IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-14104-2019
Date of decision: 28.03.2019

Ashok Kumar Monga **...Petitioner**

Versus

State of Haryana **...Respondent**

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Vijay Rana, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J. *(Oral)*

The petitioner prays for grant of anticipatory bail in FIR No. 859 dated 01.12.2018, registered under Sections 419, 420, 467, 468, 471 and 120-B of the IPC at Police Station Sadar Gurugram, District Gurugram.

As per the allegations in the FIR, which was registered at the instance of one Bhagat Thakran, it is stated that Ashok Kumar Monga, his son Gaurav Monga, Usha Monga and one Raj Kumar have committed cheating with the complainant by approaching him for obtaining a loan of Rs. 1.15 crore and when the loan was paid to accused Ashok Kumar Monga, he issued two cheques dated 10.10.2017 for Rs. 35 Lakh and Rs. 30 Lakh and one cheque dated 10.10.2017 for Rs. 50 Lakh was issued by Usha Monga, for the purpose of repaying the aforesaid loan, however, on presentation of the said cheques before the bank, the same were dishonoured.

Learned counsel for the petitioner submits that the complainant has already filed a complaint under Section 138 of the N. I. Act, therefore, subsequent registration of the FIR under Sections 419, 420, 467, 468, 471 and 120-B of the IPC is not maintainable.

Learned counsel for the petitioner has relied upon ***2000 (1) R.C.R. (Criminal) 707, G. Sagar Suri vs. State of U. P.***, wherein it has been held by the Hon'ble Supreme Court that if there are no allegations of any cheating and the dispute was between the directors of a company, there was no occasion for registration of FIR under Sections 406 and 420 IPC.

Learned counsel for the petitioner has further argued that in fact the petitioner has moved various applications before the concerned bank that he never opened the said account and it was his son Gaurav Monga who has fraudulently opened the account in his name and even the petitioner has been cheated.

Learned counsel for the petitioner further submitted that the petitioner has also filed a civil suit for declaration against the general public and his son where he has prayed that GPA dated 14.03.2013 is an outcome of fraud and in that suit, his son Gaurav Monga has made a statement that he has no objection if the said GPA is set aside.

Learned counsel for the petitioner has next argued that the petitioner has been falsely implicated on account of a fraud played by his son Gaurav Monga.

Mr. Gautam Diwan, Advocate has put in appearance on behalf of the complainant on his own and has argued the case.

Learned counsel for the complainant has submitted that as per the allegations in the FIR, one Raj Kumar introduced the complainant with petitioner Ashok Kumar Monga, his son Gaurav Monga and Usha Monga and petitioner told him that he is registered owner of the property i.e. plot No. 50, DLF Colony, Qutub Enclave Complex, District Gurugram, vide sale deed dated 18.01.1994 and the petitioner requested the complainant that he is in dire need of some money and wants a loan of Rs. 1.15 crore as against the aforesaid property as a security. Thereafter, an agreement was entered into between them on 19.02.2016, in which, the petitioner gave the details of the loan amount which was disbursed in his favour by way of a cheque of Rs. 35 Lakh dated 19.02.2016, another cheque of Rs. 15 Lakh dated 18.04.2016 and remaining amount of Rs. 65 Lakh was given to him on 15.10.2016. Thereafter, petitioner Ashok Kumar Monga executed two cheques and Usha Monga executed one cheque for repayment of the loan, however, on presentation of the cheques before the bank, first cheque, issued by the petitioner, was returned with remarks "fund insufficient", the second cheque, issued by the petitioner, was returned with the remarks "account closed" and the third cheque, issued by Usha Monga, was returned with remrks "kindly contact the drawer". Later on, complainant came to know that all the accused person, in conspiracy with each other, have issued bogus cheques and have executed bogus agreement and have allured him to take a huge money of Rs. 1.15 crore and they have duped other persons also by using the documents of the said property.

It is further submitted by learned counsel for the complainant that the civil suit filed by the petitioner was dismissed by the trial Court by observing that since the prayer in the civil suit is for setting aside the GPA executed by the petitioner in favour of his son and his son, by way of a compromise, has stated that he has no objection if the same is set aside, the said compromise cannot be accepted under Order 23 Rule 3 CPC as the civil court could not satisfy itself that there was a lawful compromise between the petitioner and his son. Accordingly, the civil suit was dismissed, vide order dated 03.02.2016.

Learned counsel for the complainant has further submitted that not only this, though there was an agreement with the complainant by which the plot was kept as a surety, however, the petitioner transferred the said plot in favour of his daughter Kanika, vide transfer deed dated 20.04.2014, therefore, the intention of the petitioner was to cheat the complainant from the very beginning and to allure him to part away his money.

It is further submitted by learned counsel for the complainant that the very fact that one of the cheques was issued by the petitioner from an account which was already closed also reflects the dishonest intention of the petitioner.

Learned counsel for the complainant has further submitted that anticipatory bail application of the son of petitioner, namely Gaurav Monga, has already been dismissed by this Court, vide order dated 14.03.2019 passed in CRM-M-11730-2019, therefore, the custodial investigation of the petitioner is required as the Investigating Officer has to recover the documents pertaining to the said property along with other articles/documents.

After hearing learned counsel for the parties, I find no merit in the present petition.

So far as the judgment of Hon'ble Supreme Court in ***G. Sagar Suri's case (supra)*** is concerned, there is no dispute about the settled law, however, in the present case, the cheating on the part of the petitioner is apparent as noticed above. Therefore, mere filing of a complaint under

Section 138 of the N. I. Act is no ground to deter the investigating agency from completing the investigation in the present case.

Accordingly, considering the fact that there are serious allegations against the petitioner, the present petition praying for anticipatory bail is hereby dismissed.

March 28, 2019 **(ARVIND SINGH SANGWAN)**
Waseem Ansari **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*