AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 9-8-2019

Delivered on 14-8-2019

CRMP No. 942 of 2014

- Kamlesh Verma S/o . Paltan Ram Verma Aged About 38 Years R/o. House No.2 Ward No. 39 Ridhi Sidhi Colony Rajnandgaon, Tah. And Distt. Rajnandgaon C.G

---- Petitioner

Versus

- State Of Chhattisgarh Through SHO, Basantpur, Distt. Rajnandgaon C.G.

---- Respondent

For petitioner	:	Mr. Hemant Gupta, Adv.
For State	:	Mr. Suyash Dharmadhikari, P.L.

Hon'ble Shri Sharad Kumar Gupta, Judge

CAV ORDER

1. Petitioner has preferred this CRMP under Section 482 of the Code of Criminal Procedure (in brevity Cr.P.C.) for quashing the FIR No. 418/2014 dated 06.09.2014 and all further investigation.

2. In brief petitioner's case is that he runs business in the name and style of Vee – Real Entertainment House at Rajnandgaon. Complainant Arjun Ram Verma was forced to make a false report against him by Sharad Pansari and Jai Shree Kove. Said complainant lodged a false report against him and one co-accused Ramesh Kumar Sahu claiming that they allured him to deposit Rs. 27,00,000/- in the firm named as Vee Realities Ltd. He is not associated with that firm. He had not induced complainant to deposit the money. Said FIR does not disclose his role on strength of which it can be said that some cognizable offence is made out against him. The essential elements of Section 415 IPC are missing in the case in hand. Earlier Crime NO. 411/2014 was registered against him on similar allegations in which he was bailed out.

3. In brief the respondent's case is that the contents of alleged FIR reveal that petitioner and another coaccused had committed cognizable offences. The defence of petitioner cannot be seen at this stage.

4. Counsel for the petitioner submitted that as per the allegations made in FIR that after the expiration of six years double amount was payable to complainant but without expiration of the six years complainant lodged the report, thus, the FIR is premature and no cause of action arises to complainant. Prima facie it cannot be said that his fraudulent or dishonest intention was present at the beginning of transaction. The alleged offences are predominantly and overwhelmingly of civil character, arising out of commercial, mercantile transaction. Moreover he further submitted that complainant had filed an affidavit to the effect that when he deposited the amount petitioner had left that firm, petitioner had not taken the amount from him. He does not want to take any action against petitioner.

5. Counsel for the respondent submitted that it is the fit case where prima facie fraudulent and dishonest inducement may be inferred from the allegation made in FIR and his conduct. Said affidavit is the subject matter of the defence which cannot be seen at this stage.

6. Counsel for the petitioner placed reliance in the judgment of Hon'ble Supreme Court in the matter of **Alpic Finance Ltd. -v- P. Sadasivan and another** [2001 STPL (LE) 29342 SC] wherein Hon'ble Supreme Court has observed in para 10 as under :-

> “10. The facts in the present case have to be appreciated in the light of the various decisions of this Court. When somebody suffers injury to his person, property or reputation, he may have remedies both under civil and criminal law.
>
> The injury alleged may form basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between the parties arising out of a transaction involving passing of valuable properties

between them, the aggrieved person may have right to sue for damages or compensation and at the same time, law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating. Here the main offence alleged by the appellant is that respondents committed the offence under Section 420 I.P.C. and the case of the appellant is that respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is true which is false and which the person practicing the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. There is no allegation that the respondents made any willful misrepresentation. Even according to the appellant, parties entered into a valid lease agreement and the grievance of the appellant is that the respondents failed to discharge their contractual obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the respondents and thereby the respondents parted with the property. It is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception.
"

7. Counsel for the petitioner placed reliance in the judgment of Hon'ble Supreme Court in the matter of **Satish Chandra Ratanlal Shah -v- State of Gujrat and another** [2019 Lawsuits(SC) 645] wherein Hon'ble Supreme Court has observed in para 15 as under :-

"15. Moreover, this Court in a number of cases has usually cautioned against criminalizing civil disputes, such as breach of contractual obligations [refer to **Gian Singh v. State of Punjab**, [(2012) 10 SCC 303]. The legislature intended to criminalize only those breaches which are accompanied by fraudulent, dishonest or deceptive inducements, which resulted in involuntary and in-efficient transfers, Under Section 415 of Indian Penal Code.
"

8. In the matter of **State of Haryana and others -v- Choudhary Bhajan Lal and others** reported in AIR 1992 SC 604, Hon'ble Supreme Court has observed in para 108 as under:-

"108. …................. we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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 FIR 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 FIR 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, providing 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."

9. In the matter of **R.P. Kapur -v- State of Punjab** reported in AIR 1960 SC 866, wherein in para 6, the Full Bench of Hon'ble Supreme Court has held as under :-

"The inherent power of the High Court under Section 561-A of the Code cannot be exercised in regard to matters specifically covered by the other provisions of the Code. The inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction.

Some of the categories of cases where the inherent jurisdiction to quash proceedings can and should be exercised are :-

Where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.

Where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not.

Where the allegations made against the accused person do constitute offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained."

10. In **Parbatbhai Aahir v. State of Gujarat,** [(2017) 9 SCC 641], again the Hon'ble Supreme Court has had an occasion to consider whether the High Court can quash the FIR/complaint/criminal proceedings, in exercise of the inherent jurisdiction under Section 482 CrPC. Considering a catena of decisions on the point, the Hon'ble Supreme Court Court summarised the following propositions:

"(1) Section 482 CrPC preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

(2) xxx xxx xxx

(3) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

(4) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

(5) xxx xxx xxx

(6) xxx xxx xxx

(7) xxx xxx xxx
(8) xxx xxx xxx
(9) xxx xxx xxx
(10) xxx xxx xxx

11. In **Narinder Singh v. State of Punjab** [(2014) 6 SCC 466], after considering the decision in **Gian Singh v. State of Punjab,** (supra), in para 29.1, Their Lordships summed up as under:

> "29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. **However, this power is to be exercised sparingly and with caution**.

12. In the matter of **Umesh Kumar v. State of A.P.** [(2013) 10 SCC 591], Their Lordships have held as under in para 20 :-

> "**20.** …... it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about the existence of sufficient ground for proceedings against the accused and the Court cannot look into materials, the acceptability of which is essentially a matter for trial. ….."

13. In the matter of **Tilly Gifford v. Michael Eshwar [(2018) 11 SCC 205]** wherein Hon'ble Supreme Court held that time and again it has been emphasized by this Court that the power under Section 482 CrPC would not permit the High Court to go into disputed questions of facts or to appreciate the defence of the accused.

14. In the case in hand FIR reveals that complainant Arjun ram Verma had given an application to SHO Basantpur alleging that he had Rs. 30,85,000/- which he had received by selling some land of his son. Co-accused Ramesh Kumar Sahu approached him and told that he invested said amount in their company, WEE REALTIES Ltd. India. If he invests Rs. 27 lacs he would get Rs. 5 lacs within 2 months and after six years, he would get double of Rs. 27 lacs. He went to petitioner's

office on 20-6-2014. He repeated the same facts which co-accused Ramesh Kumar Sahu had stated earlier. He deposited Rs. 27 lacs to the petitioner. He gave him an agreement wherein description was for Rs. 20 lacs. He obtained signatures of complainant in some papers. After completion of 2 months he demanded Rs. 5 lacs from said co-accused and petitioner. Petitioner evaded repayment and did not give amount to the complainant. Co-accused and the petitioner cheated him and evaded to pay him Rs. 27 lacs.

15. As per the allegations made in FIR, co-accused Ramesh Kumar Sahu and petitioner both induced complainant that if he invests Rs. 27 lacs then he would get Rs. 5 lacs after two months. FIR is lodged after 2 months. Thus, it cannot be said that FIR cannot be registered before six years and it is premature. Thus, this Court is not impressed upon the argument raised by counsel for the petitioner in this regard.

16. The FIR depicts that prima facie complainant had entrusted Rs. 27 lacs to the petitioner, on the inducement of co-accused Ramesh Kumar Sahu and petitioner himself.

17. When a company / firm floats some deposit scheme for public at large and induce them that if they invest in its scheme, they may get handsome return, by it, such company / firm convince the public at large that there is no scope for fraud and scheme is floated with honest intention. In other words, there would be presumption that scheme is free from fraud or dishonest intention.

18. In the case in hand, prima facie it appears from the allegations of FIR that complainant neither received Rs. 5 lacs within 2 months nor got any amount in respect of invested amount. Moreover, prima facie it appears that agreement was executed for Rs. 20 lacs instead of Rs. 27

lacs. Moreover, as per the petitioner's case he was bailed out in another similar type of case. In FIR prima facie allegation of cheating is mentioned.

19. Looking to the above mentioned facts and circumstances of the case, this Court finds that prima facie fraudulent and dishonest intention of the co-accused and petitioner existed at the beginning of the transaction. In other words, prima facie it appears that co-accused and petitioner dishonestly represented or induced to the complainant. Thus, it cannot be said that said matter is predominantly and overwhelmingly of civil nature. Thus, the petitioner does not get any help from the aforesaid judicial precedents laid down by Hon'ble Supreme Court in the matter of **Alpic Finance Ltd.** (supra) and **Satish Chandra** (supra).

20. As per the aforesaid judicial precedent laid dow by Hon'ble Supreme Court in the matter of **Tilly Gifford** (supra), this Court finds that at this stage this Court cannot consider these aspects that petitioner was not associated with that company, allegedly complainant had given subsequently an affidavit that petitioner had left that company and he has received entire invested amount from VEE REALITIES India ltd., because these aspects are subject matter of the defence which can be considered at the time of trial.

21. If the aforesaid allegations made in the impugned FIR are taken at their face value and accepted in their entirety constitute the offences punishable under Section 406, 409, 420 read with 34 of IPC which are the cognizable offences. In the case in hand, from the impugned FIR this Court is prima facie satisfied that sufficient ground is in existence for initiating proceeding against the petitioner. In the case in hand there is no express legal bar ingrafed in any of the provisions of the Code or the IPC to the institution and continuance of the proceedings. It cannot

be said that allegations are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the petitioner. Looking to these circumstances and aforesaid judicial precedents laid down by Hon'ble Supreme Court in the matter of **Choudhary Bhajan Lal** (supra) and **R.P Kapur** (supra) and **Umesh Kumar** (supra), this Court finds that impugned FIR cannot be thrown down.

22. In the case in hand, it does not appear that there is an abuse of process or intervention is necessary to secure ends of justice. Thus, aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Parbat Bhai Ahir** (supra) is applicable against the petitioner.

23. Looking to the above mentioned facts and circumstances of the case, this Court finds that it is not the fit case where the extra ordinary jurisdiction of Section 482, Cr.P.C. be invoked which is invoked sparingly with care and circumspection. Thus, aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Narinder Singh (**supra**)** is applicable against the petitioner. Consequently, the instant CRMP is dismissed at motion stage without entertaining for final hearing.

Sd/-
(Sharad Kumar Gupta)
Judge

Pathak/-