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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-13690-2019 (O&M)

Date of Decision : May 29, 2019

Kaushik Chatterjee

.... Petitioner

Versus

State of Haryana and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. J.S. Bedi, Senior Advocate,
with Mr. S.S.Brar, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana,
for respondent-State.

Mr. D.S. Patwalia, Sr. Advocate, with
Mr. Gaurav Rana, Advocate,
for respondent No.2.

SHEKHER DHAWAN, J.

Present petition by Kaushik Chatterjee under Section 482 of the Code of Criminal Procedure is for quashing of FIR No. 452 dated 14.09.2018 under Sections 120-B, 34, 406, 408, 420 IPC registered at Police Station Civil Lines, Gurgaon and all subsequent proceedings arising therefrom.

2. Facts relevant for the purpose of decision of the present petition; that the petitioner has come with the plea that he has been falsely implicated in this case. Petitioner had joined M/s Capri Global Capital Limited, the complainant-company (for short, “**the Company**”) as

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its Group Chief Risk Officer on 4.8.2016 and resigned on 30.07.2018. During that period, Anant Saxena, promoter of M/s Zillion Infraprojects Pvt. Limited had applied for business loan for purchase of commercial property. The said application was completed by the Sales department of the Company after meeting the customer. There were two separate valuation reports regarding Unit No. 709. Report was also obtained from empaneled law firm, namely, M/s Narang & Associates for funding the property. The meeting and personal discussion with the borrower was conducted by Sandeep Arora, Zonal Credit Head – North jointly with Mayur Teredesai (Head of Credit) and Dahanveer Singh, Regional Sales Manager-Delhi and they had done the documents verification and on the basis of reports available, made recommendation and on that basis, the petitioner approved the proposal which is a formal procedure in normal course of business.

3. After the formal and final approval of the loan, there was a discussion on the legal flow confirmation of title of the property and the property was again visited by Deepak Dixit, Area Technical Manager – Delhi who was responsible for the final clearance of the property. The loan agreement was entered into between the borrower, i.e., Anant Saxena and the Company, i.e., M/s Capri Global Capital Limited. The disbursement of the loan was processed by Operations department which does not report to the petitioner in its capacity as Chief Risk Officer.

4. Subsequently, Conveyance/Sale deed was executed . More so, since November, 2016 till October, 2017, the borrower was paying installments of the loan obtained from the Company and after payment of 12 installments, he defaulted in repayment of loan and was declared as

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NPA on 28.2.2018. After more than an year, the petitioner had received a job from much larger and AAA-rated company, which is also a Multi National with Groups Head Quarter at Singapore and finally the petitioner decided to leave the complainant-Company on 30.07.2018 and joined Fullerton India Housing Finance Company Limited as its Chief Risk Officer. Meanwhile the complainant company had initiated SARFAESI proceedings against the borrower and received an order from District Magistrate, Gurgaon. Meanwhile, the complainant company also filed a complaint with Police Station, Civil Lines, Gurgaon against the borrower and a settlement was arrived at on 17.8.2018 and the borrower committed to pay all the dues over a period of time and eventually close the loan by April, 2019. But the complainant, because of personal grudge with the petitioner, filed a second complaint before the Commissioner of Police, Gurgaon on 11.09.2018 naming the petitioner as co-accused in the said loan and the present FIR (Annexure P/13) was registered. The said FIR was registered without any preliminary enquiry or without any notice for joining the investigation.

5. The petitioner has sought quashing of the FIR, Annexure P/13 on the ground that he has been falsely implicated in this case; the loan was sanctioned as per proper procedure and only formal approval was taken from the petitioner; the borrower committed to pay loan installments; petitioner had not connived with any other person and there was no material for impleading the present petitioner as an accused and the allegations are baseless. The present FIR is liable to be quashed.

6. Learned senior counsel for the petitioner raised different pleas for quashing of FIR, Annexure P/13 to the effect that loan was sanctioned

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by the complainant company on the basis of loan papers having been processed at different levels and different branches and on the basis of recommendations of all the responsible officers and report from legal experts. The allegations against the petitioner are that the loan was not sanctioned after following complete procedure and the loan has not been disbursed to the proper party, whereas the loan was sanctioned after getting the approval from the empanelled lawyers and two Valuers. Whatsoever was done by the responsible subordinate officers was endorsed by the petitioner at a later stage. Petitioner had taken all the steps to verify the credit rating of the borrower. More so, the borrower had repaid 12 installments in a period spread over one year. There was absolutely no intention on the part of the petitioner, at any stage, to deceive any body before advancement of loan. All the documents are part of report submitted by the Police under Section 173 Cr.P.C. Even if, it is a case of default in re-payment of loan, it is not a case of criminal liability on the part of the present petitioner for which FIR has been lodged.

7. Learned senior counsel for the petitioner has also referred to the documents and material having been endorsed and valuation report, which are part of report under Section 173 Cr.P.C. so as to establish that the petitioner had taken all the due care and loan was sanctioned on the basis of report submitted by the concerned officers and the petitioner had simply endorsed the same. More so, as per the statement recorded under Section 161 Cr.P.C. by the police, there are no allegations against the petitioner that he had cheated the complainant or forged any document at any stage. As such, the registration of FIR and continuation of proceedings on the basis of same, are misuse of the process of the Court and the same

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are liable to be quashed by exercising inherent powers under Section 482 Cr.P.C. In support of his arguments, reliance has been placed upon the judgments from Hon`ble Supreme Court of India in **Anand Kumar Mohatta and another vs. State (Govt. of NCT of Delhi) Department of Home and another, 2019 (1) PLJR 215; Vesa Holdings P. Ltd. and another vs. State of Kerala and others, 2015(2) R.C.R.(Criminal) 442; Inder Mohan Goswami and another vs. State of Uttaranchal and others, 2007(4) R.C.R. (Criminal) 548.**

8. Learned senior counsel for the petitioner also contended that the petitioner can take all these pleas in a petition under Section 482 Cr.P.C. apart from taking all such pleas before learned trial Judge at the time of framing of charge. On this point, reliance was placed on the decision of Hon`ble Apex Court in **Satishchandra Ratanlal Shah vs. State of Gujarat and another, 2019 (2) R.C.R. (Criminal) 145.**

9. Learned State counsel contended that the matter is pending before the Court below for consideration on report under Section 173 Cr.P.C. and charge, and as such no case is made out for filing of present petition under Section 482 Cr.P.C.

10. While arguing on this point, learned senior counsel for respondent No. 2/complainant contended that certain facts are not disputed that the police, after investigation had registered the present FIR and as per provisions of Code of Criminal Procedure, taking of cognizance for cognizable offence is exclusively within the domain of Investigating Officer and learned Magistrate is not authorized to interfere with the investigation. Police Officer has statutory duty to register the case and

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proceed with the investigation. On this point reliance was placed upon the judgment from Hon`ble Apex Court in case **State of Haryana and others vs. Ch. Bhajan Lal and others, 1992 AIR(SC) 304.**

11. Learned senior counsel for the complainant mainly contended that at this stage, the present petition for quashing of FIR is not maintainable because the Police had already submitted the final report under Section 173 Cr.P.C. after completion of investigation and the matter is now before learned Magistrate to consider the entire material and documents including all the documents referred to by learned counsel for the petitioner and to pass an appropriate order whether to frame charges against the petitioner or to discharge the accused person and at this stage, this Court should not exercise the power under Section 482 Cr.P.C. for quashing of FIR and it is not a case of rarest of rare cases. On this point, reliance was also placed on the Larger Bench decision of Hon`ble Apex Court in **Som Mittal vs. Governmnet of Karnataka, 2008 AIR (SC) 1528.**

12. Similar matter was before Hon`ble Apex Court in case **Dharmantma Singh vs. Harminder Singh and others, 2011(3) R.C.R. (Criminal) 38** wherein Hon`ble Apex Court observed that it would not be justified to interfere by exercising powers under Section 482 Cr.P.C. rather, it is for the Magistrate/trial Court to apply its judicious mind to the merits of the case and report having been submitted under Section 173 Cr.P.C.

13. On the same point, reliance was also placed on the decision of a Co-ordinate Bench of this Court in case **East India Udyog Ltd. Vs. State of Haryana and another, 2012 (2) R.C.R. (Criminal) 141**

14. Having considered the submissions made by learned counsel

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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 got registered on the basis of complaint having been made by the complainant company for commission of offence under Sections 120-B, 34, 406, 408, 420 of IPC. 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.

15. In **Ch. Bhajan Lal's case (supra)**, 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 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

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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 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

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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 action satisfying the requirements of Section 154(1) of the Code, the void 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.”

16. Learned senior counsel for the petitioner has raised certain issues so as to make out a case that the petitioner 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., after hearing learned counsel for both the parties and to pass an order to that effect. Needless to say that if the petitioner is still dissatisfied with the order passed by learned trial Judge, the petitioner 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)**.

17. Identical view was taken by Hon`ble Apex Court in

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Dharmatma Singh's case (supra), 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 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

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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..."

18. 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 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)**.

19. Section 482 Cr.P.C. deals with inherent powers of this Court. It

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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:-

- (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.”

20. 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.

21. Needless to mention that nothing observed, here-in-above,

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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.

(SHEKHER DHAWAN)
JUDGE

May 29, 2019
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes