

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

CRM-M-13203 of 2020 (O&M)

Date of Decision : 09.06.2020

Jaspal Singh and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vikas Bali, Advocate
for the petitioners.

Mr. Ajay Pal Singh Gill, DAG, Punjab.
(appearing keeping in view advance copy served).

Mr. Prabhinder Singh Punia, Advocate
for the complainant.

Harsimran Singh Sethi, J. (Oral)

The petition has been taken for hearing through video conference due to Covid-19 pandemic.

The present petition has been filed under Section 438 Cr.P.C. for the grant of anticipatory bail in respect of FIR No.001 dated 04.01.2020 under Section 406 IPC registered at Police Station, Division 4, District Police Commissionerate Jalandhar.

Learned counsel for the petitioners argues that the present FIR has been wrongly registered against the petitioners, though, the dispute in respect of payment of Rs.31 lacs to the complainant is totally non-existing and the complainant has no locus to raise the claim with regard to the

payment of Rs.31 lacs as mentioned in the allegations of the FIR as only

M/s Bhatia Sales Corporation, which firm entrusted the money to the petitioner's company can claim the said repayment.

Mr. Ajay Pal Singh Gill, DAG, Punjab, who has joined the proceedings through video conference, keeping in view the service of advance copy of petition submits that the case was investigated by the Economic Wing, Jalandhar and during the investigation, it has come on record that petitioner's firm M/s Mohan Rail Components Pvt. Ltd was entrusted a sum of Rs.1 Crore, 35 lacs and the said amount was given by various financial agencies, wherein, the complainant acted as facilitator for arranging the entrusted money and surety on behalf of the firm run by the petitioners for repayment of the same.

Learned State counsel submits that out of the total entrusted amount of Rs. 1 Crore, 35 lacs, to the company run by the petitioners, a sum of Rs.31 lacs is yet to be repaid to M/s Bhatia Sales Corporation.

Learned counsel appearing on behalf of complainant has filed an application being CRM-12841 of 2020 in pursuance to order passed by this Court on 29.05.2020, so as to show the jurisdiction of the complainant to file a complaint of misappropriation of entrusted amount to be repaid to M/s Bhatia Sales Corporation on the basis of which, the FIR was registered. In the said miscellaneous application, it has been averred by the complainant that out of the total amount of 1.35 Crore entrusted to the petitioner's company by various institutions, a sum of Rs.31 lacs is still, to be returned by the company of the petitioners to M/s Bhatia Sales Corporation. As the petitioner-company was not returning the said amount,

and the complainant who facilitated for arranging the money to the petitioner's company and stood surety and on whose assurance M/s Bhatia Sales Corporation and other institutions had entrusted a sum of Rs. 1 Crore, 35 lacs to the petitioner's company paid back the remaining amount of Rs.31 lacs to M/s Bhatia Sales Corporation, which amount, admittedly was to be paid by the petitioners.

Learned counsel appearing on behalf of the complainant has attached documents to this effect that initially a statement/compromise was effected on 29.08.2016, wherein, it was agreed that amount still to be paid back to M/s Bhatia Sales Corporation, will be returned by the company of the petitioners to M/s Bhatia Sales Corporation, though, the said agreement was not signed by the petitioners. Later on another agreement was entered into between the petitioners and complainant, which was duly signed by the petitioner No.1, agreeing to return the remaining entrusted amount to the complainant. The said agreement was signed by the complainant representative of M/s Bhatia Sales Corporation as well. Those agreements are annexures R-2 and R-3 attached with the affidavit filed by the complainant.

Learned counsel for the complainant further submits that petitioners had agreed to return back the remaining amount of Rs.31 lacs out of the entrusted money to the complainant out of the total amount of Rs. 1.35 Crore entrusted to the petitioner's company. Learned counsel argues that the petitioners agreed to return the amount to the complainant, who was surety on behalf of petitioners and their company as he had returned the said amount to M/s Bhatia Sales Corporation. As the amount was not returned to

the complainant by the petitioners, though agreed more than once, the complaint was filed by the complainant against the petitioners.

Learned counsel for the petitioners states that the agreement dated 29.8.2016, which has been attached by the complainant has not been signed by the petitioners but, he does not dispute the agreements Annexures R/2 and R/3, wherein the petitioner No.1 as well as the complainant being representative of M/s Bhatia Sales Corporation had signed the same and agreed to return the remaining entrusted amount to the complainant by December 2016. Annexures R/2 and R-3 are as under:-

“Annexure R-2”

Agreement
Today, on dated 22.03.2016 regarding application
Baldev Raj Hira son of Gian Chand resident of H.No.77,

Shaheed Bhagat Singh Nagar, Pakhowal Road, District Ludhiana. Jaspal s/o Mohan Singh, Amandeep Singh c/o Jaspal Singh, Director Mohan Rail Private Limited Co. near Rail Coach Factory, Hussainpur alongwith respectable persons gather together. Both the parties by agreement took time till 03.04.2016. Both the parties will meet on 03.04.2016 regarding application and bring respective evidence.

Sd/- Baldev Mal Hira
Sd/- Jaspal Singh
Director Mohan Rail Private
R/o Company near Coach Factory
sd/- sd/- Amarjit Singh sd/-
sd/-

Annexure R-3

Agreement

I, Jaspal Singh son of Mohan Singh C/o Mohan Rail Company, Kapurthala by way of this writing agreed that I agreed to pay Baldev Raj Hira son of Gian Chand resident of H.No. 77, Shaheed Bhagat Singh Nagar, Pakhowal Road, District Ludhiana by 05.12.2016 Rs.10,00,000/- and remaining amount on 20.12.2016. This amount will be deposited in account of M/s Bhatia Sales Corporation, Jalandhar through RTGS.

Sd/- Baldev Raj Hira sd/- Jaspal Singh
for Bhatia Sales Corporation

28.11.2016

Witness:

Kirpal Singh s/o Piara Singh,
R/o 621 Urban Estate, Phagwara

sd/- Kirpal Singh

Tarlok Singh s/o Ishan Dass
R/o H.No. 237, Adarsh Nagar,
Ludhiana.

Sd/- Tarlok Singh

Learned counsel for the petitioners submits that as the disputed amount is to be paid by the M/s Mohan Rail Components Pvt. Ltd, company belonging to the petitioners only to M/s Bhatia Sales Corporation, the complainant has no locus standi to file a complaint for the return of the entrusted amount even though, it is stated that the complainant has already paid the said amount on behalf of petitioner's company, being surety, to M/s Bhatia Sales Corporation,

I have heard learned counsel for the parties and have gone through the record with their able assistance.

A huge amount of money is involved in the present case, which prima facie was entrusted to the petitioner's company and is yet to be repaid back by the petitioners, though, agreed to be returned to the complainant as far back as in 2016. Petitioners are not returning the remaining entrusted amount. Mr. V.K. Sachdeva, Advocate, who initially appeared on behalf of the petitioners conceded before this Court during the arguments that the petitioners have liability for a sum of Rs.31 lacs, which stands in the books of M/s Mohan Rail Components Pvt. Ltd belonging to the petitioners is yet to be repaid to M/s Bhatia Sales Corporation and sought time to give the modalities of repayment. Today, there is a change of counsel, who contends

that no amount is to be paid by the petitioners and the allegations alleged in the FIR are incorrect.

Prima facie, the present case involves certain facts, which need to be investigated and as the petitioners have been changing their stand during proceedings before this Court, which shows that despite admitting the liability to repay a sum of Rs.31 lacs, of the entrusted amount, no word is coming forward for the return of the same. The agreement which has been placed on record by the complainant, which has been duly signed by petitioner No.1, agreeing to repay the entrusted amount to the complainant, could not be controverted by the learned counsel for the petitioners. Once the liability to pay the amount has not been denied rather admitted before this Court during the course of hearing, now prima facie the petitioners are trying to wriggle out of their liability to repay the balance of the entrusted amount by raising plea that complainant has no locus standi to claim an amount of Rs.31 lacs, which they admittedly have to refund to M/s Bhatia Sales Corporation, even though, it is stated that the complainant has already discharged the said liability on behalf of the petitioners-company being surety. Conduct of the petitioners prima facie shows that they are trying to wriggle out of the payment of the entrusted amount by taking shelter behind the plea that M/s Bhatia Sales Corporation should claim the entrusted amount and not the complainant very well knowing that M/s Bhatia Sales Corporation has already got the said money back paid by the complainant by raising funds from his own sources. The said conduct of the petitioners does not warrant grant of concession of anticipatory bail as being prayed by petitioners, especially, when all the facts are yet to be unearthed by the

police during investigations.

No ground to allow the present petition is made out.

Dismissed.

Nothing mentioned in this order will be taken as an expression of opinion on the merits of the case.

CRMs No.12367, 12841 and 12913 of 2020

In view of the dismissal of the main petition, no order is required to be passed in above criminal miscellaneous applications.

June 09, 2020

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(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No