

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc.-M-10126 of 2016 (O&M)

Date of Decision: September 19, 2019.

Anil Tripathi and another

.....Petitioners

versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE ANIL KSHETARPAL.

Present: Mr.R.S.Rai, Senior Advocate with
Mr.Gautam Dutt, Advocate, for the petitioners.

Mr.Bhupinder Beniwal, AAG, Punjab.

Mr.Sunil Chadha, Senior Advocate with
Mr.Lakshay Bector, Advocate, for respondent No.2.

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Anil Kshetarpal, J.

Through the present petition filed under Section 482 Cr.P.C., the petitioners pray for quashing of FIR No.14 of 2016, registered under Sections 406, 420 and 120-B IPC 1860, at Police Station Samrala, and all subsequent proceedings arising therefrom.

At the outset, it must be noticed that on 23.05.2019, learned senior counsel appearing on behalf of the petitioners had given undertaking that the petitioners are ready to return the two machines which are root cause of entire dispute between the parties. Order dated 23.05.2019 is reproduced as under:-

“Learned counsel for the petitioners on instructions from Mr.Amit Kumar Narang, Manager-Compliance, has submitted that petitioners are ready to return two machines and they would be sending it back through transport, costs whereof would be subject to the arbitration which is pending between the parties.

Learned counsel for respondent No.2 has accepted the offer, however, he submits that case be kept pending for final arguments.

Keeping in view the aforesaid facts, let petitioner comply with the statement made by him within a period of 15 days.

Adjourned to 12.07.2019.

In the meantime, further proceedings before the trial Court shall remain stayed.”

Thereafter, Criminal Misc. Application No.18655 of 2019 was filed and on 31.05.2019, following order was passed.

“Before lunch session, counsel had appeared for the petitioners and had stated that they could not comply with the order dated 23.05.2019. However, he requested for pass over to seek instructions. In post lunch session, no one has come present on behalf of the petitioners.

Adjourned to 31.07.2019.

The interim order dated 23.05.2019 shall stand vacated.”

As per the contents of the FIR, which now on completion of investigation, has matured into a police report, it is alleged that the accused-petitioners had deceived the first informant in connivance with each other and caused criminal breach of trust. It is further the case of the first informant that machine was also damaged and the accused have given life threats to the first informant and his employees. It is claimed that two brand new machines Truck Mounted Road Sweeping Dry Type were given on lease @ Rs.2,98,000/- plus car on monthly rent. Petitioner No.2 came to the factory of the first informant and after inspecting, directed the first informant to deliver the machines at Raigarh (Chhatisgarh). Initial payment of rent plus security was paid but thereafter, no amount was paid. Even the

machines are not being returned. On 9.12.2015 brother of the first informant alongwith a technician visited the Raigarh and the accused had asked them to take away one machine through gate pass but thereafter did not permit the brother of first informant and technician to take away even one machine. Petitioner No.2 alongwith his companions have surrounded them and gave them threats and also broke the machine. A false information was given to the police at Raigarh by the accused regarding theft of machine, however, once the facts were brought to the notice of the police, representative of the first informant returned back empty handed. The accused had even threatened that if the representatives come back to take away the machine, they should be ready for dire consequences.

This court has heard learned senior counsel for the parties and with their able assistance gone through the paper book.

Learned senior counsel for the petitioners has submitted that the agreement was between the company and the firm of the first informant. He submitted that petitioners are merely officials of the aforesaid company and therefore, petitioners cannot be prosecuted. Learned senior counsel referred to a judgment passed by the Hon'ble Supreme Court in the case of **Sunil Bharti Mittal versus Central Bureau of Investigation, 2015 (4) SCC 609**

On the other hand, learned senior counsel for the respondents has submitted that in this case the first information and the police report is not against the company but against certain individuals. He hence submitted that the aforesaid judgment would have no application.

The jurisdiction of the High Court while entertaining petition under Section 482 Cr.P.C. is limited. The Court can interfere only if the

Court finds that from the reading of the first information report and the police report filed under 173 Cr.P.C. no case is made out against the accused. In the present case, as noticed above, there are specific allegations against both the petitioners. Still further, once the petitioners had undertaken to return both the machines but failed to return the machines, this Court is not inclined to exercise its powers under Section 482 Cr.P.C. No doubt, one machine has been returned but the second is still with the petitioners, although petitioners claim that the aforesaid machine is in possession of another company, however, that fact cannot be examined by this Court at this stage.

Hence, no ground to exercise inherent power under Section 482 Cr.P.C. is made out.

Petition is disposed of with observation that they shall be at liberty to take all defences, as permissible in law, before the learned Trial Court.

September 19, 2019
mohinder

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No