

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

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**CRM-M-17530-2021
Decided on : 29.04.2021**

Shika Jain and another

... Petitioners

Versus

State of Punjab and another

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Navraj Singh Mahal, Advocate
for the petitioners.

(The proceedings have been conducted through video
conferencing, as per instructions.)

G.S. Sandhawalia, J. (Oral)

In the present petition filed under Section 482 Cr.P.C., the petitioners seek quashing of FIR No.0028 dated 15.03.2019 under Sections 420, 120-B IPC and Section 24 of Immigration Act, 1983 registered at Police Station, Mukerian, District Hoshiarpur (Annexure P-1) on the complaint of Navneet Jain including the challan dated 12.09.2020 (Annexure P-2).

The allegations against the petitioners are of sending Sania Jain daughter of the complainant abroad. A sum of Rs.29 lakhs are stated to have been received for the said purpose by the petitioner. The same was sought to be refunded by way of a cheque drawn at HDFC Bank, which is stated to have bounced for 'Insufficient Funds'.

Admittedly the police has inquired into the matter and submitted its challan before the Court of competent jurisdiction and the petitioners are husband and wife have been arrayed as accused. The charge is yet to be framed against the petitioners.

It is the case of the counsel for the petitioners that the petitioners have business dealing with the family of the complainant and the brother of the complainant was director with petitioner No.1 in Comal Agro Foods Ltd, as per Annexure P-3. It is further stated that the complainant had

misused the cheque and filed a complaint under Section 138 of Negotiable Instruments Act, 1881 and the daughter of the complainant is aged 8-9 years and, therefore, the question of settling her in USA would not arise. Further averments have been made that there is a dispute regarding the factory on lease/rent of Shubhneet Jain and a complaint has also been filed by Shubhneet Jain against petitioner No.2 under Section 138 of Negotiable and Instruments Act (Annexure P-4). There are also allegations of the complainant having filed a complaint (Annexure P-5) against Dinesh Jain and Hitesh Jain, who are stated to be family members of the petitioners, regarding agreement to sell.

In view of the above, it would be clear that parties have had cordial relations at one point of time which seems to have soured over a period of time and disputed questions of facts are involved and it would not be appropriate for this Court to examine the said issue under Section 482 Cr.P.C. It would be a matter of trial as such as to whether offences are made out or not and whether the proceedings are mala fide. Even otherwise it is open to the petitioners to raise all these issues before the Trial Court at the time of framing of charges to put forth their case whether they are liable to be tried or not.

The Apex Court while laying down the principles of quashing under Section 482 Cr.P.C., has held that the power should only be exercised wherein the allegations have to be taken without adding or subtracting anything and to see that any of the offence has been made out or not. Only if there is a legal defect or for want of sanction or in the absence of a complaint by the legally competent authority this Court would step in. This Court is not to embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the complaint while exercising the extraordinary and inherent powers under Section 482 Cr.P.C.

In Iridium India Telecom Ltd. Vs. Motorola Incorporated & others 2011 (1) SCC 74, wherein the criminal complaint had been quashed by the Bombay High Court and the said

order was set aside, it was held as under:

“As noticed earlier, both the appellants and the respondents have much to say in support of their respective view points. Which of the views is ultimately to be accepted, could only be decided when the parties have had the opportunities to place the entire materials before the Court. This Court has repeatedly held that power to quash proceedings at the initial stage have to be exercised sparingly with circumspection and in the rarest of the rare cases. The power is to be exercised ex debito justitiae. Such power can be exercised where a criminal proceeding is manifestly attended with malafide and have been instituted maliciously with ulterior motive. This inherent power ought not to be exercised to stifle a legitimate prosecution. In the present case, the parties are yet to place on the record the entire material in support of their claims. The issues involved are of considerable importance to the parties in particular, and the world of trade and commerce in general.

45. In such circumstances, in our opinion, the High Court ought to have refrained from indulging in detailed analysis of very complicated commercial documents and reaching any definite conclusions. In our opinion, the High Court clearly exceeded its jurisdiction in quashing the criminal proceeding in the peculiar facts and circumstances of this case. The High Court noticed that while exercising jurisdiction under [Section 482 Cr.P.C.](#) "the complaint in its entirety will have to be examined on the basis of the allegations made therein. But the High Court has no authority or jurisdiction to go into the matter or examine its correctness. The allegations in the complaint will have to be accepted on the face of it and the truth or falsity cannot be entered into by the Court at this stage." Having said so, the High Court proceeded to do exactly the opposite.

46. We, therefore, allow the appeal and set aside the impugned judgment of the Bombay High Court. There shall be no order as to costs.

Appeal allowed.”

In such circumstances, this Court is loath to interfere in the proceedings, keeping in view the well settled law by the Apex Court. Resultantly, there is no merit in the present petition and the same is dismissed.

April 29, 2021
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No