosed in the FIR. It is for the High Court to determine the scope of its interference; in the facts and circumstances of an individual case, by maintaining the balance between the well recognized principles for self restraint and the need for securing ends of justice.

Coming to the facts of the present case, a bare perusal of the FIR shows that the complainant has leveled allegations regarding unauthorized representation by Rajiv Gaddh; on behalf of M/s Aastha Trading Company Limited, at three stages, namely, in the process of purchasing the property from the Jammu and Kashmir Bank, for deciding

the shares in the properties to be apportioned to different entities and for filing / defending the writ petition which is mentioned in the FIR. As an off-shoot of this unauthorized representation only, it is also alleged that since Rajiv Gaddh or Bharat Gupta signed the letters and documents on behalf of M/s Aastha Trading Company, without authority; therefore, those were fake and forged documents. Still another allegation is regarding floating of the company M/s JMD Special Steel Private Limited by Rajiv Gaddh; without information or knowledge of the complainant. In financial terms, the allegation is that; although the petitioner paid only an amount of Rs.62 lacs, yet he has taken away the entire properties worth Rs. 4 Crores, which were purchased from the J & K Bank. With these allegations a sweeping attempt is made to involve all the participants in the process, including the officials of the J & K Bank, in the criminal activity. Hence, it would not be out of place to delve, prima facie, into the admitted and undisputed facts, documents and the records, to ascertain if there are some traces of truth in the case of the complainant.

Lack of Authority:- So far as the allegation qua lack of authority with Rajiv Gaddh, to represent M/s Aastha Trading Company, in the purchase of the properties from the Jammu & Kashmir Bank is concerned, it deserves to be noticed that the complainant has been participating into the process throughout. He had been making payments towards the purchase of properties from J & K Bank even through cheques signed by him and / or issued from his companies. These payments through the cheques signed by the complainant were being made on the basis of the same correspondence; which Rajiv Gaddh was conducting as authorized representative on behalf of M/s Aastha Trading Company. Therefore, it cannot be said that the

complainant was kept in dark regarding the process of purchase of the property from the Jammu & Kashmir Bank or that the said Rajiv Gaddh was not authorized to carry out the process of purchase of the property from Jammu & Kashmir Bank, including, signing the documentation and requesting for apportioning the shares in the property. It is the case of the complainant himself that he had family and friendly relations with Rajiv Gaddh and he was acting in confidence of the complainant. So far as the apportionment of the shares in the properties are concerned, suffices it to say that the complainant has paid; separately and consecutively; for the shares in the properties, as got assigned by writing letters by Rajiv Gaddh or by Bharat Gupta. The complainant also received the properties for which he made the payments through his signed cheques. This aspect totally excludes any lack of authority with Rajiv Gaddh; to represent M/s Aastha Trading Company or M/s JMD Special Steel Private Limited in the process of purchase of properties from Jammu & Kashmir Bank. During the arguments, much hype was created by the learned counsel for the complainant/respondent regarding one Bharat Gupta writing letters on behalf of M/s Aastha Trading Company or Rajiv Gaddh, allegedly, writing letter to Jammu & Kashmir Bank under forged signature of Bharat Gupta; in the process of purchase of the said properties. Although the learned counsel for the respondent has submitted that the existence of this Bharat Gupta is not known even till today, however, equally clear fact is also that the said Bharat Gupta is not even alleged to have got any benefit in the entire process of purchase of these properties. Therefore, it appears that since the parties were acting in confidence with each other, therefore, some employee of some of the Company or some acquaintance of the parties was the person

named Bharat Gupta. He has written only one or two letters on behalf of M/s Astha Trading Co. Ltd. But the complainant has not raised any allegation that the said Bharat Gupta has ended up getting any share in the properties or has derived any benefit in the entire process of the purchase of the said properties.

The allegation in the FIR; qua Rajiv Gaddh or the petitioner working without authority from the complainant or from his companies; is also established to be totally false from the records of the other statutory and adjudicating bodies, where the parties, including the complainant, were being represented in person as well as in representative capacities. It is established from the records; and even admitted by the parties; that qua the sale of the properties by Jammu & Kashmir Bank, M/s Prabhat General Agencies, whose properties were sold because of their loan having been declared as NPA, had challenged this sale of these properties before DRT Mumbai. In those proceedings, the complainant, Rajiv Gaddh and the petitioner; all were parties. Reply was filed before DRT, Mumbai, in which the entire proceedings undertaken by Rajiv Gaddh on behalf of the complainant and his companies were dully acknowledged in the reply filed on behalf of the complainant and his companies as well. Still further, the order passed by DRT, Mumbai was further challenged by M/s Prabhat General Agencies before DRAT, Mumbai. In that appeal before the DRAT, the reply was again filed by the complainant; on his own behalf and on behalf of his companies; under his own signatures. In that reply also, the complainant had averred that the proceedings of sale were conducted by Rajiv Gaddh and the documentation of the process was done by him; being a person duly authorized by the complainant and his companies. The reply

filed before DRAT, Mumbai has been duly admitted and owned by the complainant in his reply filed to the present petition in the present proceedings as well. Therefore, there is absolutely no scope, even to prima facie believe the allegation of the complainant that Rajiv Gaddh was acting without any authority from the complainant or his companies.

Although the allegation in the FIR is also that shares in the properties purchased from the J & K Bank have been wrongly apportioned in favour of the company of the petitioner; without any authority from M/s Aastha Trading Company or from the complainant, however, the last nail in the coffin in which the falsehood of the case of the complainant is destined to be buried; is put by the legal notice (Annexure P-25), which was served by the complainant himself upon the petitioner and Rajiv Gaddh. In this legal notice, the complainant himself has written that; since the complainant or his companies were not having sufficient funds to purchase the properties in the auction from the Jammu & Kashmir Bank, therefore, it was 'decided' to introduce the petitioner as investor in the process. Once the complainant himself admits that a conscious decision was taken to introduce the petitioner as an investor in the process of purchase of the properties; and accordingly, the petitioner has invested about 1/3rd of the purchase price, then it does not lie in the mouth of the complainant to allege; in the retrospect; that the petitioner was granted share in the property purchased from the Bank; without any authority from the complainant. Learned counsel for the petitioner has also rightly pointed out to one statement made by the complainant, while appearing as a witness in a complaint filed by him under Section 138 of the Negotiable Instruments Act. The cross-examination of the present complainant in that statement, totally demolishes

the version given in the FIR qua the lack of authority with Rajiv Gaddh. In that statement; made on oath and before the Court, the complainant has admitted as having himself authorized Rajiv Gaddh on every aspect in the process of purchase of the properties from the Jammu & Kashmir Bank. Therefore, by no means it can be said; even as traces of any truth, that Rajiv Gaddh, Bharat Gupta or for that matter, the present petitioner, were acting without any understanding or authority from the complainant or his companies.

Assuming for the sake of argument that Rajiv Gaddh acted without any authority from and on behalf of M/s Aastha Trading Company or on behalf of M/s JMD Special Steel Private Limited, still by no means the petitioner is responsible for that unauthorized representation. The petitioner was not connected in any manner with either of these companies till the time he was made to pay Rs. 1.20 Crores to supplement the effort of the complainant and his companies towards the purchase of the properties from Jammu & Kashmir Bank. Till that time, the company M/s Aastha Trading Company was owned by the complainant and M/s JMD Special Steels Pvt. Ltd. was owned jointly by the complainant and Rajiv Gaddh. Therefore, the present petitioner cannot be taken liable for any management aspect of those companies. The petitioner came into picture only when he was asked to pay Rs. 1.20 Crores. Accordingly, he invested and he received the share in the properties being purchased worth this investment only.

The allegation that Rajiv Gaddh floated the company M/s JMD Special Steels Pvt. Ltd. without knowledge or information of the complainant falls flat on its face for the simple reason that the complainant invested money in that company under his own hand. Otherwise also, at the

time when this company was floated, the complainant was the only share holder to the extent of 50% and a Director; with Rajiv Gaddh having 50% shares. Evidently, the company could not have been floated and the complainant could not have been made a Director without his knowledge or information. Even if the company is floated and the complainant is made a Director without his knowledge or information, still, by no means the investment could have been made in the said company in the name of the complainant by investing funds from on his own accounts. Therefore, the complainant is telling blatant lie in alleging that the company was floated by Rajiv Gaddh without his knowledge or information.

Loss perception:- Though not strictly required in these proceedings, still, if this Court is to consider the loss perception of the complainant; in the entire transaction of purchase of properties from Jammu & Kashmir Bank, that also is not supported by any document on record. In the FIR, itself, no details are given as to how and what is the loss caused to the complainant in that process. The complainant has vaguely and incorrectly alleged in the FIR that he invested an amount of Rs.3.28 crores out of 4 crores and got only 1/3rd share in the property, whereas, the accused/petitioner paid only Rs.62 lacs and he became owner of 2/3rd property. However, from the undisputed documents and transactions itself, this allegation is established to be false, on both the counts, namely, qua the alleged payments, as well as qua the stated shares.

At the time of arguments, learned counsel for the complainant has detailed the investments made by the complainant by submitting that an amount of Rs.1 Crore was paid directly to the J & K Bank from the account of M/s Aastha Trading Company and another amount of Rs.2.45 Crores was

paid to the M/s JMD Special Steel Private Limited and hence, he invested Rs.3.45 Crores towards purchase of properties from Jammu & Kashmir Bank. However, while raising this argument, counsel for the complainant has tried to introduce the fallacy of logic; by counting the entire money paid to the company M/s JMD Special Steel Private Limited; as having been paid towards the purchase price of the properties from the J & K Bank. However, when confronted with the documents, learned counsel for the complainant was constrained to admit that out of Rs.2.45 Crores paid to the account of Company M/s JMD Special Steel Limited; only an amount of Rs.1.80 Crores was invested towards purchase price of the properties being purchased from J & K Bank and that only this amount of Rs.1.80 Crores was invested from the company M/s JMD Special Steel Pvt. Limited. Therefore, even if the entire funds of the company M/s JMD Special Steel Pvt. Limited is taken to be investment of the complainant; then also; so far as the purchase of the properties from Jammu & Kashmir Bank is concerned, the complainant has, admittedly, paid only an amount of Rs. 2.80 Crores (1 Crore paid directly to J & K Bank and Rs. 1.80 Crores paid through M/s JMD Special Steel Pvt. Limited), out of Rs.4 crores towards the purchase price of the properties. The remaining amount of Rs.1.20 Crores has come, admittedly, from the petitioner. In lieu of this investment of Rs.2.80 crore, the complainant got moveable properties worth Rs.35 lacs exclusively in the name of his own company M/s Aastha Trading Company, and in lieu of the balance amount of Rs.2.45 Crores, the complainant / his company M/s JMD Special Steel Pvt. Limited got 2/3rd share in immovable property, which was purchased from Jammu & Kashmir Bank. This 2/3rd share in immovable property is quiet proportionate to investment made by the complainant as

2/3rd share of the purchase price. Therefore, at the time of purchase process, no loss was caused to the complainant. The loss perception of the complainant is based upon fallacy of calculations because the complainant is treating the total amount of Rs.2,52,50,000/- as having gone from the account of M/s JMD Special Steel Private Limited because it is so mentioned in the sale certificate issued qua the immovable properties. It is, however, not disputed by either of the parties that although M/s JMD Special Steel Private Limited got 2/3rd share but the entire amount 2/3rd sale price had not gone from the account of M/s JMD Special Steel Private Limited. Although in the sale certificate 2/3rd share of immovable property is proposed to be transferred in favour of M/s JMD Special Steel Pvt. Limited; on the ground that an amount of Rs.2,52,50,000/- has been received from M/s JMD Special Steel Private Limited as 2/3rd price, however, admittedly, from the account of M/s JMD Special Steel Private Limited, only 1.8 Crore was invested towards the purchase price of the immovable property from Jammu & Kashmir Bank. A part of amount paid directly by the complainant from the account of M/s Aastha Trading Company is also counted to make-up this amount of Rs.2,52,50,000/-. Hence, it is clear that the complainant is counting the amount of Rs.1 crore paid to J & K Bank directly from M/s Aastha Trading Company account at two places, i.e. as an investment from M/s Aastha Trading Company and also as sale price paid from the side of M/s JMD Special Steel Private Limited, whereas, this is only one amount. Therefore, the loss perceived by the complainant in the process or at the time of purchase of the properties is non-existence. He has paid Rs.2.80 Crores, either directly or through M/s JMD Special Steel Private Limited (Rs.1 Crore directly to J & K Bank from the account of M/s Aastha Trading

company and Rs.1.80 Crores through the account of M/s JMD Special Steel Private Limited) and he has received moveable or immoveable properties worth this amount as well (moveable properties worth Rs.35 lacs + 2/3rd share in property worth Rs.2.45 Crores in immoveable properties). This concludes the process of purchase of the properties, moveable and immoveable, in the auction process from Jammu & Kashmir Bank; in which the complainant invested an amount of Rs.2.80 Crores and got properties worth amount Rs.2.80 Crores and the petitioner invested Rs.1.2 Crores and he got properties worth Rs.1.2 Crores only. Therefore, there is no extra loss or gain to either of the side.

During the arguments, with great effort, ld. counsel for the complainant has tried to show that the complainant suffered a loss of Rs.65 lacs while dealing with the petitioner and his brother. It is submitted by him that the complainant paid Rs.1 Crore directly to the Jammu & Kashmir Bank from the accounts of M/s Aastha Trading Company and he credited Rs.2.45 crores to the account of M/s JMD Special Steel Private Limited. Therefore, his total investment has been an amount of Rs.3.45 crores, whereas, he has got share in the property only worth Rs.2.80 crores. Hence, there is loss of Rs.65 lacs. Here again, the complainant is introducing a fallacy of logic. The complainant has not given any details as to when he deposited the amount of Rs.2.45 Crores in the account of M/s JMD Special Steel Private Limited. No details of deposit or dates of deposit are mentioned by him anywhere. The complainant has also not been able to refer to any documentary record to show that the company M/s JMD Special Steel Private Limited was having any worth or any amount more than Rs.1.8 Crores in its account at the time of purchase of the properties from J & K

Bank. As per the record and the balance sheet of the Company at the time of purchase, there was only Rs.1.8 Crores in the account of the company M/s JMD Special Steel Private Limited. There was absolutely no other amount reflected in the balance sheet. Even this amount of Rs.1.8 Crores was shown only as having been already invested in purchase of the property. Learned counsel for the petitioner has rightly pointed out that as on March, 2007 there is no amount shown in the account of the Company M/s JMD Special Steel Private Limited except the abovesaid worth of Rs. 1.80 Crores. However, after April, 2007 and before April, 2008 some amount seems to have come to the account of M/s JMD Special Steel Private Limited. Therefore, in April 2008, the account of the Company M/s JMD Special Steel Private Limited reflects as Rs.2.45 Crores; including the already invested abovesaid amount of Rs.1.8 Crores. This would suggest that an amount of Rs.65 lacs has possibly come to the account of M/s JMD Special Steel Private Limited after the transaction of purchase of the property from Jammu & Kashmir Bank was already over in the year 2005. Even this amount of Rs.65 lacs, which had come to the account of M/s JMD Special Steel Private Limited, much after the purchase of the property from Jammu & Kashmir Bank, was repaid to the complainant. This is clear from the fact that in the year 2008, M/s JMD Special Steel Private Limited had Rs.2.45 crores (Rs. 65 lacs added later on + Rs.1.80 Crores already invested towards purchase of property from Jammu & Kashmir Bank). This entire amount of Rs.2.45 Crores was; admittedly; paid by the petitioner to the complainant in the year 2008. This means that the petitioner has repaid the investment made by M/s JMD Special Steel Private Limited in the year 2005, as well as the subsequent amount of Rs.65 lacs, which the complainant may have

credited to the account of M/s JMD Special Steel Private Limited after purchase of the properties from the Jammu & Kashmir Bank. However, the complainant is counting as if this amount of Rs.65 lacs was also paid by him to M/s JMD Special Steel Private Limited in the year 2005 and the same was also invested towards the purchase price of the properties to Jammu & Kashmir Bank. Therefore, the perception of the complainant qua loss at the time of purchase of the said properties emerges qua an amount which was not even in existence in the account of M/s JMD Special Steel Private Limited in the year 2005 and which was not at all invested towards the purchase consideration paid to the Jammu & Kashmir Bank. This amount of Rs.65 lacs was, probably, credited by the complainant or by Rajiv Gaddh in the account of M/s JMD Special Steel Pvt. Ltd subsequent to the purchase of the properties and the same was reimbursed also to the complainant subsequent to the purchase of properties, in the year 2008. This conclusively shows that so far as the process of purchase of the properties from Jammu & Kashmir Bank is concerned, there is no loss of Rs. 65 lacs even suggested to have caused to the complainant; as per any document placed on record or even pleaded by the complainant.

Advantage to Petitioner:- The next question for consideration before this Court is: have the petitioner got any undue advantage in the process of purchase of the properties from Jammu & Kashmir Bank. Considering the matter and also the simple calculations of payments of auction amount to the Jammu & Kashmir Bank, from the point of view of the petitioner, also verifies that neither the petitioner got any undue advantage nor the complainant got any loss, so far as the process of purchase of the properties in the year 2005 are concerned.

It is an admitted fact that the auction price was an amount of Rs.4 crores. The properties comprised of moveable and immoveable properties. The moveable properties worth Rs.35 lacs, have gone to M/s Aastha Trading Co. exclusively. The balance sale price remains to be Rs.3.65 crores. The petitioner, admittedly, paid an amount of Rs.1.2 Crores out of the balance sale price of Rs.3.65 Crores; meant for immoveable property. This amount is 1/3rd of the sale consideration for immoveable property (this is short of 1/3rd by about Rs. 2 lacs only – which the complainant gets compensated at the time of purchase of stake by petitioner in M/s JMD Special Steel Private Limited). Accordingly, he has got 1/3rd share in immoveable property in the name of his company M/s Vikarmaditya Associates. Remaining 2/3rd amount had come from the complainant or his company M/s JMD Special Steel Private Limited. Therefore, 2/3rd share of the immoveable property had gone to the share of M/s JMD Special Steel Private Limited. Later on, in the year 2008, the entire stake of complainant in M/s JMD Special Steel Private Limited, which was only 2/3rd share in the properties purchased from the Jammu & Kashmir Bank, was also purchased by the petitioner, by paying to the complainant the entire amount standing in the account of M/s JMD Special Steel Private Limited as investment of the complainant. The total amount reflected in the balance sheet and the account of the Company at that time was Rs.2.45 Crores, which included Rs.1.8 Crore worth of the investment already made towards the purchase of the property from Jammu & Kashmir Bank. This entire amount of Rs.2.45 Crores was paid by the petitioner to the complainant. Since the 2/3rd share in the property purchased from Jammu & Kashmir Bank was standing in the name of the M/s JMD Special

Steel Private Limited, therefore, with the purchase of the entire stake in the Company M/s JMD Special Steel Private Limited, the petitioner also became owner of 2/3rd share in immoveable properties purchased from Jammu & Kashmir Bank, which was till now in the name of M/s JMD Special Steel Private Limited. In the entire process, the petitioner pays an amount of Rs.3.65 Crores (Rs.1.2 Crores at the time of process of purchase + Rs.2.45 Crores at the time of purchase of company M/s JMD Special Steel Private Limited from the complainant) and he gets immoveable property worth Rs.3.65 Crores only; which was purchased from Jammu & Kashmir Bank. However, despite the petitioner having paid the full price of immoveable properties, partly paid directly and partly by purchasing M/s JMD Special Steel Private Limited, there remains a rider on the share of the petitioner in the said property. As mentioned above, while launching the company M/s JMD Special Steel Pvt. Limited, the complainant had made Rajiv Gaddh a partner to the extent of 50% share. Therefore, when the M/s JMD Special Steel Private Limited owned 2/3rd share in the immoveable property purchased from Jammu & Kashmir Bank, then Rajiv Gaddh also became owner of the said property to the extent of 50% by default. As a result, when the petitioner purchased that Company M/s JMD Special Steel Private Limited, then also Rajiv Gaddh remained owner of the immoveable property of M/s JMD Special Steel Private Limited to the extent of 50% share. Therefore, in the last analysis; in the property purchased from Jammu & Kashmir Bank, Rajiv Gaddh still remain holder of 1/3rd share in the immoveable property whereas the petitioner could become owner of only 2/3rd share, despite having paid the entire amount of sale consideration, which was paid to the Jammu & Kashmir Bank. Hence, it was the petitioner

who was at some loss in the entire process. Not only this, since M/s Aastha Trading Company had undertaken to pay the labour dues of the NPA Company M/s Prabhat General Agencies, therefore, while purchasing M/s JMD Special Steel Private Limited with its entire stake, the petitioner also had to pay Rs.50 lacs as labour dues amount as well. Seen in terms of money, the petitioner paid Rs.4.15 crores for immoveable property whereas, he got only 2/3rd share in immoveable property worth Rs.3.65 Crores in total.

Counsel for the petitioner has further pointed out, and it is not even disputed by the learned counsel for the complainant/respondent that even the moveable properties worth Rs.35 lacs, which was separately purchased in the name of company of the complainant, namely M/s Aastha Trading Company, was purchased subsequently by one of the Companies of the petitioner by paying separately Rs.35 lacs to the complainant and his Company. Hence, the learned counsel for the petitioner is right in submitting that petitioner has been made to pay an amount Rs.4.5 Crores for all the properties, moveable and immoveable, which had come from Jammu & Kashmir Bank and which were worth Rs.4 Crore only, and still, he got only 2/3rd share in immoveable property and the moveable properties was Rs.35 lacs. Hence, this Court finds substance in the arguments of the learned counsel for the petitioner that if anybody has been to put loss in the entire process then it is only the petitioner and not either the complainant or Mr. Rajiv Gaddh.

Possibility of Loss:- One more relevant question which has come up during the argument is whether there is any possibility of the complainant being put to loss in the business dealings with the petitioner or Rajiv Gaddh.

Although, there is no document to substantiate any loss having been caused to the complainant in any transaction involving the petitioner or Rajiv Gaddh with the complainant. However, this has also come on record that the complainant and Rajiv Gaddh were working in business together; being friendly businessman. It is also evident from the facts on record that the complainant and Rajiv Gaddh were acting by reposing confidence in each other. Although, it is evident that no loss is caused to the complainant at the time and in the process of purchase of the properties from J & K Bank, however, as is mentioned above, and as is evident from the statement of account and balance sheet of the M/s JMD Special Steels Pvt. Ltd., in the year 2007-08 there appears to be some dealing which led to addition of an amount of Rs.65 lacs in the account of M/s JMD Special Steel Private Limited. Although, this amount of Rs.65 lacs have also been reimbursed to the complainant in the year 2008 by the petitioner; while purchasing M/s JMD Special Steel Private Limited, however, this shows that it was the complainant who deposited this amount somewhere between 2007 and 2008. The other aspect is that the complainant introduced Rajiv Gaddh as a 50% partner in the company M/s JMD Special Steel Private Limited. While purchasing properties from Jammu and Kashmir Bank; whatever investment had come from the company M/s JMD Special Steel Private Limited is stated to have come only from the complainant. Despite that, Rajiv Gaddh also got 50% share in the properties purchased in the name of M/s JMD Special Steel Private Limited, being 50% shareholder of the Company. This shows that Rajiv Gaddh might be getting some benefit without making any payment which could be deciphered from the records. To explain this undue benefit of Rajiv Gaddh, one more aspect had come up during the argument;

that whatever amounts were being arranged for M/s JMD Special Steel Private Limited those were being arranged by mortgaging the personal properties of Rajiv Gaddh. However, beyond this small submission, none of the parties have proceeded to explain further qua the dealings involving mortgage of properties of Rajiv Gaddh. It appears to be an aspect on which neither Rajiv Gaddh is shown to have taken any stand anywhere nor has the complainant dared to explain any further. Hence, there appear to be some financial dealings between the complainant and Rajiv Gaddh. These dealings, which were being conducted by the complainant and the Rajiv Gaddh in extreme confidence, appears to be the grey area where the complainant might be having some grouse of loss against Rajiv Gaddh. However, even if there is any loss due to such dealings between Rajiv Gaddh and the complainant, still two things are clear, firstly, that such loss is not during and in the process of purchase of the properties from Jammu and Kashmir Bank and secondly, through the execution of the properties either directly from the Jammu and Kashmir Bank or through purchase of share of the M/s JMD Special Steel Private Limited, the petitioner has not caused any loss to complainant. Therefore, even if there is some dispute or any loss caused to the complainant by Rajiv Gaddh, the petitioner is not responsible for that. This remains a dispute only between the complainant and the Rajiv Gaddh.

Negotiations for Settlement:- Even during the argument, the entire emphasis of learned counsel for the complainant/respondent had been to; somehow or the other club the petitioner with Rajiv Gaddh; so as to emphasize that they are one and the same thing. As a result, even while referring to individual transaction/acts or dealing of the said Rajiv Gaddh,

Learned counsel for the complainant repeatedly referred to the said Rajiv Gaddh as “they”. However, he could not substantiate his use of word “they” with reference to the allegations, so far as the purchase process of properties from Jammu and Kashmir Bank viz.-a-viz., the investment made by the parties are concerned. Not finding anything else to substantiate the effort to include the petitioner as a person who might be acting with Rajiv Gaddh and who might have caused loss to the complainant, the counsel for the complainant refers to a negotiation process and a Memo of Understanding arrived at between the complainant and Rajiv Gaddh. Learned counsel for the respondent has tried to club the personality of the petitioner with the said Rajiv Gaddh by saying that the petitioner has been participating in the negotiating process relating to making good the loss caused to the complainant and that his son was also sending messages in this regard to the complainant. However, on this account also, learned counsel for the complainant has failed to connect the petitioner with the said Rajiv Gaddh so far as their business dealings are concerned.

However, this Court finds sufficient substance in the argument of the learned counsel for the petitioner that since Rajiv Gaddh remained partner in the immoveable property coming to the petitioner through M/s JMD Special Steel Private Limited to the extent of 1/3rd share by default, therefore, the petitioner had every reason to take part in the process of negotiations so that he could ensure that his property is not subjected to any further encumbrance or litigation. Towards the same objective only, the son of the petitioner was in-touch with the complainant. Otherwise, it is an admitted fact that neither the petitioner nor his son is a signatory to the said Memorandum of Understanding. The petitioner or his son is not stated to

have undertaken to make good any loss to the complainant in the entire process of this negotiation or understanding. Even during this negotiation process, there is no document or transaction to show any liability against the petitioner or his son. There is no document to show that the petitioner or his son owed anything to the complainant or that they ever undertook to pay anything to the complainant. Hence, this attempt on the part of the complainant to include the petitioner also in the dispute with his brother shows that the complainant is out to create pressure upon the petitioner just to make good his possible loss, allegedly caused to him in the dealings with Rajiv Gaddh.

Filing / Defending Writ Petition:-There is one more allegation in the FIR qua the Rajiv Gaddh filing writ petition or representing the companies of the complainant before the Hon'ble High Court in the writ petition without any authority. However, learned counsel for the petitioner has rightly pointed out the resolutions of the Companies of the complainant, which have been signed by the complainant himself which dully authorized the said Rajiv Gaddh to file the writ petitions or to sign documents and affidavits etc. regarding the writ petitions to be filed or to be defended on behalf of the companies or on behalf of the complainant. Therefore, there is no substance in this allegation as well, even as per the admitted documents.

Otherwise also, after having received the total amounts standing in the accounts of M/s JMD Special Steel Private Limited, the complainant had resigned as Director of M/s JMD Special Steel Private Limited. He had sold his entire shares as well, in favour of the petitioner. The resignation from the Company was also duly intimated to the Registrar of the Companies; way back in the year 2008 only. The complainant has

never raised his eyebrow either qua the validity of resignation from the Company or qua full and final receipt of the money. Not only that; subsequently the complainant had transferred to the Company of the petitioner, the moveable properties also which were purchased in the same process from J & K Bank and which were in exclusive control and ownership of the complainant or his Company. The complainant has received money for that transfer as well in his account from the petitioner. Therefore, no doubt is left qua genuineness of purchase of the Company of M/s JMD Special Steel Private Limited by the petitioner, purchase of 1/3rd share in the auction process directly from Jammu and Kashmir Bank or the purchase of immoveable properties worth Rs.35 lacs from the complainant himself.

In view of the above, this Court has come to the conclusion that the complaint has been got lodged by the complainant with a *malafide* intentions; for an oblique motive to arm twist the petitioner as well; by involving him in the FIR for the purpose of settling score with the brother of the present petitioner. The learned counsel for the petitioner has rightly pointed out to the order passed by this court in earlier petition filed by the petitioner, which shows that in another FIR, lodged by the complainant against Rajiv Gaddh also the petitioner was sought to be involved. He was harassed by the police without there being anything against him and when cornered due to proceedings before the Hon'ble High Court, the police had to make a statement that the petitioner was not required in connection with that earlier FIR. The present FIR is only a renewed effort of the complainant; to somehow or the other; allege an offence in retrospect involving the petitioner as well; so that being in better financial position, the

petitioner could be pressurized to pay something as a compensation for the loss, allegedly caused to the complainant by Rajiv Gaddh. The police have also been more than ready to register the case in such a financial dispute, which otherwise would have been the subject matter of rendition of accounts between the companies. Needless to say that it is the same police which shows extreme reluctance in registering the FIR even in a murder case. The propensity with which the State is making attempt to contest these proceedings has also reflected upon the extra interest of the police authorities in this regard.

Therefore, this Court is of the considered view that the present FIR is got lodged against the petitioner with malafide intention and for oblique purpose of pressurizing the petitioner. Hence the present FIR is misuse of the process of the Court. If this FIR and the consequent proceedings are permitted to continue any longer, then it would result in defeating the ends of justice. Therefore, the same deserves to be quashed qua the petitioner. Accordingly, it is ordered that the present petition is allowed and the FIR is ordered to be quashed qua the petitioner. However, it is further clarified that since Rajiv Gaddh is not a petitioner nor the case has been considered from the point of view business dealings between the complainant and the said Rajiv Gaddh, therefore, the complainant would be at liberty to continue with his remedies against Rajiv Gaddh in accordance with law. Any observation made hereinabove would have no bearing upon any proceedings between the complainant and the said Rajiv Gaddh.

(RAJBIR SEHRAWAT)
JUDGE

06.12.2018
hemlata

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No