IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

1. CRM-M-25320-2013 (O&M)

Reebok India Company **...Petitioner**

Versus

State of Punjab and another **...Respondents**

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2. CRM-M-5210-2018 (O&M)

Jagdish Raj Sharma **...Petitioner**

Versus

State of Punjab and another **...Respondents**

Date of decision: 06.08.2021

CORAM:- HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Vipin Mahajan, Advocate
for the petitioner in CRM-M-25320-2013.

Mr. Anil Kumar Bhardwaj, Advocate
for the petitioner in CRM-M-5210-2018.

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. Prateek Gupta, Advocate
for respondent No.2/complainant in both cases.

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ARVIND SINGH SANGWAN, J. *(Oral)*

This common order shall dispose of above noted two petitions as they arise out of the same FIR, however, for the sake of convenience, the facts are being taken from the first petition.

<u>CRM-19846-2021 in CRM-M-5210-2018</u>

Prayer in this application is for staying the proceedings before the trial Court qua petitioner Jagdish Raj Sharma, during the pendency of the present petition, however, on the oral request of learned counsel for the applicant-petitioner that he is ready to advance arguments in the main case as well, the date of the main case, which is fixed for 06.10.2021, is preponed for today. Let the main case be taken up today itself with the connected case for final hearing.

<u>Main cases</u>

Prayer in these petitions is for quashing of FIR No. 103 dated 27.04.2013, registered under Sections 420, 406 and 120-B of the IPC at Police Station City Batala, District Batala, Punjab along with all the subsequent proceedings arising therefrom.

It is submitted that petitioner Reebok India Company is a Company registered under the Companies Act, 1956 and is a part of the Adidas Group.

Learned senior counsel, appearing for petitioner Reebok India Company, submits that as per allegations in the FIR, registered at the instance of complainant/respondent No.2 Sanjiv Naib, it is stated that he is running a petrol pump in the name and style of M/s Maa Bhagwati Filling Station and there is a vacant place adjoining the said petrol pump. In the month of October, 2010, petitioner Jagdish Raj Sharma approached complainant and introduced himself as Area Sales Manager of M/s Reebok India Company and further asked him to invest an amount of Rs. 50 Lakh in the company as the company is looking for a suitable place to open its outlet at Batala. After 2/3 months, petitioner Jagdish Raj Sharma again came to complainant's office and started inducing him by showing some false and fictitious sale reports of another firm, thus, he induced complainant to make investment in the company. Petitioner Jagdish Raj Sharma demanded Rs. 8 Lakh in cash to be paid to Subhinder Singh Prem, the Managing Director for approval and sanctioning of the project and executing an agreement with the complainant. Upon such allurement, the complainant gave an amount of Rs. 8 Lakh to petitioner Jagdish Raj Sharma in the presence of one Manjit Singh. On receiving the said amount, petitioner Jagdish Raj Sharma assured him that company would start its business only with complainant at Batala and asked him to start the construction and interior decoration as per the norms of the company and the complainant spent an amount of Rs. 12 Lakh for construction as well as interior decoration as designed and told by petitioner Jagdish Raj Sharma. On 28.02.2011, a rent agreement was executed between the complainant, on behalf of his firm M/s Bhagwati Creation, and Subhinder Singh Prem, Managing Director of Reebok India Company.

On 20.05.2011, the complainant received a letter of appointment of Reebok Franchise under the signature of petitioner Jagdish Raj Sharma and when the complainant asked him that the letter does not contain the approval of the Managing Director, he assured that there is no requirement as he is competent to grant approval and further told that complainant should maintain a minimum stock level of Rs. 40 Lakh and thereafter, an old stock of shoes and apparels was sent through a firm at Chandigarh. When the complainant raised objection, petitioner Jagdish Raj

Sharma again assured him that he will cover the loss if any due to old stock. It is further stated in the FIR that complainant obtained a loan from Punjab and Sind Bank, Batala and spent more than Rs. 50 Lakh on the total project, however, later on, on 28.09.2012, he received a letter that they are going to terminated the agreement. With these allegations, the present FIR was registered that petitioner Jagdish Raj Sharma, in connivance with other persons of Reebok India Company, has committed the offence of cheating and fraud.

It is worth noticing that the petition, filed by Reebok India Company, is pending since 2013 and the operation of order dated 21.05.2013, regarding issuance of non-bailable warrants against the present Managing Director of Reebok India Company, was stayed, vide order dated 20.08.2013.

Learned senior counsel further submits that the FIR has been registered against Reebok India Company through its Managing Director without any specific name, therefore, the trial Court is proceeding against the present Managing Director i.e. the petitioner in CRM-M-25320-2013 as well as against the petitioner Jagdish Raj Sharma i.e. the then Area Sales Manager on account of allegations of cheating and misappropriation of funds, as per averments made in the FIR. It is further submitted that the present Managing Director namely Eric David Hadson was never a part of any dealing between the complainant and petitioner Jagdish Raj Sharma as it is admitted case of the complainant that no authorization, in his favour, was ever issued even by the then Managing Director of the company.

Learned senior counsel further submits that in 2012, certain frauds were unearthed regarding the affairs of the company and an FIR

No. 99 dated 21.05.2012, under Sections 406, 408, 418, 477-A and 120-B of the IPC was registered at Police Station Sector 40, Gurgaon against Subhinder Singh Prem (former Managing Director) and Vishnu Bhagat (former Chief Operating Officer) and thereafter, the petitioner/company had taken over the new management of the company and the policies were revised. In August, 2012, the petitioner/company wrote a letter to M/s Bhagwati Creation, the firm of the complainant, to continue the business under the new business model adopted by the company, however, despite sufficient time, no reply was given by the complainant and, therefore, the Franchise was terminated on 13.08.2012. Even thereafter, a notice was given on 28.09.2012 that the rent agreement will also stand terminated on 30.11.2012 and as per the terms and conditions of the rent agreement, the petitioner/company has earlier deposited Rs. 1.2 Lakh, which is equivalent to three months' rent with respondent No. 2 as security deposit. It is further submitted that on 23.11.2012, respondent No.2/complainant gave a notice for recovery of Rs. 5 Lakh along with interest @ 18%. The allegations in the notice were that old stock of Rs. 40 Lakh was sent. The company gave a reply to this notice on 16.01.2013.

It is further submitted that on 05.12.2012, respondent No. 2/complainant gave a complaint against petitioner Jagdish Raj Sharma, in which the allegations of cheating were levelled against him as well as the then Managing Director, namely Subhinder Singh Prem, whose services were terminated in 2012. It is further submitted that even respondent No. 2/complainant issued a notice on 11.01.2013 claiming the arrears of rent from the petitioner/company and the same was contested by the petitioner/company.

Learned senior counsel further submits that after registration of the FIR, even a representation was given to Senior Superintendent of Police, Batala that the matter is of purely civil nature and, therefore, no offence is made out, however, the present FIR was registered.

Learned senior counsel further submits that petitioner Jagdish Raj Sharma was arrested and later on, he was released on bail as it was observed in the order dated 03.06.2012 that some settlement has arrived at between the parties.

Learned senior counsel, thus, prays for quashing of the FIR qua petitioner/company on the grounds that the same has resulted into miscarriage of justice as at the relevant time, it was Subhinder Singh Prem, who was the Managing Director of the petitioner/company and offence, if any, was committed by him, however, he has not been arrayed as an accused in this case and the present Managing Director has joined subsequently, therefore, he cannot be held liable for the same as he became Managing Director of the company on 28.03.2012.

It is further submitted that a bare perusal of the FIR would show that all the allegations are made against former Managing Director i.e. Subhinder Singh Prem and petitioner Jagdish Raj Sharma, a former employee of the company.

Learned senior counsel further argues that even in the opinion given by the District Attorney, there is a reference of Managing Director, which relates to former Managing Director Subhinder Singh Prem, who is not arrayed as an accused in this case as the present Managing Director joined much later. It is further submitted that the termination of the agreement was part of the policy of the petitioner/company and an option was given to respondent No. 2/complainant to switch over to new terms and conditions, however, having failed to do so, the same was terminated and it was followed by the termination of the rent agreement.

Learned senior counsel has referred to ***AIR 2006 SC 2780 Indian Oil Corporation vs. NEPC India Ltd. & Ors.*** to submit that it has been held by Hon'ble Supreme Court that there is a growing tendency in the business circle to convert the purely civil disputes into a criminal cases for the reason that the remedies in civil law are time consuming. Learned senior counsel has also referred to ***2000 (2) SCC 636 G. Sagar Suri vs. State of U.P.***, wherein a similar view has been taken by Hon'ble Supreme Court.

Learned senior counsel further submits that on a bare perusal of the FIR, no offence under Sections 420, 406 and 120-B of the IPC is made out against the present Managing Director as he joined on 28.03.2012 and prior to that, his predecessor has already terminated the agreement and the allegations of taking the money in cash are levelled against co-accused/petitioner Jagdish Raj Sharma.

Learned counsel, appearing for petitioner Jagdish Raj Sharma, additionally submits that in fact it is a case of civil dispute and the decision of termination of agreement was not taken by the petitioner and it was taken by the company, therefore, the petitioner cannot be held liable for any such termination of Franchise or the rent agreement as he has left the job much prior to that.

In reply, learned State counsel, assisted by learned counsel for the complainant, submits that the FIR has been registered after conducting a due enquiry and seeking the opinion of the District Attorney that offences are made out against the Managing Director of the Reebok India Company and petitioner Jagdish Raj Sharma.

Learned counsel, appearing for respondent No. 2/complainant, submits that the petitioners have not brought the correct facts on record as it was on an allurement given by petitioner Jagdish Raj Sharma that he can procure the Franchise of M/s Reebok India Company for the complainant, the complainant has paid Rs. 8 Lakh in cash to Jagdish Raj Sharma, Area Sales Manager of the company. It is further submitted that Subhinder Singh Prem and Vishnu Bhagat were the employees of the company and, therefore, the FIR was registered against the petitioner/company.

Learned counsel for respondent No. 2/complainant, on the basis of the averments made in the FIR, further argues that on the basis of the allurement given by petitioner Jagdish Raj Sharma and others, the complainant has spent Rs. 50 Lakh on construction, interior decorations and investment on the stock. It is further submitted that instead of fresh stock, old stock was given to the complainant by petitioner Jagdish Raj Sharma and, therefore, offence under Sections 406 and 420 is apparently made out. It is also argued that in pursuance to rent agreement, which was the part of the Franchise allotted to complainant, even the arrears of rent were not paid as the rent agreement was abruptly terminated by the company.

In reply to arguments raised on behalf of petitioner Jagdish Raj Sharma, learned counsel for respondent No. 2/complainant has further submitted that in fact there are direct allegations against him in the FIR and that he has allured the complainant on the basis of false and fictitious documents and took Rs. 8 Lakh in cash for providing Franchise of the company.

In reply, learned senior counsel has argued that in the affidavit of respondent No. 2/complainant, there is no denial to the fact that an offer was given by the petitioner/company to the complainant to switch over to new terms and conditions, however, the same was not agreed by the complainant and it is also not denied that the present Managing Director joined on 28.03.2012, which is much after the termination of the said agreement.

After hearing learned counsel for the parties, I find no merit in the petition filed by petitioner Jagdish Raj Sharma (CRM-M-5210-2018).

A perusal of the FIR shows that there are direct allegations against him of committing fraud. Petitioner Jagdish Raj Sharma has relied upon certain documents, which cannot be termed as the documents of unimpeachable character as the same are disputed by learned State counsel as well as learned counsel for the complainant.

Even otherwise, it is well settled principle of law that while entertaining a petition, filed under Section 482 Cr.P.C., the Court is not to look into the defence evidence of the accused, rather, it has to see whether from a bare perusal of the FIR, the offences are made out or not.

Accordingly, the petition filed by petitioner Jagdish Raj Sharma, bearing CRM-M-5210-2018, is dismissed.

However, I find merit in the petition, filed by Reebok India Company (CRM-M-25320-2012), limited to the extent that in the FIR, no name of the accused (the then Managing Director of M/s Reebok India Company) is given and the accused No. 1 is arrayed as M/s Reebok India Company through its Managing Director and, therefore, in the absence of any given name, no prosecution can be initiated, though in the FIR, the complainant has levelled allegations against the then Managing Director

Subhinder Singh Prem, during whose tenure, the Franchise was allotted to the victim; the rent agreement was entered into and later on, the same was terminated.

Accordingly, the petition bearing CRM-M-25320-2013 is disposed of and impugned order dated 21.05.2013, vide which non-bailable warrants were issued against the present Managing Director i.e. Eric David Hadson, is hereby quashed.

However, it will be open for the complainant to pursue his case/FIR against M/s Reebok India Company through its the then Managing Director, i.e. Subhinder Singh Prem, by moving an appropriate application before the trial Court, if permissible under the Limitation Act.

A photocopy of this order be placed on the file of other connected case.

06.08.2021 **(ARVIND SINGH SANGWAN)**
Waseem Ansari **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*