

***IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH***

**Criminal Misc. No. M-44238 of 2016
Date of Decision:-21st May, 2019**

Mandeep Saini

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present:- Mr. Parveen K. Kataria, Advocate
for the petitioner.

Mr. Harsimar Singh Sitta, AAG, Punjab.

Mr. J.S. Virk, Advocate
for respondent No.2.

MANOJ BAJAJ J.

Petitioner Mandeep Saini d/o Deepak Saini has filed this petition under Section 482 Cr.P.C. for quashing of FIR No.19 dated 29.2.2016, under Sections 406 and 420 IPC, registered at Police Station Kot Isse Kha, District Moga and consequential proceedings arising out of it.

According to the petitioner, the FIR is nothing but an abuse of process of law, which has been lodged by the complainant/respondent No.2, who is an accused in a complaint case dated 09.10.2015 under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as 'the

Act') brought by her for dishonour of two cheques bearing No.000104 and 000105 amounting to Rs.7,00,000/- and Rs.3,00,000/- respectively.

The FIR (Annexure P-1) lodged on the basis of complaint given by respondent No.2 contains the allegations that complainant being Panchayat Secretary had gone to District Court, Chandigarh a year ago for official work and after finishing the same he visited the shopping mall. There complainant met Mandeep Saini (petitioner) by chance and after introduction they both exchanged their mobile numbers. Mandeep Saini allegedly asked complainant for a monetary help of Rs.50,000-60,000/- with an assurance to return soon. The complainant on humanitarian ground deposited a sum of Rs.50,000/- approximately in her account number 0141000108084924 with Punjab National Bank, Kot Ise Khan, District Moga. However, even after one month, the accused neither called him nor returned the money. Upon demand, it was assured that after arranging the money, she would return the money to the complainant. When complainant called her again, she extended threats on the ground of her links with Senior Superintendent of Police and to implicate him in a false case. It was further alleged that accused asked him to come to Zirakpur to take back his money, however, she filed a false complaint on the ground that Rajwant Singh came to her flat and used abusive language. The complainant was called at Police Station, Zirakpur to settle the matter. According to complainant, on 03.7.2015 he alongwith other Secretaries again went to Chandigarh for official work and after finishing the job he reached the Police Station, Zirakpur as he was called by SHO Deep Inder to patch up the matter. It was narrated that in the police station, the police officials misbehaved and

snatched his mobile phone forcibly and he was made to sign two cheques amounting to Rs.7,00,000/- and Rs.3,00,000/- at gun point in favour of accused Mandeep Saini, besides obtaining his signatures on 2-3 blank papers also. According to him, he made various visits to Senior Superintendent of Police, Mohali for registration of the case against accused persons, however, his efforts proved futile.

On the complaint, an inquiry was marked by Senior Superintendent of Police Moga, which was looked into by the Superintendent of Police (I), Moga and as per the inquiry report dated 23.1.2016, the offence was found to have been committed by Mandeep Saini d/o Deepak Saini alone and the cognizance was taken against her by registering the impugned FIR on 29.2.2016, under Sections 406 and 420 IPC.

In this petition, notice of motion was issued on 14.12.2016.

The said order reads as under :-

“Inter alia, it has been contended by learned counsel for the petitioner that FIR is nothing but counter-blast to the complaint moved under Section 138 of Negotiable Instruments Act by the petitioner. In fact, petitioner had allured by the complainant-Rajwant Singh and received a sum of Rs.10 lac on the pretext for sending her abroad. When the matter could not be finalized, Rajwant Singh returned the said amount by way of two cheques dated 23.7.2015 and 01.8.2015 in the sum of Rs.7 lacs & Rs.3 lacs respectively, to be drawn at HDFC Bank. Both the complaints are pending trial before the Judicial Magistrate at Dera Bassi, SAS Nagar Mohali (Punjab).

Notice of motion for 07.04.2017.

In the meanwhile, further proceedings before the trial Court shall remain stayed.”

However, in response to the petition, no reply was filed either by the State or by the complainant despite various adjournments.

Learned counsel for the petitioner contends that the FIR has been lodged to pressurise the petitioner/accused to withdraw her complaint under Section 138 of the Act, as two cheques amounting to Rs.7,00,000/- and Rs.3,00,000/- issued by Rajwant Singh (complainant in the present case) stood dishonoured. Learned counsel further refers to the complaint dated 09.10.2015 under Section 138 of the Act (Annexure P-3) to contend that in fact the petitioner had paid a sum of Rs.10,00,000/- to Rajwant Singh, who had promised to facilitate her to visit abroad. Since he had failed to keep his promise, therefore, to return the said amount of Rs.10,00,000/- he had issued two cheques and that too pursuant to compromise arrived at between parties. The affidavit (Annexure P-2) by respondent No.2 Rajwant Singh was sworn with regard to compromise and for return of said amount to the petitioner.

Learned counsel for the petitioner contends that after dishonour of abovesaid cheques, the statutory notice was issued on 27.8.2015 and upon receipt of the same, the complainant/respondent got this impugned FIR lodged to exert pressure. It is further contended that as per the FIR, the alleged occurrence is of 03.7.2015, whereas the complaint was given by the complainant on 17.9.2016, which further lends strength to the argument of the petitioner that the same is filed with malafide intentions. It is further

contended that the version given in the FIR is not worth believing as according to the complainant Rajwant Singh that he met the complainant in a shopping mall and after introduction, agreed to extend the alleged loan of Rs.50,000/- in the first meeting itself.

On the other hand, learned counsel for respondent No.2 has not disputed the fact of issuance of cheques in favour of petitioner and the pendency of the complaint under Section 138 of the Act. According to him, complainant had given a loan of Rs.55,000/- on four different dates i.e. Rs.30,000/- on 07.10.2014, Rs.10,000/- on 22.10.2014, Rs.10,000/- on 31.10.2014 and Rs.5000/- on 05.11.2014. Learned counsel further contends that since the amount of loan was not returned by the accused, therefore, he has suffered a wrongful loss and the offence of cheating is clearly made out. According to him, the petition is founded on disputed facts, which can be effectively decided after the parties are allowed to adduce evidence.

After hearing learned counsel for the parties and examining the material on record, this Court finds that the case set up by the complainant has not at all explained delay of more than a year in giving his complaint in respect of the alleged occurrence. A perusal of complaint shows that it was given by the complainant on 17.09.2015, wherein, the first part contains the allegations of advancement of friendly loan to accused Mandeep Saini in October-November 2014. The alleged amount was deposited in her bank account on different dates, however, after demand by complainant, the amount was not returned. The second part of the complaint mentions about the occurrence dated 03.7.2015, when the complainant allegedly went to Police Station, Zirakpur to see accused Mandeep Saini for the purpose of

receiving back his money and compromise. There accused No.2 and 3 (officials of the police station) gave him beatings, snatched his mobile and forced him to sign the two cheques at gun point, allegedly in favour of Mandeep Saini for a sum of Rs.7,00,000/- and Rs.3,00,000/- respectively. Though complaint dated 17.9.2015 was inquired into and it was found that Mandeep Saini committed a fraud, who cheated the complainant, however, no offence was found to have been committed by the police officers of Police Station, Zirakpur. It is apparent that the specific allegations levelled by the complainant in the complaint regarding occurrence dated 03.7.2015 in respect of beatings, snatching of phone or forcing him to sign two cheques were found to be untrue as no cognizance was taken in respect of the alleged offences. Undisputedly, Rajwant Singh is facing prosecution in a complaint case under Section 138 of the Act in respect of dishonour of the two cheques for a sum of Rs.7,00,000/- and Rs.3,00,000/- respectively, issued by him in favour of Mandeep Saini. The dates on the said cheques are of July and August 2015 and the statutory notice for demand of payment was issued by Mandeep Saini on 27.8.2015. Therefore, it is absolutely clear that after service of the said notice, the complainant swung into action and submitted complaint on 17.9.2015 to set up his defence in the said complaint case that the cheques were obtained from him forcibly. The issuance of notice by the petitioner under the Negotiable Instruments Act, 1881 and reply by Rajwant Singh were also noticed in the inquiry by the police, but strangely a conclusion was drawn to register the case against Mandeep Saini for committing the offence under Sections 406 and 420 IPC, i.e. non-payment of alleged loan amount.

Apart from the above, a close analysis of impugned FIR leaves no room for any doubt that the ingredients to constitute the offences punishable under Sections 406 and 420 IPC are missing. The definition of criminal breach of trust is contained in Section 405 Indian Penal Code and the same reads as under :-

“405. Criminal breach of trust

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust".

A reading of the above makes it clear that essential ingredients to constitute criminal breach of trust is “Entrustment of Property” and “Dishonest use of the same”. As per facts given in the FIR, the element of entrustment is missing and it is the case of the complainant himself that it was a voluntary act on his part to advance a friendly loan to Mandeep Saini for her domestic use. The necessary ingredients of “entrustment” and “dishonest use” are lacking in the above FIR, and, therefore, the cognizance in respect of the offence under Section 406 IPC is not justified.

Similarly, the offence of cheating is defined under Section 415 Indian Penal Code, which reads as under :-

“415. Cheating

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or

intentionally induces the person so deceived to do or omit to do anything which he would not do omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation. A dishonest concealment of facts is deception within the meaning of this section.”

Again there is no inducement on the part of the petitioner muchless by deceiving him and therefore the offence of cheating would not be made out, merely because of breach of promise by the borrower to return the loan amount. This Court is not oblivious of the fact that allegations of the complainant regarding signing the cheques at gun point were not believed as no offence in that regard was registered by the police. The alleged loan of approximately Rs.50,000/- was advanced by complainant in the year 2014 and it does not appeal to prudence as to why respondent No.2 issued the cheques worth Rs.10,00,000/- in July/August 2015 in favour of the petitioner Mandeep Saini. The allegations of the complainant regarding advancement of loan are further belied by his own act and conduct as by issuance of cheques in favour of Mandeep Saini, it is evident that he owed money towards her and to discharge the said liability, the cheques were issued. Therefore, cognizance in respect of the offence under Section 420 IPC is also not sustainable.

Even for the sake of arguments if it is assumed that it was actually a loan, as alleged by the complainant, which the accused (petitioner) had failed to return, even then it would not be a penal offence punishable under the Indian Penal Code. It would be useful to rely upon the judgment of Hon'ble Supreme Court in Satishchandra Ratanlal Shah vs.

State of Gujarat and another in Criminal Appeal No.9 of 2019 (Arising out of SLP (Crl.) No.5223 of 2018), decided on 03.1.2019, wherein the penal proceedings based on the similar grounds of non-payment of loan amount were set aside and the said proceedings based on the FIR were quashed. The relevant paragraphs are reproduced hereunder :-

“ xxx xxx

10. *Before we analyse this case, it is to be noted that the criminal application preferred by the accused before the High Court was against the order of the Trial Court at the stage of framing of charges, wherein it is the duty of the Court to apply its judicial mind to the material placed before it and to come to a clear conclusion that a prima facie case has been made out against the accused. An order for framing of charges is of serious concern to the accused as it affects his liberty substantially. Courts must therefore be cautious that their decision at this stage causes no irreparable harm to the accused.*

11. *Coming to the aspect of quashing of the charges, it is well settled that such exercise needs to be undertaken by the High Court in exceptional cases. It is also well settled that the framing of charges being initial stages in the trial process, the court therein cannot base the decision of quashing the charge on the basis of the quality or quantity of evidence rather the enquiry must be limited to a prima facie examination. [refer to State of Bihar vs. Ramesh Singh, 1977 CriLJ 1606].*

12. *Having observed the background principles applicable herein, we need to consider the individual charges against the appellant. Turning to Section 405 read with 406 of IPC, we observe that the dispute arises out of a loan transaction between the parties. It falls*

from the record that the respondent No.2 knew the appellant and the attendant circumstances before lending the loan. Further it is an admitted fact that in order to recover the aforesaid amount, the respondent No.2 had instituted a summary civil suit which is still pending adjudication. The law clearly recognizes a difference between simple payment/investment of money and entrustment of money or property. A mere breach of a promise, agreement or contract does not, ipso facto, constitute the offence of the criminal breach of trust contained in Section 405 IPC without there being a clear case of entrustment.”

At this stage it will be useful to refer the pronouncement of the Hon'ble Supreme Court on exercise of power under Section 482 Cr.P.C. The inherent powers contained in Section 482 Cr.P.C. are meant to deal with a situation where the criminal proceedings are attended with malafide intentions and the exercise of inherent powers is warranted to prevent the abuse of the process of law. In **State of Haryana and others** vs. **Ch. Bhajan Lal and others**, 1992 Supp(1) Supreme Court Cases 335, the Apex Court has held as under:-

“The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482, Cr.P.C. can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:-

(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.

- (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 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 specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of 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.

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

The above view was further adopted by the Supreme Court in **M/s Pepsi Foods Ltd. vs. Special Judicial Magistrate 1997(4) RCR (Criminal) 761.** Further in **S.W. Palanitkar vs. State of Bihar 2001(4) RCR (Criminal) 572,** the proceedings under challenge pertained to a complaint case brought under Chapter XV of the Code of Criminal Procedure and the Hon'ble Supreme Court while dealing with the powers under Section 482 Cr.P.C., made the following observations :-

“27.The approach and considerations while exercising power and jurisdiction by a Magistrate at the time of issuing process are to be in terms of Sections 200 to 203 under Chapter XV of Criminal Procedure Code, having due regard to the position of law explained in various decisions of this Court, and whereas while exercising power under Section 482 of Criminal Procedure Code the High Court has to look at the object and purpose for which such power is conferred on it under the said provision. Exercise of inherent power is available to the High Court to give effect to any order under the Criminal Procedure Code, or to prevent abuse

of the process of any Court or otherwise to secure the ends of justice. This being the position, exercise of power under Section 482 Criminal Procedure Code should be consistent with the scope and ambit of the same in the light of the decisions aforementioned. In appropriate cases, to prevent judicial process from being an instrument of oppression or harassment in the hands of frustrated or vindictive litigants, exercise of inherent power is not only desirable but necessary also, so that the judicial forum of the Court may not be allowed to be utilised for any oblique motive. When a person approaches the High Court under Section 482 Criminal Procedure Code to quash the very issue of process, the High court on the facts and circumstances of a case has to exercise the powers with circumspection as stated above to really serve the purpose and object for which they are conferred.”

Apart from it, there is nothing on record to indicate that anything had happened within the jurisdiction of Police Station Moga, where the cognizance of the alleged offences contained in the impugned FIR was taken by the police. Sections 177 and 178 of the Code of Criminal Procedure contemplate the place of inquiry and trial of an offence, which read as under :-

“177. Ordinary place of inquiry and trial-Every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed.

178. Place of inquiry or trial.-(a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local

- area and partly in another, or
- (c) where an offence is a continuing one, and continues to be committed in more local areas than one, or
 - (d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.”

A perusal of the FIR reveals that a common case was set up by respondent, as far as the occurrence dated 03.7.2015 is concerned, which took place at Police Station, Zirakpur and specific allegations were made against the two police officials. Once this material part of the complaint was disbelieved, there was no occasion for the police to register the FIR only in respect of the offences punishable under Sections 406 and 420 IPC at Moga. The transaction of advancement of loan and non-payment of the same by petitioner is not only a dispute primarily of a civil nature but the ingredients of these offences are also missing as discussed above.

This Court is well aware that mere lack of territorial jurisdiction may not be a ground for quashing the FIR but in the peculiar facts and circumstances of this case, it can be safely held that the Police Station Moga, had no jurisdiction to entertain the complaint particularly in respect of the offences under Sections 406 and 420 IPC for which the FIR has been registered. There may be cases, where after registration of a case, the investigation could be transferred to the police station, where the territorial jurisdiction lies, but in the background of this case and the conduct of the complainant, it is apparent that the complaint was purposely

given to get this tailor-made FIR registered against the petitioner.

In view of the above facts and circumstances of this case, this Court finds that the present case is a fit case for exercise of power under Section 482 Cr.P.C. as the FIR is nothing but an abuse of the process of the law. Resultantly, the impugned FIR No.19 dated 29.2.2016, under Sections 406 and 420 IPC, registered at Police Station Kot Isse Kha, District Moga and the proceedings arising out of it are hereby quashed.

The petition stands allowed.

21st May, 2019
Vijay Asija

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No