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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-14910-2015 [O&M]

Date of Decision:- July 08, 2019

Ashish Dahiya

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Ashish Dahiya, petitioner-in-person.

Mr. Ashok Muthreja, DAG, Haryana

Mr. Sushil Jain, Advocate,
for respondent No.2.

SHEKHER DHAWAN, J.

Present petition under Section 482 of Code of Criminal Procedure [Cr.P.C.] is for quashing of FIR No. 157 dated 25.04.2014 (Annexure P/1) registered under Sections 406, 420 and 506 IPC at Police Station City Sonapat, District Sonapat.

2. Quashing of FIR, Annexure P/1 has been sought on the ground that continuation of proceedings on the basis of present FIR is mis-use of the process of the Court because the petitioner, who had taken delivery of vehicle (Tata Sumo Grand Car) from Swan Motors Pvt. Limited on the basis of loan having been advanced by Tata Motor Finance Limited. The petitioner was informed that 70% of the value of the car as loan was to be financed and he was asked to deposit a sum of Rs.2,00,000/- as

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advance/initial amount and the petitioner deposited the said amount on 12.08.2009 with Swan Motors Pvt. Limited vide receipt Annexure P/2. But, subsequently on 2.9.2009, he was informed that Tata Motor Finance Limited approved finance of loan upto 65% only instead of 70%. Accordingly, the petitioner deposited a sum of Rs. 80,675/- and the detail of amount is as follows :-

Price of vehicle	7,11,990/-
Discount	40,000/-
	6,71,990/-
Loan	4,35,000/-
Balance	2,36,000/-
Advance EMI	9,900/-
P.F. (Process Fee)	4,000/-
E.W.	6,500/-
T.R/C	600/-
Insurance	20,685/-
R/C Security (refundable)	2,000/-
	2,80,675/-
Advance	2,00,000/-
Total	80,675/-

3. The vehicle was delivered as properly financed Vehicle, hypothecated with Tata Motor Finance Limited. The petitioner was also asked to hand-over blank cheque as security. At the time of delivery of vehicle, the petitioner's signatures were obtained on some form and blank papers for completing the formalities. Thereafter, a criminal complaint was filed for issuance of cheque having been dis-honoured.

4. Subsequently, the petitioner filed a complaint under Section 12 of the Consumer Protection Act, 1986 against Swan Motors Pvt. Limited to compensate him for deficiency in service. However, Swan

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Motors Pvt. Limited filed false affidavit before the Consumer Forum. Subsequently, a private complaint was filed by the present petitioner. On March 30, 2011, Swan Motors Pvt. Limited filed a suit for recovery of Rs.5,13,300/- against the petitioner at Delhi Courts.

5. The petitioner has sought quashing of the FIR on the grounds that there is long delay of 4 years in filing the present FIR. The complaint is misuse of the process of law. The local Police of Sonapat is under the influence of the complainant and has been harassing the petitioner though, the petitioner had joined the investigation and as such, the present FIR is liable to be quashed.

6. In the reply filed by respondent No.2, Ashish Gupta C/o M/s Swan Motors Pvt. Limited, plea was taken that the complaint was filed by him with the police and after preliminary enquiry having been done by the Police, present FIR was registered against the petitioner and copy of the enquiry report dated 25.04.2014 has been placed on record as Annexure R/1. Subsequently, on 16.12.2014, police had filed charge sheet in the present case and the accused-petitioner appeared before the trial Court and obtained bail order and the case was fixed for arguments on charge. Subsequently, the petitioner sought different dates i.e. 23.2.2015, 20.4.2015, 8.6.2015, 29.08.2015, 17.10.2015, 25.12.2015 and 25.1.2016 for arguments on charge.

7. While replying on facts, respondent No.2 contended that Swan Motors Pvt. Limited is an authorized dealer of TATA passenger Cars in District Sonapat and the petitioner approached Swan Motors Pvt. Limited for purchase of vehicle, i.e. TATA SUMO GRANDE. Deal was

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finalized and a total sum of Rs.7,15,675/- was to be paid. On 12.08.2009, Rs.2,00,000/- was deposited as part payment and on 2.9.2009 another sum of Rs.80,675/- was deposited and the balance amount of Rs. 4,35,000/- was to be paid by the Finance Company. The Finance Company had not disbursed the loan amount as the same was not sanctioned. The petitioner approached the Sales Manager of Company and represented that due to marriage in his family, he was going to purchase the said vehicle and requested to give the delivery of the vehicle on 2.9.2009 itself and further assured that the Finance Company would disburse the balance amount of Rs. 4,35,000/- in a day or so. On such a request, assurance and commitment made by the petitioner, the Company delivered the said vehicle and the petitioner also signed the delivery note of the vehicle and also signed an undertaking and acknowledgment to the following effect :-

“in case due to any reason bank/financer is unable to disburse the loan to you within seven days from today, we will compensate you to making payment for the balance amount and till that time we have the exclusive lien on the above mentioned car. Also the original documents will be handed over to us only after the entire payment has been made to Swan Motors Pvt. Ltd.”

8. Respondent No.2 also took the plea that the Consumer Complaint was filed before District Consumer Forum, Sonapat and on 5.10.2010, the said complaint was dismissed and prayed that the present petition be dismissed.

9. Plea was also taken that petitioner was in possession of the

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vehicle since 2.9.2009 without making the balance payment with interest and present litigation is misuse of the process of law.

10. Having considered the submissions made by learned counsel for the parties and appraisal of record of this case file, this Court is of the considered view that there is no dispute on the basic facts that the FIR was registered on the basis of preliminary enquiry having been conducted by the Police. The matter was investigated by the Police and thereafter report under Section 173 Cr.P.C. was submitted by the investigating agency before learned trial Court for consideration on the point of charge.

11. In **State of Haryana and others Vs. Ch. Bhajan Lal and others, 1992 AIR (SC) 304**, Hon`ble Apex Court observed as under :-

“32. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the concerned police officer cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer incharge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered Under Section 156 of the Code to investigate, subject to the proviso to Section 157. (As we have proposed to make a detailed discussion about the power of a police officer in the field of investigation of a cognizable offence within the ambit of Sections 156 and 157 of the Code in the ensuing part of this judgment, we do not propose to deal with those sections in extenso in the present context). In case, an officer incharge of

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a police station refuses to exercise the jurisdiction vested on him and to register a case on the information of a cognizable offence, reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by Sub-section (3) of Section 154 of the Code.

33. Be it noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression "information" without qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions, "reasonable complaint" and "credible information" are used. Evidently, the non-qualification of the word "information" in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, 'reasonableness' or 'credibility' of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word "information" without qualifying the said word. Section 139 of the Cr.P.C. of 1861 (Act XXV of 1861) passed by the Legislative Council of India read that 'every complaint or information' preferred to an officer incharge of a police station should be reduced into writing which provision was subsequently modified by Section

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112 of the Code of 1872 (Act X of 1872) which thereafter read that 'every complaint' preferred to an officer incharge of a police station shall be reduced in writing. The word 'complaint' which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word 'information' was used in the Codes of 1882 and 1898 which word is now used in Sections 154, 155, 157 and 190(c) of the present Code of 1973(Act II of 1974). An overall reading of all the Codes makes it clear that the condition which is sine-qua-non for recording a First Information Report is that there must be an information and that information must disclose a cognizable offence.

34. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer incharge of a police station satisfying the requirements of Section 154(1) of the Code, the police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.”

12. The petitioner has raised certain issues so as to make out a case that he has been falsely implicated in this case. However, without observing anything at this stage, as the matter is before learned trial Judge to consider whether there exists any case for framing of charge against the accused person or not, so that the same may not cause prejudice to either of the parties, this Court would refrain from making any observation on this point. But, it would be within the domain of learned trial Judge to consider the report submitted by the Police under Section 173 Cr.P.C., and after hearing learned counsel for both the parties, to pass an order to that effect. Needless to say that if the petitioner is still

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dissatisfied with the order passed by learned trial Judge, he shall be at liberty to challenge the same but at any rate, at this stage, it is for the trial Judge to consider the report under Section 173 Cr. P.C. on merits and to pass the order. Such was the view taken by Larger Bench of Hon`ble Apex Court in **Ch. Bhajan Lal's case (supra)**.

13. Identical view was taken by Hon`ble Apex Court in **Dharmantma Singh vs. Harminder Singh and others, 2011(3) R.C.R. (Criminal) 38**, wherein Hon`ble Apex Court observed as under :-

“6. However, before the Court of the Judicial Magistrate, First Class, Ludhiana, could apply its mind and take a decision on the original challan against Respondents No. 1 and 2 and on the report of further investigation recommending dropping of the criminal proceedings against them, Respondent Nos. 1 and 2 filed Criminal Misc. Application No. 10664-M of 2007 under Section 482 Code of Criminal Procedure on 17.02.2007 in the High Court of Punjab and Haryana praying for quashing of DDR No. 15 dated 13.12.2004 and the challan filed against them by the police in the Court of Judicial Magistrate, First Class. After considering the report of further investigation recommending dropping of the criminal proceedings against Respondent No. 1 and others, the High Court passed the impugned order dated 25.03.2008 quashing the criminal proceedings initiated pursuant to the DDR No. 15 dated 13.12.2004 and further directing that the criminal proceedings against the Appellant at the behest of the Respondent No. 1 initiated pursuant to the F.I.R. No. 276 dated 12.12.2004 shall not be affected.

7. Learned Counsel for the Appellant submitted that the power under Section 482 of the Code of Criminal Procedure is

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to be exercised only in the exceptional circumstances and that the High Court should not have exercised this power and quashed the criminal proceedings against the Respondents No. 1 and 2 when the Magistrate was yet to exercise his judicial mind under Section 190 of the Code of Criminal Procedure to the police reports filed under Section 173 of the Code of Criminal Procedure He submitted that the Magistrate before whom the entire records were placed including the evidence collected during the investigation was in a better position to appreciate the facts and circumstances of the case and pass orders whether to take cognizance of the offences against the Respondents No. 1 and 2 registered pursuant to the DDR No. 15 dated 13.12.2004 on the basis of information furnished by the Appellant...”

14. More so, as the facts before this Court and the legal position that the procedural prescriptions are meant for doing substantial justice, Chapter XIV postulates the conditions for initiation of proceedings. Section 190 Cr.P.C. further postulates that a Magistrate can take cognizance of any offence either on receiving a complaint of facts which constitute an offence or upon police report of such facts or upon receipt of information from any person other than a police officer or upon his own knowledge, that such an offence has been committed. Meaning thereby, when a police report is forwarded to the Magistrate either under sub-section (2) or sub-section (8) of Section 173 Cr.P.C., it is for the Magistrate at the first instance to apply his mind to the police report and to take a definite view whether to take or not to take cognizance of offence against an accused person. A conjoint and meaningful reading of these provisions would

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reveal that if there is no material/evidence, then the accused would be discharged by the Magistrate, otherwise charge would be framed against him and the trial would commence. In the present case, the Magistrate before whom the challan has been filed has not applied his mind to the merits of the case or otherwise and in that eventuality, the FIR cannot and should not be quashed in exercise of powers under Section 482 Cr.P.C. Such a view as also taken by Hon`ble Apex Court in **Dharmatma Singh's case (supra)**.

15. Section 482 Cr.P.C. deals with inherent powers of this Court. It is well-established principle of law that inherent powers conferred on this Court under Section 482 Cr.P.C. has to be exercised sparingly with circumspection and in rare cases and that too, to correct patent illegalities of when some miscarriage of justice is done. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed, because they are initiated illegally, vexatiously or without jurisdiction and where the allegations, even if they 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. The content and scope of power under Section 482 Cr. P.C. were examined in considerable details by Hon`ble Apex Court in **Madhu Limaye v. State of Maharashtra, 1978 AIR (SC) 47**, and it was held as under:

“The following principles may be stated in relation to the exercise of the inherent power of the High Court:-

(1) that the power is not to be restored if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;

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- (2) that it should be exercised very sparingly to prevent abuse of process of any court or otherwise to secure the ends of justice;
- (3) that it should not be exercised as against the express bar of law engrafted in any other provision of the Code.”

16. In the light of the aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of the trial of the main case, the instant petition is hereby dismissed in the above terms.

17. Needless to mention that nothing observed, here-in-above, would reflect, in any manner, on merits of the main case, as the same has been so recorded for a limited purpose of deciding the present petition only.

July 8, 2019
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(SHEKHER DHAWAN)
JUDGE

Speaking/Reasoned	Yes
Reportable	Yes