IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.5882 of 2020 (O&M)
Decided on: 27.02.2020

Kislay Panday

....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Kanwaljit Singh, Sr. Advocate
with Mr. Munish Gulati, Advocate
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

Mr. J.S. Bedi, Sr. Advocate
with Mr. Lovekirat S. Chahal, Advocate
for the complainant/respondent No.2.

ARVIND SINGH SANGWAN, J.

CRM No.6382 of 2020

Heard.

Allowed as prayed for.

Document (Annexure P25) is taken on record subject to all just exceptions.

CRM-M No.5882 of 2020 (O&M)

Prayer in this petition is for quashing of FIR No.216 dated 04.06.2019 registered under Sections 120-B, 384, 385, 388, 465, 468, 469, 464, 467, 389, 420, 506, 471, 476, 511 of the Indian Penal Code, 1860 (in short 'IPC') at Police Station Udyog Vihar, Gurugram, District

Gurugram and all other subsequent proceedings arising therefrom.

Learned senior counsel for the petitioner has argued that the petitioner is presently residing in U.S.A. and has filed the present petition through his power of attorney. It is further submitted that the petitioner is possessing the qualification of L.L.B. and L.L.M. and is a practicing Advocate in Delhi and is a member of the Supreme Court Bar Association. It is argued that as per the allegations in the FIR, registered at the instance of respondent No.2/complainant, he is working as a Chief General Manger of Indiabulls Group of Companies at Gurugram and the company is having good reputation. The complainant received a phone call in the last week of April, 2019 from a person who told him that he is a well-wisher of Indiabulls Group of Companies and he has many internal documents in his possession which can damage the reputation of his company. The said person threatened that he will circulate the same in the various department and can cause huge financial loss in thousand of crores of rupees to his company. When the complainant enquired about his name and to disclose his identity, the caller said, for that complainant will have to meet him. Again on the next day, a similar call was received from Phone No.9899419447, 9870278925 wherein, the called asked him to make a call from the WhatsApp or internet application and not to call on landline. He further threatened that the complainant will face dire consequences if he fail to meet his demand and upon this, the complainant requested him to share the information through documents and e-mails. On 27.05.2019, the senior official of the complainant also received a call from a person named Vikas Shekhar on WhatsApp in which again the same story was repeated and when the complainant did not respond, he threatened that they are not taking him seriously. As per further allegations in the FIR, this happened again and in order to check the veracity of Vikas Shekhar as to what is his demand, when asked the caller, he informed him that the complainant should pay Rs.10 crores in two parts. Rs.5 crores as initial installment where he will show the copy of the complaint sent to various government department and second installment of Rs.5 crores after the withdrawal of the complaint. The FIR further states that believing that Vikas Shekhar and his associates are a gang of blackmailing and cheaters who by creating false complaints and distorted reports are making extortion calls to the complainant, the police was requested to register an FIR against Vikas Shekhar and his associates and accordingly, the FIR was registered.

Learned senior counsel for the petitioner has further argued that thereafter co-accused Vikas Shekhar was arrested and in his disclosure, he made the following statement:-

> *"During this period, I met* ***'Dr. Kislay Pandey'*** *who is practicing Advocate in Delhi and with the passage of time, I started look after the work relating to his private business and had become very close to him, That* ***Dr. Kislay Pandey*** *made me understand during the discussion that to purchase shares of 2-3 Finance companies and thereafter, after few days, the money can be usurped by leveling false allegations against the companies from which, the shares have been purchased. As per his directions, I worked and purchased few shares of Indiabulls company and DHFL Finance Companies. After few days, I was called by* ***Dr. Kislay Pandey*** *in his office and obtained my signatures on some papers and told that*

the complaint has been lodged to the government officers against the DHFL and these people shall try to contact you. After some days, I was called by ***Dr. Kislay Pandey*** *in his office and gave Rs.5.00 lacs to me at last Sunday and informed that the compromise has been effected with the Officers of DHFL and I got Rs 20.00 lacs for the compromise. Thereafter, he moved withdrawal letter against the applications given against DHFL and got the cases consigned to record room. In order to do all this, he used to talk through Whatsapp chat and internet calling. The payment which I received, the complete details are available in the Mobile Phone lying at my flat in Mayur Vihar and I can get the same recovered.* ***Dr. Kislay Pandey*** *also used to get illegal work done from me. Few days earlier, he gave cash amount to me and got the same converted into gold, the details of which are also lying in that Mobile phone, which I can get recovered. Similarly, after preparing complaint against Indiabulls Finance Company, he obtained my signatures on 8-10 papers and the applications were given to the senior officers by levelling allegations against Indiabulls. Similarly,* ***Dr. Kislay Pandey*** *told me by preparing withdrawal letter that as the discussion started with Indiabulls company, we will send these withdrawal letter to the concerned officers. The applications which were prepared against Indiabulls company, the same were prepared by* ***Dr. Kislay Pandey*** *and his associates. All these withdrawal letters have been kept by me in my village Sri Krishan Nagar, Sitamandi, Police station Sitamandi, Bihar. As directed by* ***Dr. Kislay Pandey****, I made Whatsapp internet calling in the Indiabulis company and threatened them to pay Rs. 10.00 crores and also told them that if they do not pay this amount then I will lodge complaint against them with the government officers. I also told that I am having sufficient* *material against Indiabull. Despite making several internet calls, no reply was given by the officers of Indiabulls, the information regarding the same was given to **Dr. Kislay Panday**. I have continuously talked with these officers through Whatsapp calling for the last about 1½ - 2 months. I felt that the company officials shall contact me on my phone due to fear as I had given my two mobile numbers i.e. 98994-19447 and 98702-78925. General I used to switch off my these numbers but I used to know on the basis of missed calls that who have made call to me but I have not received any call back from Indiabulls. I had demanded Rs. 10.00 crores (two installments of Rs.5.00 crores) from Indiabulls company telephonically. **Dr. Kislay** had talked to me for the preparation of complaint by leveling for misappropriation of Rs.500 crores in respect of Pashav Nath Builders and **Dr. Kislay** had been talking through whatsapp message in this regard, this record is also lying available in my Mobile Phone and I can get it recovered from my village as I am residing in rented accommodation and have no source of income. I have borrowed money from many people and I had to repay the same and wife is also pregnant. Keeping in view the expenses regarding the same, I was very upset and under tension due to which, I have committed offence on the saying of **Dr. Kislay Pandey**. That the signatures of the witnesses have been obtained on the disclosure statement and the accused has also put his signatures on it. Thereafter, the accused had also disclosed that some documents are lying in his car bearing registration No.DL-7CN-8981. As per this disclosure statement, two booklet of Indiabull company, Annual report for the year 2017-18 of the sister concern of Indiabulls Real Estate and the annual report of Indiabuls Home Loan for the year 2016-17 have been taken out from*

> *the seat cover of Maruti Wagan R bearing No. DL-7CN-8981 and have been produced and the same have been taken into police possession vide separate memo. Thereafter, the accused has further disclosed during interrogation that some fake documents duly prepared pertaining to Indiabulls company and one my Laptop in which, I have kept secret information and two Mobile Phone through I had talked, have been kept in secret place in my House i.e. Village Krishan Nahar, Sitamandi, Police Station Sitamandi, Bihar and some documents have been kept at House No.874, Jai Amba Apartment, Mayur Vihar 3, Delhi and I can get it recovered. Apart from the aforesaid company, I had also prepared the information regarding other few companies so that more money may be extorted with the same, which have been kept by me in a secret place in my village Sri Krishan Nagar, Sitamandi, Police Station Sitamandi, Bhiar and some documents have been kept at 874, Jai Amba Apartment, Mayur Vihar 3, Delhi and I can get it recovered."*

Learned senior counsel for the petitioner has also submitted that the disclosure statement of Vikas Shekhar is not binding on the petitioner as Vikas Shekhar was a client of Magnum Juris LLP Limited, a law firm run by the petitioner and the petitioner has filed certain petitions on behalf of Vikas Shekhar and therefore, nothing has come against the petitioner. It is further submitted that, thereafter, another disclosure statement was made by the accused Vikas Shekhar on 13.06.2019 in which he has stated that the father of the petitioner – Ram Mani Panday (co-accused, who was also arrested) used to work with him and prepared the petition and application on the basis of false and fake documents. These applications were got prepared by Puneet

Verma Advocate, Purva Advocate, Anu Priya Advocate, Pallavi Advocate, besides one person namely Sanjay Mishra, who used to do the fake work and money transactions. It is further stated in this disclosure statement that the petitioner – Kislay Panday and his father Ram Mani Panday used to give him cash amount and financial assistance and they had three different addresses. The petitioner – Kislay Panday and his father Ram Mani Panday told him that they are facing criminal prosecution in four cases registered against them in Police Station Simapuri, New Delhi.

Learned senior counsel for the petitioner has, thus, argued that only on the basis of two disclosure statements of Vikas Shekhar, the petitioner has been nominated in the FIR and therefore, nothing has come against him. It is further argued that the petitioner has moved an application for anticipatory bail before the Court of Sessions at Gurugram and the same were dismissed and even the second petition for anticipatory bail was dismissed on 30.07.2019 and thereafter, the petitioner has traveled abroad apprehending his arrest.

Learned senior counsel for the petitioner has also submitted that the police during the investigation has issued a notice under Section 41(a) of the Code of Criminal Procedure to the sister of the petitioner to put pressure on him. At that time, the petitioner was in Dubai and some officials of Indiabulls Group of Companies, visited him and thereafter, they published a public apology on behalf of the petitioner which show that the complainant party is exerting pressure upon the petitioner.

Learned senior counsel for the petitioner has also argued that even Vikas Shekhar, the co-accused of the petitioner has filed CRM-M No.43183 of 2019 titled as Vikash Shekhar vs State of Haryana and others, CRM-M No.41793 of 2019 titled as Vikash Shekhar vs Union of India and others and CRM-M No.54504 of 2019 titled as Vikash Shekhar vs Union of India and others, praying for certain directions as he is a whistle blower against the Indiabulls Group of Companies and its officials and has prayed for issuance of a directions to various authorities to take action against them.

It is worth noticing that though the said petitions were also listed today and were withdrawn by Vikas Shekhar by passing the following order on even date:-

> *"Counsel for the petitioner on instructions submit that that since the petitioner has availed the alternative remedy before the trial Court as noticed in the order dated 5.2.2020, he may be permitted to withdraw the present petitions with liberty to the petitioner to file a fresh petition after the trial Court pass an appropriate orders on the application filed by the petitioner.*
>
> *In view of the same, the present petitions stand dismissed as withdrawn.*
>
> *Mr. Cheema, learned Senior Counsel submits that since the petitioner has withdrawn the main petitions, the miscellaneous applications, if any, be render infructuous with liberty to take alternative remedy.*
>
> *Ordered accordingly."*

Learned senior counsel for the petitioner has also submitted that the aforesaid Vikas Shekhar is still pursuing his complaint dated 06.05.2019 with the various authorities highlighting the siphoning off the money by Indiabulls Group of Companies to some other companies.

Learned senior counsel for the petitioner has also referred to a PIL titled as Citizens Whistle Blowers Forums vs Union of India in which Indiabulls Group of Companies and the complainants are respondents No.7 and 8. In the said petition, it is prayed that the direction be issued to the respondents therein to conduct an independent investigation on the complaints given by them. Learned senior counsel has, however, submitted that the said petition is pending before the Delhi High Court.

Learned senior counsel for the petitioner has further argued that the petitioner is entitled to protection under Section 29 of the Advocates Act as well as under the Whistle Blowers Protection Act, 2014 as he and Vikas Shekhar are acting towards the larger interest of the investors of Indiabulls Group of Companies.

Learned senior counsel for the petitioner has, lastly, argued that the petitioner may be granted the concession of anticipatory bail and he may be permitted to come back to India and face the proceedings, in accordance with law.

Since the petition filed by Vikas Shekhar was also listed, learned counsel for the State, assisted by the Investigating Officer as well as learned senior counsel for the complainant/respondent No.2, have also appeared in the present case of their own.

Before referring to the arguments of counsel for the State as well as learned senior counsel for the complainant, it would be relevant to mention that on a Court query whether the petitioner, his father Ram Mani Panday (co-accused) or Vikas Shekhar (co-accused) have invested any amount to show their *locus standi* about the allegations against the Indiabulls Group of Companies, the answer is in negative.

Counsel for the State, on instructions for the Investigating Officer, has stated that since the petitioner is not appearing initially, non-bailable warrants were issued by Illaqa Magistrate and now on 26.02.2020, the trial Court has issued a proclamation to declare him a proclaimed offender.

Learned State counsel has further referred to the order dated 30.07.2019 declining the application for grant of anticipatory bail to the petitioner, to submit that a list was provided by the Investigating Officer before the Additional Sessions Judge regarding the cases in which the petitioner as well as his father (who was found to be a fake Lawyer) is pending.

For a ready reference, the list of cases registered against the petitioner – Kislay Panday, is reproduced as under:-

Sr. No.	**Case Type**	**No.**	**PS**	**Act/Sec.**	**Dated**	**Court**
1	FIR	580/2006	NA	170, 419, 406, 420, 384, 120B IPC	07.09.2006	KARKARDOOMA COURT, DELHI, DELHI
2	FIR	643/2006	NA	170, 406, 419, 420, 384, 120B IPC	15.10.2006	KARKARDOOMA COURT, DELHI, DELHI
3	FIR	–	NA	–	17.10.2006	KARKARDOOMA COURT, DELHI, DELHI

Similarly, the father of the petitioner namely Ram Mani Panday is also facing ten criminal cases and the particulars of the same are reproduced as follows:-

Sr. No.	Case Type	No.	PS	Act/Sec.	Dated	Court
1	FIR	580/2006	NA	170, 419, 406, 420, 384, 120B IPC	18.07.2006	KARKARDOOMA COURT, DELHI, DELHI
2	FIR	643/2006	NA	170, 406, 419, 420, 384, 120B IPC	18.07.2006	KARKARDOOMA COURT, DELHI, DELHI
3	FIR	CC 10/2005	NA	170, 419, 420, 120B, 106 IPC	07.08.2005	KARKARDOOMA COURT, DELHI, DELHI
4	FIR	CC No.5756/2007	NA	138 NI ACT	07.08.2007	KARKARDOOMA COURT, DELHI, DELHI
5	FIR	22/07	NA	138 NI ACT	31.08.2007	KARKARDOOMA COURT, DELHI, DELHI
6	FIR	4040/2006	NA	357 Cr.P.C.	31.08.2006	KARKARDOOMA COURT, DELHI, DELHI
7	FIR	4039/2006	NA	357 IPC	04.09.2006	KARKARDOOMA COURT, DELHI, DELHI
8	FIR	4038/2006	NA	357 IPC	04.09.2006	KARKARDOOMA COURT, DELHI, DELHI
9	FIR	SUIT NO.260/03/02	NA	138 NI ACT	04.09.2007	KARKARDOOMA COURT, DELHI, DELHI
10	FIR	95/2002	NA	336, 506, 34 IPC, 27 A ACT	04.09.2002	KARKARDOOMA COURT, DELHI, DELHI

Counsel for the State has further argued that even one another FIR has been registered against the petitioner i.e. FIR No.23 dated 13.02.2020 under Sections 419, 420, 467, 468, 471, 120-B IPC read with Section 34 IPC in Police Station I.P. Estate, New Delhi, regarding cheating of Rs.52 lacs by the complainant in the said FIR.

Counsel for the State has further submitted that the petitioner, instead of surrendering before the Court has run away from the jurisdiction of the Court and therefore, the proclamation has already been issued against him.

Counsel for the State has further argued that even from the laptop of the father of the petitioner, a copy of the application given by one lady namely Alka Rani against the former Chief Justice of India, with regard to her sexual exploitation was also found including a printout of her affidavit. It is also submitted that not only in the disclosure statement of co-accused Vikas Shekhar, the name of the petitioner has surfaced as the main accused, in a ploy of extortion against the complainant but recoveries in purusance of disclosure are also effected which shows that the disclosure made by the co-accused against the petitioner is corroborated by the recoveries. It is further stated that four other Advocates, who were working with the petitioner in the firm i.e. M/s Magnum Juris LLP Limited, namely Puneet Verma Advocate, Purva Advocate, Anu Priya Advocate and Pallavi Advocate, have also recorded their statements under Section 161 Cr.P.C. and 164 Cr.P.C. In one of the statement recorded under Section 164 Cr.P.C., Abhay Yadav has stated that he had engaged the petitioner as an Advocate regarding a matrimonial dispute with his wife but the petitioner without his knowledge and by misusing his signatures has filed a petition before the Hon'ble Supreme Court with his name against the complainant – Indiabulls Group of Companies whereas he was never a whistle blower as he stated that his signatures were obtained in a fraudulent manner. This petition was later on withdrawn by him. The another statement of Puneet Verma, Advocate under Section 164 Cr.P.C. is recorded in which he has leveled similar allegations against the petitioner. Counsel for the State has further submitted that the complainant has given a complete details of WhatsApp chat with the petitioner from his mobile phone, e-mails and documents and Sections 388 and 389 IPC were also added. Counsel for the State has, thus, submitted that not only the disclosure statement of Vikas Shekhar but from the recoveries effected thereafter, which corroborate the version as well as from the statement of the other witnesses, it has come that even on previous occasion, in a similar manner, the accused persons have blackmailed one DHFL Company and they have received a huge amount in crores of rupees. This fact has come in the disclosure statement of co-accused Ram Mani Panday, the father of the petitioner. The complete details of the amount extorted from DHFL Company is given in the disclosure statement of Ram Mani Panday.

Learned senior counsel for the complainant has additionally argued that the *modus operandi* adopted by the petitioner is to file false complaints against the financial institutions in order to blackmail them on the basis of the forged and fabricated documents and for this purpose, the petitioner used to hire clients like Vikas Shekhar for the purpose of getting their signatures and filing false petitions before the Court. It is further submitted that not only this, the petitioner has adopted a unique method of filing similar complaints against the same companies from different places in the country by hiring the services of various persons. Learned senior counsel for the complainant has also submitted that he has the instructions to say that in verbatim different complaints from different parts of the country are being filed at the instance of the petitioner against Indiabulls as a part of larger conspiracy.

Learned senior counsel for the complainant has further submitted that even the CWP No.9987 of 2019 filed before the Delhi High Court in the name of Citizens Whistle Blowers as relied upon by learned senior counsel for the petitioner was, in fact, in verbatim a copy of the petition which was filed by the petitioner by posing the aforesaid Abhay Yadav as a genuine petitioner before the Hon'ble Supreme Court of India and was later on withdrawn by Abhay Yadav.

Learned senior counsel for the complainant has further argued that since the petitioner is avoiding his arrest and the investigation qua him is still pending, this petition praying for quashing of the FIR is not maintainable.

Learned senior counsel for the complainant has further referred to judgments ***"Munshiram vs State of Rajasthan and another",*** **2018(5) SCC 678** and ***"Dineshbhai Chandubhai Patel vs State of Gujarat and others",*** **2018(3) SCC 104**, wherein the Hon'ble Supreme Court has held that if the case is at the stage of investigation, the High Court should not entertain the petition under Section 482 Cr.P.C. for quashing of the FIR.

Learned senior counsel for the complainant has referred to the judgment ***"State of Telangana vs Habib Abdullah Jeelani and others",*** **2017(2) SCC 799** wherein the Hon'ble Supreme Court has held that while deciding the petition under Section 482 Cr.P.C., for quashing of the FIR, the High Court cannot direct the police, not to arrest the petitioner as it will amount to converting the proceedings under Section 482 Cr.P.C. into 438 Cr.P.C. without satisfying its condition.

It is held by the Hon'ble Supreme Court that the practicing of filing a petition under Section 482 Cr.P.C., initially for quashing of the FIR and then seeking the relief of enlargement on bail by surrendering the petitioner before the Magistrate should be stopped.

Learned senior counsel for the complainant has further submitted that where the accused is absconding and warrants are issued against him, the FIR cannot be quashed where the offence are relating to extortion, forgery and fabrication of document. Learned senior counsel for the complainant has also relied upon the judgment ***"Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and others vs State of Gujarat and another",* 2017(4) RCR (Criminal) 523**, wherein the Hon'ble Supreme Court has held that even in case of compromise, the FIR cannot be quashed where the allegations are of serious nature.

In reply, learned senior counsel for the petitioner has argued that since the petitioner was not initially named in the FIR, the FIR is liable to be quashed and the allegations are primarily against the co-accused Vikas Shekhar and therefore, the petitioner is entitled to protection under Section 29, 30 and 33 of the Advocates Act.

After hearing the learned counsel for the parties, I find no ground to quash the FIR for the following reasons:-

> ***(a) The investigation qua the petitioner is pending and the trial Court has already issued a notice of proclamation on 26.02.2020 to declare the petitioner a proclaimed offender.***
>
> ***Even at the stage when the present petition was filed, non-bailable warrants were issued against the***

petitioner. The anticipatory bail of the petitioner was dismissed by the trial Court vide order dated 30.07.2019 and thereafter, the petitioner traveled abroad and never returned back, therefore, in view of the judgment <u>Dineshbhai Chandubhai Patel's case (supra)</u> and <u>Munshiram's case (supra)</u>, this petition is not maintainable.

(b) A perusal of the order dated 30.07.2019 in which it is noticed that the petitioner is facing criminal prosecution in three cases as well as his father namely Ram Mani Panday is also facing trial in ten FIRs, it cannot be said that the petitioners have clean antecedents.

Even in the laptop recovered from the father of the petitioner, the police found the details of the complaint given by a lady against the former Chief Justice of India along with her affidavit which reflect the conduct of the accused persons.

It has also come during the investigation that in a similar fashion the money in crores was taken by them from another firm i.e. DHFL, the details of which came in the disclosure statement of the father of the petitioner namely Ram Mani Panday.

(c) The prayer of the petitioner that he may be permitted to come to India even after dismissal of his anticipatory bail application and join the proceedings

cannot be permitted in view of <u>State of Telangana's case (supra)</u>, wherein the Hon'ble Supreme Court has clearly held that on dismissal of the anticipatory bail, no such relief can be granted in a petition under Section 482 Cr.P.C.

(d) Since the investigation qua the petitioner is still pending, considering the serious allegations against the petitioner, which have come during the disclosure of his father (co-accused) Ram Mani Panday and (other co-accused) Vikas Shekhar, which are further corroborated by the recovery effected by the police and various documents supplied by the complainant in the shape of WhatsApp messages, e-mails, etc. wherein the extortion calls were made, in view of the judgment of the Hon'ble Supreme Court in <u>Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur's case (supra)</u>, this petition praying for quashing of the FIR is not maintainable, at this stage.

(e) From the bare perusal of the FIR and the report submitted under Section 173 Cr.P.C. against the co-accused Vikas Shekhar and Ram Mani Panday, it cannot be said that on the face of it, no offence is made out against the petitioner, as per the prosecution, he is the mastermind of the entire episode of extortion as alleged by the complainant.

(f) The investigations conducted so far

demonstrates that the modus operandi adopted by the petitioner and his father Ram Mani Panday like one Abhay Yadav was used as a tool to file a petition before the Hon'ble Supreme Court against the complainant and he later on coming to know that the petitioner has misused his signed papers had withdrawn the same as he never intended to be a petitioner in the said case. Therefore, the argument that the petitioner is entitled to protection under the Advocates Act is without force as his active involvement is there as per the prosecution.

Therefore, looking into the allegations of blackmailing and extortion of money from the complainant, I do not find that from the bare perusal of the FIR it can be quashed as per the guidelines laid down in the judgment of the Hon'ble Supreme Court in "State of Haryana vs Bhajan Lal", 1992 Supp.(1) SCC 335.

In view of what has been discussed hereinbefore, finding no merit, the petition fails and is accordingly ***dismissed***.

(ARVIND SINGH SANGWAN)
JUDGE

27.02.2020
yakub

Whether speaking/reasoned Yes/No

Whether reportable: Yes/No