

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 2406 of 2019**

Atul Singh Yadav, son of Jitendra Singh Yadav, aged about 33 years, R/o House No.147, Ward No.25, P.S. City Kotwali, District Chattarpur, Madhya Pradesh

---- Petitioner**Versus**

1. State of Chhattisgarh through Station House Officer, Police Station Tarbahar, District Bilaspur, Chhattisgarh.
2. Mitesh Chouksey, son of Mahesh Chouksey, aged about 40 years, C/o Mahesh Sweets, Tarbahar, P.S. Tarbahar, District Bilaspur, Chhattisgarh.

---- Respondents

For Petitioner	: Shri Vivek Sharma, Advocate on behalf of Shri Shashank Thakur, Advocate
For Respondent No. 1	: Shri Uddhav Sharma, Govt. Advocate
For Respondent No. 2	: Shri Rishi Rahul Soni, Advocate

Hon'ble Shri Parth Prateem Sahu, Judge**Order on Board****20.10.2021**

1. The petitioner by this petition has challenged the registration of First Information Report vide Crime No.168 of 2019 and made following prayer :

“It is, therefore, prayed that this Hon'ble Court may kindly be pleased to quash the charge sheet submitted against the petitioner pursuant to the FIR vide Crime No.168/2019 at Police Station Tarbahar, District Bilaspur (C.G.), in the interest of justice.”

2. Facts of the case in nutshell are that, respondent No.2 has lodged a written complaint mentioning therein that petitioner who developed friendly relationship with respondent No.2 and thereafter, convinced him of making investment to earn

good profit. On repeated persuasion of petitioner, respondent No.2 transferred Rs.12 Lacs through RTGS from the bank account of his wife into current account of petitioner with HDFC Bank. When respondent No.2 demanded money with profit, petitioner initially made several excuses and thereafter, respondent No.2 has inquired the correctness of the fact of investment as stated by the petitioner. When he came to know that petitioner has not made investment of his amount in any of the company, but utilized it personally, respondent No.2 sent his employee on the address known to him i.e. Chhatarpur (Madhya Pradesh). In personal meeting of petitioner with the employee of respondent No.2, it has been informed that money has been handed over to uncle of petitioner who is residing at Rewa (Madhya Pradesh). Uncle of petitioner initially agreed to return back the money, but when said employee approached personally, he refused for the same and stated that money will be returned by the person to whom respondent No.2 paid. When respondent No.2 found that petitioner cheated him, a written report was lodged.

3. Shri Vivek Sharma, learned counsel for the petitioner would submit that absolutely false allegation has been levelled against the petitioner in First Information Report. Complainant himself was actively involved in conversion of books of accounts into e-books (scanning). Complainant

created e-mail in the name of aps.coresolution@gmail.com prior to the date of alleged transfer of amount of Rs.12 Lacs. There was transfer of amount of Rs.12 Lacs in the account of petitioner, but he has not utilized single penny of alleged transferred money and amount has been transferred in different accounts at the instance of complainant himself. The allegations are false, baseless and no offence as alleged can be made out against the petitioner, hence, First Information Report itself be quashed.

4. Per contra, Shri Uddhav Sharma, learned Government Advocate representing the State/respondent No.1 would submit that this petition is filed, seeking relief for quashment of First Information Report. Perusal of contents of complaint/ First Information Report would show that petitioner has obtained money from respondent No.2 by narrating false facts of investing money with return of higher rate of profit. Petitioner has not filed any document to show that he invested money in any company which was deposited in his bank account. Quashment of First Information Report is only for exceptional reasons. *Prima facie*, perusal of contents of First Information Report shows the involvement of petitioner in alleged offence, hence, he is not entitled for relief as sought for by him.
5. Shri Rishi Rahul Soni, learned counsel for respondent No.2 would submit that respondent No.2 was defrauded by the

petitioner. Petitioner induced respondent No.2 for making huge investment of Rs.12 Lacs by showing false picture of gaining higher profit. The amount deposited in the account of petitioner was not invested in company as stated by him, but utilized the same in personal capacity. The grounds raised by the petitioner in this petition may be his defence, which cannot be appreciated in this proceeding, hence, petition may be dismissed.

6. I have heard learned counsel appearing for the respective parties.
7. Petitioner has prayed for quashment of First Information Report on the ground that false and baseless allegations have been levelled against him. Deposit of amount of Rs.12 Lacs through online transfer directly in the bank account of petitioner is not denied, but admitted the same and further stated that amount has been transferred in different accounts at the instance of respondent No.2.
8. In view of aforementioned facts of the case, admission of deposit of amount in bank account of petitioner and also from the contents of First Information Report, it cannot be said at this stage that the allegations of cheating are absolutely false. The law with regard to quashment of First Information Report is well settled that First Information Report is to be quashed only for exceptional reasons and

not in a routine manner. Hon'ble Supreme Court in case of **State of Haryana and Others v. Bhajan Lal and Others** reported in **1992 Supp (1) SCC 335** has categorized some of the cases wherein inherent power under Section 482 of CrPC can be exercised to prevent abuse of process of Court or to secure ends of justice, which reads as under :

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised 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 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 Act concerned (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 Act concerned, 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."

103. 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."

9. Recently, in case of **Amish Devgan v. Union of India and Others** reported in **(2021) 1 SCC 1** Hon'ble Supreme Court has held that quashing of First Information Report can only

be in exceptional circumstances and some of the exceptional circumstances are held to be where manifestly there is some legal bar against institution or continuation of prosecution; where allegations made even if taken at face value do not constitute any offence; allegations made do not constitute cognizable offence and allegations made are so absurd and improbable that any prudent person can ever reach to a conclusion that there is sufficient ground for proceeding against accused.

10. If the facts of present case are tested on touchstone of principles laid down by Hon'ble Supreme Court in aforementioned rulings, the conclusion which comes out is that petitioner has not been able to make out a case for quashing of First Information Report registered against him under Crime No.168 of 2019 by Police Station Tarbahar, District Bilaspur, Chhattisgarh.
11. For the foregoing reasons, this petition being sans merit is liable to be dismissed and it is hereby dismissed. However, it is made clear that observations made by this Court in this order are only with respect to reliefs as claimed by petitioner in this petition only.

Sd/-
(Parth Prateem Sahu)
Judge