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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M- 24373-2018

Date of Decision : July 18, 2019

Gourav Bansal Petitioner

Versus

State of Punjab Respondent

2. CRM-M- 24316-2018

Gursewak Singh Petitioner

Versus

State of Punjab Respondent

3. CRM-M- 25086-2018

Dilpreet Singh Petitioner

Versus

State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. Rau P.S.Girwar, Advocate,
for the petitioner (s).

Mr. Pawan Sharda, Sr. DAG, Punjab,
for respondent-State .

SHEKHER DHAWAN, J.

All the above titled three petitions have been filed under

Section 482 of the Code of Criminal Procedure seeking quashing of FIR

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No.6 dated 25.5.2016 under Sections 409, 420 and 120-B IPC and Section 13(1)(D) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short, "**the Act**") registered at Police Station Vigilance Bureau, Phase-I, Mohali, Punjab. Therefore, all these petitions are being disposed of with this common order.

2. Facts relevant for the purpose of decision of the present petitions are being taken from CRM-M- 24373-2018; petitioner himself was a candidate for appointment to the post of Junior Engineer in Punjab Urban Development Authority (for short, "**PUDA**") and admit card was issued to him. As per the prosecution case, on the basis of source report by Vigilance Bureau, Patiala, there was suspicion of leakage of question paper and on that basis, Vigilance Bureau, Punjab conducted an enquiry. During the said enquiry, it had come on record that Department of Local Government, Punjab had issued a public notice dated 1.7.2015 advertising various posts in the Municipal Corporation, Municipal Council, Nagar Panchayats, Improvement Trusts in the State as well as Water Supply and Sewerage Board. The examination for the posts of Junior Engineer (Civil) was conducted in the forenoon while for the posts of Assistant Corporation Engineer (Civil) in the afternoon of 15.11.2015 by Panjab University, Chandigarh. Result of the exam was declared and names of 19 candidates appeared in the merit list of Assistant Corporation Engineers. All those candidates had also applied for the posts of Junior Engineer as well as Assistant Corporation Engineer (Civil). However, on 15.11.2015, all these 19 candidates absented from the examination of Junior Engineer (Civil) conducted in the forenoon. A specific information was received that some of these candidates were taken to Lucknow where they were

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supplied question papers as well as answer keys. When call details of one of the candidates, namely, Sandeep Singh were analyzed, the same confirmed their stay at Lucknow on 13.11.2015 and 14.11.2015. During that period, another candidate, namely, Khushwant Singh kept his mobile phone switched off, but his father Balwinder Singh was found in regular touch with another candidate, Gaurav Sharma through his mobile phone whose tower location indicated that Gaurav Sharma was also in Lucknow. During further enquiry and analysis of answers of all these 10 suspicious candidates, it was found that they had shown similarity and even the answers which were incorrect, were the same for all these candidates. As such three FIR Nos. 4, 5 and 6 were registered.

3. During investigation, it had come that Gourav Bansal was desirous of getting job of Junior Engineer. For that purpose, he met Amandeep Singh through Amit Sagar, resident of Malout, who took him to Lucknow on 20.11.2015 where a kingpin Master Ji alias Guru Ji alias Pandey Ji showed him the question paper for a consideration of Rs.21.00 Lakhs, as a result he succeeded in clearing the said examination.

4. Learned counsel for the petitioners contended that the present FIR is based on unreliable information, which was received by the Deputy Superintendent of Police. More so, no internal enquiry was conducted by Panjab University and no persons were named in the FIR. Even the result was not declared. The petitioner was not the beneficiary at all. No solved paper or any other material was taken from the possession of the present petitioners and as such, continuation of proceedings on the basis of such an FIR would be a futile exercise. On this point, reliance was placed on the decisions of Hon`ble Apex Court in **Manoj Kumar Sharma & Ors. Vs.**

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State of Chhattisgarh & Anr. 2016 (4) R.C.R. (Criminal) 145, wherein the Hon`ble Apex Court in para No. 20 observed as under:-

“20. In the above backdrop, it is also imperative to discuss the scope of inherent power of the High Court Under Section 482 of the Code. The Appellants before us filed a petition Under Section 482 of the Code for quashing of the FIR on the ground that the FIR was filed after a delay of 5 (five) years and is barred by territorial jurisdiction. The High Court, on the other hand, after taking note of the fact that the investigation is in the final stage in the matter and a charge sheet is ready to be filed before the Judicial Magistrate First Class, ordered for its continuance without taking into consideration that it is barred by law. The court at Durg did not take notice of the fact that there is a legal bar engrafted in the matter for its continuance and the proceedings have been maliciously instituted after a delay of five years with an ulterior motive for wreaking vengeance on the appellants.”

5. Reliance was placed on the decisions of Hon`ble Apex Court in **Ajay Mitra Vs. State of M.P. & Ors., 2003 (1) R.C.R. (Criminal) 674**, wherein Hon`ble Apex Court in para No. 18 observed as under:-

“18. So far as the present appellants are concerned, they came into picture much later in July 1999, when various trademarks and brands of A-1 were purchased by A-6. The appellants were not at all in picture at the time when the complainant claims to have spent money in improvement of its bottling plant on the basis of the agreement executed with Cadbury Schweppes Beverages India Pvt. Ltd. (A-1). Since the appellants were not in picture at all at the time when the complainant alleges to have spent money in improving the bottling plant, neither any guilty intention can be attributed to them nor there can possibly be any intention on their part to deceive the complainant. No offence of cheating can,

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therefore, be said to have been committed by the appellants on account of the fact that a notice was given to the complainant that the bottling agreements will not be renewed any further after expiry of the initial term. Thus, even if the allegations made in the complaint are accepted to be absolutely true and correct, the appellants cannot be said to have committed any offence of cheating as provided in Section 420 IPC.”

6. Learned State counsel while opposing the present petitions for quashing of FIR contended that the petitioner himself was a candidate for the post of Junior Engineer in PUDA. During enquiry, it has come that response of all the 19 candidates was similar. During investigation even it had come that the house-owner had made statement that the petitioner had solved the question paper at their residence. Learned State counsel mainly contended that on the basis of investigation, prosecution has already submitted the final report under Section 173 Cr.P.C. and on that basis, charges have been framed and 14 prosecution witnesses have already been examined and the next date fixed before the trial Court is 02.09.2019. The petitioners have even challenged the order of framing of charge against the accused persons and as such, there are no grounds for quashing of FIR in this case.

7. 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 the matter in controversy before this Court is for quashing of FIR in question. If the entire case of the petitioner is taken to be correct, no case is made out for quashing of the present FIR, especially when on the basis of FIR, investigation is already complete and final report

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has been submitted. Learned trial Judge has applied its mind at the time of framing of charge and after hearing both the sides, including the petitioners-accused, charges have been framed. At any rate, it cannot be said that if the FIR in question is considered, there is no material to proceed further in the trial. Rather, on the basis of information disclosed in the FIR, investigation has been concluded and final report under Section 173 Cr.P.C. has been filed and learned trial Judge has already applied its mind on that and finding a *prima facie* case against the accused-persons, framed charge against them. In the light of that, the judgment referred to and relied upon by learned counsel for the petitioners are distinguishable on facts.

8. 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 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:-

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(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;

(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.”

9. Identical matter was also before Hon`ble Apex Court in **Dineshbhai Chandubhai Patel vs. State of Gujarat and others, 2018(1)**

R.C.R.(Criminal) 617 and Hon`ble Apex Court observed as under:-

“28. Keeping in view the aforesaid principle of law, which was consistently followed by this Court in later years and on perusing the impugned judgment, we are constrained to observe that the High Court without any justifiable reason devoted 89 pages judgment (see-paper book) to examine the aforesaid question and then came to a conclusion that some part of the FIR in question is bad in law because it does not disclose any cognizable offence against any of the accused persons whereas only a part of the FIR is good which discloses a prima facie case against the accused persons and hence it needs further investigation to that extent in accordance with law.

29 In doing so, the High Court, in our view, virtually decided all the issues arising out of the case like an investigating authority or/and appellate authority decides, by little realizing that it was exercising its inherent jurisdiction under Section 482 of the Code at this stage.

30 The High Court, in our view, failed to see the extent of its jurisdiction, which it possess to exercise while examining the legality of any FIR complaining commission of several cognizable offences by accused persons. In order to examine as to whether the factual contents of the FIR disclose any prima facie cognizable offences or not, the High Court cannot

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act like an investigating agency and nor can exercise the powers like an appellate Court. The question, in our opinion, was required to be examined keeping in view the contents of the FIR and prima facie material, if any, requiring no proof.

31. At this stage, the High Court could not appreciate the evidence nor could draw its own inferences from the contents of the FIR and the material relied on. It was more so when the material relied on was disputed by the Complainants and visa-se-versa. In such a situation, it becomes the job of the investigating authority at such stage to probe and then of the Court to examine the questions once the charge sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

10. Similar view as taken by Hon`ble Apex Court in **State of Haryana and others Vs. Ch. Bhajan Lal and others, 1992 AIR (SC) 304**

11. 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 petitions are hereby dismissed in the above terms.

12. 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 petitions only.

(SHEKHER DHAWAN)
JUDGE

July 18, 2019

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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes