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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-32939-2016 [O&M]
Date of Decision : April 09, 2019

Naveen Sachdeva and another Petitioners

Versus

State of Punjab and another Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr.Sunil Chadha, Senior Advocate,
with Mr. Sharad Mehta, Advocate,
for the petitioners.

Mr. Ajay Pal Singh Gill, DAG, Punjab
for respondent-State .

Mr. N.K. Manchanda, Advocate,
for respondent No.2.

SHEKHER DHAWAN, J.

Present petition under Section 482 of the Code of Criminal Procedure is for quashing of FIR No. 51 dated 23.03.2016 (Annexure P/1) under Section 420 IPC registered at Police Station Moga City, District Moga, and all subsequent proceedings arising therefrom.

2. Learned senior counsel for the petitioners contended that the present FIR is not maintainable at all against the petitioners because as per the FIR, the real dispute is regarding adjustment of accounts and at the best payment of some amount due, for which civil liability arises. As per

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the version available with the police, on the basis of statement of complainant, upon which the present FIR was registered, is that the firm of the petitioners, namely, M/s Sachdeva Agencies was purchasing inverters and batteries from firm of respondent No.2/complainant since long and money used to be transferred to the account of M/s Lakshmi Sales Corporation Moga through bank transfers and as on 1.4.2015, an amount of Rs.10,63,250/- was due from M/s Sachdeva Agencies and even thereafter M/s Sachdeva Agencies had been purchasing goods from the firm of respondent No.2 on credit basis and M/s Sachdeva Agencies used to deposit the amount in various accounts of the owners of M/s Lakshmi Sales Corporation. On 21.07.2015, a balance amount of Rs.6,96,423/- was pending when M/s Sachdeva Agencies stopped purchasing goods from the said firm of respondent No.2.

3. Learned senior counsel for the petitioners further contended that the FIR has been registered under Section 420 IPC, but the basic ingredients of Section 420 IPC are not made out in the present case because as per Section 420 IPC, there must be dishonest inducement on the part of accused at the time of delivery of property. However, in the present case, the said ingredients are totally missing. Even if the entire version of the prosecution is taken to be gospel truth, the continuation of criminal proceedings on the basis of said FIR are misuse of the process of law and are liable to be quashed. On this point reliance was placed upon the judgments from Hon`ble Apex Court in **Rashmi Jain Vs. States of U.P. and another, 2014(13) SCC 553, Alpik Finance Ltd. Vs. P. Sadasivan 2001(1) R.C.R. (Crl.) 756; Binod Kumar and others Vs. State of Bihar and another, 2015 All SCR 293.**

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4. Having considered the submissions made by learned counsel for the parties and appraisal of record of this case, there is no dispute on the fact that the complainant as well as petitioner firm were having business transactions since long and were have running account. At the best, the matter relates to some outstanding amount against the petitioners for which appropriate remedy is civil proceedings before the Court of competent jurisdiction. More so, the basic ingredients of the offence under Section 420 IPC are not made out. Section 420 IPC is extracted below:-

“420. Cheating and dishonestly inducing delivery of property.—
Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

5. The above provisions of law make it ample clear that for constituting an offence of cheating, there must be dishonest inducement by a person to deliver any property to any person, but the in present case, there was no such dishonest inducement rather, it was a part of business transaction.

6. In **State of Haryana Vs. Bhajan Lal, 1992 SCC (CrI.) 426**, the scope and ambit of Section 482 Cr.P.C. was considered by Hon`ble Apex Court and following guidelines were laid-down:-

"(1) Where the allegations made in the first information report or the complaint, 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.

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(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

7. Similar view was taken by Hon`ble Apex Court in **Rashmi Jain and Alpic Finance Ltd. cases (supra)**.

8. In view of the law laid down by Hon`ble Apex Court and the facts of the present case, the present petition stands allowed and FIR No. No. 51 dated 23.03.2016 (Annexure P/1) under Section 420 IPC registered at Police Station Moga City, District Moga, and all subsequent proceedings

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arising therefrom are quashed qua the petitioners.

(SHEKHER DHAWAN)
JUDGE

April 09, 2019
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes