

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

CRM-M-49204 of 2021

Date of decision: 25.11.2021

Harpreet Singh Garcha

Petitioner

Versus

State of Punjab

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. B. S. Rana, Senior Advocate with
Mr. Vishal Deep Goyal, Advocate for the petitioner.
Mr. V. G. Jauhar, Senior Deputy Advocate General, Punjab.

AVNEESH JHINGAN, J (Oral):

Due to COVID-19 situation, the Court is convened through video conference.

This petition under Section 482 Cr.P.C. is filed for quashing of FIR No. 6 dated 25.7.2012, under Sections 409, 420, 120-B IPC and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 registered at Police Station Vigilance Bureau, District Ludhiana and all subsequent proceedings arising therefrom.

The relevant facts are that on the basis of report dated 11.7.2012 of Managing Director, PUNSUP, an FIR was registered for shortage of 1,39,465 bags of rice from stock entrusted to Baba Khajan Dass Agro Industries, Ghavadi, District Ludhiana (hereinafter referred to as 'rice mill') for custom milling for the year 2011-12. It was alleged that in connivance with the officials of PUNSUP, the rice mill embezzled the paddy and caused loss of Rs.5.42 crores. The land on which the rice

mill was set up was owned by Harpreet Singh Garcha (petitioner) and given on lease on 1.10.2009 to the rice mill for twenty years. The petitioner was nominated in the FIR setting up a case that he was running the rice mill by putting Ranjit Singh in front as proprietor. In the final report submitted under Section 173 Cr.P.C., it was mentioned that (i) mutation of the lease deed was not got recorded by the petitioner; (ii) the petitioner had mortgaged his land for getting term loan from State Bank of Patiala for Ranjit Singh; (iii) the petitioner authorised his close associate-Parminder Singh Sandhu to deal with day-to-day affairs with Punjab National Bank, Sarabha Nagar, Ludhiana; (iv) the petitioner appended his signatures as a consumer for taking electricity connection and (v) an agreement dated 21.3.2011 was executed between Ranjit Singh and the petitioner from which it was forth coming that the petitioner was running the entire show himself and by giving authorities to persons close to him.

Learned senior counsel appearing for the petitioner argues that embezzlement of the stock was done by the rice mill, a proprietorship concern of Ranjit Singh. The petitioner had only given the land on lease for setting up the rice mill. No offence under Sections 409 and 420 IPC is made out against the petitioner. The contention is that the agreement relied upon by the prosecution has forged signatures of the petitioner.

Learned State counsel appearing on advance notice submits that there is evidence against the petitioner to show that he had an active role in embezzlement of stock. Petitioner kept himself behind Ranjit Singh but the veil was pierced as soon as the agreement dated 21.3.2011 saw the day light. The petitioner is raising disputed questions of facts.

It is a trite law that power under Section 482 Cr.P.C. for quashing of criminal proceedings is to be used sparingly and that too in rarest of rare cases. Supreme Court in **Haridaya Ranjan Pd. Verma and others v. State of Bihar and another**, 2000(4) SCC 168 considering its decision in **State of Haryana v. Bhajan Lal**, 1991(1) RCR (Crl.) 383 held as under:

*“8. In the case of **State of Haryana and Others v. Bhajan Lal and Others**, [1992] Supp. 1 SCC 335, this Court in the back drop of interpretation of various relevant provisions of the Code of Criminal Procedure 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 Cr.P.C. gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the Court or otherwise to secure the ends of justice, making it clear that 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 to myriad kinds of cases wherein such power should be exercise :*

(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 concerned Act (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 concerned Act, 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.

9. *In the decision this Court added 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'.*

10. *The principles laid down in this decision have been followed in several decisions of this Court like [1995] 5 SCC 194 Rupan Deal Bajaj (Mrs.) and another v. Kanwar Pal Singh Gill and another, [1999] 3 SCC 259; Rajesh Bajaj v. State NCT of Delhi and others, [1992] 2 SCC 651; State of Kerala and others v. O.C. Kuttan and others, [1996] 9 SCC 1 and P.S. Rajya v. State of Bihar, [1996] 2 SCC 194 State of Orissa v. Bansidhar Singh.*

11. *The question is whether the case of the appellants comes under any of the categories enumerated in State of Haryana and others v. Bhajan Lal and others (supra) ? Is it a case where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in entirety do not make out a case against the accused? For determination of the question it becomes relevant to note the nature of the offences alleged against the appellants, the ingredients of the offences and the averments made in the complaint. ”*

As per the case of the prosecution, agreement dated 21.3.2011

establishes that the petitioner being an Advocate and pursuing his political career appointed Ranjit Singh as proprietor of the rice mill, whereas

actually the petitioner was dealing with the business. In the agreement, it is stated that from May, 2009 the business was running on oral understanding but to ensure that no dispute arises in future, the agreement was entered in the presence of witnesses. Further that the petitioner will be responsible for all dealings, benefits and loss in the rice mill.

Clause 2 of the agreement is quoted below:

“2. Party No. 2 was appointed as Proprietor of above mentioned Sheller because he could not run above mentioned business due to license of advocacy and due to his political career. Hence, Party No. 2 Ranjit Singh son of Davinder Singh son of Ram Singh, resident of Village Thuhi, Tehsil Nabha, District Patiala was appointed as Proprietor of Baba Khajan Dass Agro Industries, Village Sheelo Khurd, Tehsil and District Ludhiana for its completion of documents concerned and business and all the documents regarding this sheller were got signed by Party No. 2 Ranjit Singh whereas Party No. 1 Harpreet Singh Garcha was dealing its entire business, dealing and money dealing and sale purchase from agencies. Regarding dealing of above mentioned Sheller, Party No.1 Harpreet Singh Garcha had appointed his faithful and closed persons Parminder Singh Sandhu son of S. Darshan Singh Sandhu, resident of House No. 10227, Durgapuri, Ibowal Kalan, Backside Pali council Ludhiana. Party No. 1 Harpreet Singh had given all dealing authority of Party No. 2 Ranjit Singh to his closed person Parminder Singh Sandhu.”

The contention that the agreement is a forged document and the signatures appended on the agreement are not of the petitioner, raises a disputed question of fact. This would be a defence available to the petitioner in the trial, this itself cannot be a ground for quashing the FIR.

The contention that the petitioner had no role in the embezzlement of stock and the rice mill was of proprietorship concern of Ranjit Singh is a fact to be proved by adducing evidence. The prosecution is relying upon the material collected to establish that factual position is contrary.

The argument that no case under Sections 409 and 420 IPC is made out is noted to be rejected. The argument is to be tested on the principle that with controverting the allegations in the complaint or FIR and the material collected in support, *prima facie* no offence is made out. It is not the position in the present case. It would not be for this court in quashing proceedings to go into sufficiency of evidence collected against the petitioner.

The case does not fall within parameters for quashing of FIR under Section 482 Cr.P.C., the petition is dismissed.

However, it is clarified that nothing stated hereinabove shall be construed as an expression of opinion on the merits of the case.

[AVNEESH JHINGAN]
JUDGE

25th November, 2021

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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |