IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

Date of decision: 25.04.2022

1. **Criminal Miscellaneous No. M-628-2022**

GURKIRAT SINGH .....Petitioner

Versus

STATE OF PUNJAB AND ANOTHER .....Respondents

2. **Criminal Miscellaneous No. M-3930-2022**

PARAMJIT SINGH .....Petitioner

Versus

STATE OF PUNJAB AND ANOTHER .....Respondents

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Argued by : Mr. Narinder S. Lucky, Advocate
for the petitioner in both the cases.

Mr. Tanvir Joshi, AAG, Punjab

Mr. Mann Akashdeep Singh, Advocate
for respondent No. 2

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SANT PARKASH, J.

1. This judgment shall dispose of aforementioned two petitions as they arise out of same FIR.

2. Both the aforesaid petitions have been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing of case FIR

No. 231 dated 25.11.2020 registered under Sections 420 and 120-B of the Indian Penal Code, 1860 at Police Station Varioke, District Fazilka.

3. The present FIR has been registered against two accused persons Paramjit Singh and Gurkirat Singh (father and son) on statement of complainant/respondent No. 2- Sunil Kumar who alleged that both the accused after hatching a criminal conspiracy have cheated with him for a sum of Rs. 20 Lacs.

4. Brief facts of the case are that both the accused persons who are father and son are doing the business in the name of Gobind Sweets at Chandigarh. They both wanted to sell their business or to make somebody as partner in their business. For the said purpose, they approached complainant/respondent No. 2 through one Gursewak Singh for making him the partner in their business. The value of the total business was assessed at Rs. 40 Lacs and the complainant agreed to pay Rs. 20 Lacs to the accused persons to secure 50 % share in the partnership. It was also agreed between the parties that a partnership deed will be executed in this regard. The complainant/respondent No. 2 paid an amount of Rs.10 lacs to the accused via bank transfer to the account of co-accused Paramjit Singh, Rs. 5 Lacs in cash to both the accused at their shop, Rs.2,20,000/- was paid at the house of the complainant and Rs.2,80,000/- was paid to the accused after deduction of the remaining amount from the profits of the enterprise on account of Diwali sale. A partnership deed was also executed between the parties on 20.11.2018. After two-three months, Gurkirat Singh son of Paramjit Singh started cheating in the business. The complainant pointed out to accused Paramjit Singh that his son Gurkirat Singh is

misappropriating/stealing the funds from the cash box but he did not paid any heed to his request. The complainant/respondent No. 2 told the accused persons that he did not want to work with them anymore and asked them to cancel the partnership deed. On this the accused persons told the complainant/respondent No.2 that he has no share in their firm neither they have to pay any amount to him. The complainant/respondent No. 2 on enquiry found that the partnership deed executed between the parties is a fake document and even the accused persons do not have any franchise in their name. The complainant/respondent No. 2 asked the accused persons to return him the amount of Rs. 20 lacs which was paid by him for becoming partner in the said business of the accused but they refused to do so.

5. The petition has been opposed by learned State Counsel in terms of reply filed by way of affidavit of Vaibhav Sehgal, PPS, Deputy Superintendent of Police, Sub-Division Jalalabad, District Fazilka.

6. The petition has also been opposed by learned Counsel of complainant/respondent No. 2 in terms of reply filed today in the Court in case CRM-M-628-2022 which is taken on record.

7. I have heard learned counsel for the petitioners, learned State counsel as well as learned Counsel for the complainant/respondent No. 2 and have gone through the record.

8. Learned counsel for the petitioners has submitted that the petitioners have been falsely implicated in the present case by converting a civil dispute into a criminal case by the complainant. At the most, it is breach of contract/partnership deed and there is an alternate remedy which lies before the civil court. That the aforesaid

dispute was compromised while no written compromise deed was executed and even one cheque was issued in the name of sister of the complainant/respondent No. 2. However, the same got dishonored and complaint under Section 138 of the N.I. Act is pending against the petitioner-Paramjit Singh in this regard. The above said FIR has been lodged by the complainant/respondent No. 2 after a considerable delay only to put pressure upon the petitioners so as to extract funds from the petitioners. No ingredients of Section 420 IPC are made out and the continuance of the aforesaid FIR is just an abuse of process of law. Even, it the offence is being made out, one complaint as mentioned above under the N.I. Act is already pending and later on this FIR has been lodged only with the view to harass the petitioners. It is settled principle of law that dispute of a civil nature between partners cannot be given a criminal overtone.

9. On the other hand, learned State counsel has contended that the allegations against both the petitioners are serious. There is sufficient evidence against them to prove their guilt during the trial of the case. Therefore, the present both the petitions being devoid of any merit may be dismissed.

10. Learned Counsel for the complainant/respondent No. 2 while reiterating the contents of the reply has submitted that both the petitioners i.e. Father and Son have fraudulently induced the complainant/respondent No. 2 by misrepresenting themselves as the title holder of the property in question and also portrayed themselves as the sole proprietor of the firm 'Gobind Sweets' and acting on this misrepresentation, the complainant/respondent No. 2 had decided to

enter into partnership with the accused persons and paid a huge amount of Rs. 20 lacs to them. The complainant/respondent No. 2 was surprised to find out that the accused persons were not even the proprietors of the franchise namely 'Gobind Sweets' and the same is registered in the name of third person. The accused persons were in illegal possession of the said shop and even a civil dispute is pending regarding the ownership of the said shop. The accused persons deliberately concealed the above mentioned facts from the complainant. Further, as far as the plea of petitioner-Gurkirat Singh son of Paramjit Singh that he had no connection with the business operations of enterprise in question and he had no role to play in the entire transcaction is totally baseless and false as he has been actively participating in the day to day business of the enterprise, sitting on the cash counter and used to oversee the financial transactions of the enterprise in question.

11. Learned Counsel for the complainant/respondent No. 2 while referring to the law laid down by Hon'ble Supreme Court in case, **'State of Haryana and Others Versus Ch. Bhajan Lal and Others', AIR 1992 (604)** wherein it has been held that High Court must not quash the FIR, wherein FIR prima facie discloses the commission of cognizable offence has submitted that the present petitions for quashing of the FIR may be dismissed.

12. Section 482 of the Cr.P.C., which saves inherent powers of the High Court, reads as under :-

> *"Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice".*

13. In ***State of Haryana and others Vs. Bhajan Lal and others : 1991(1) R.C.R. (Criminal) 383*** Hon'ble Supreme Court observed as under:-

> *"107. 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.*
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> *2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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.*
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> *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 F.I.R. 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.*
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> *5. Where the allegations made in the F.I.R. 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.*
> *108. 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 F.I.R. 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."* *(emphasis supplied)*

14. In the present case, Partnership Deed was executed between the complainant/respondent No. 2 and the petitioner-Paramjit Singh to run one Fast Food enterprise M/s Govind Sweets, Chandigarh. For the said partnership, the complainant/respondent No. 2 paid Rs.20 lacs to the petitioner. Out of the said amount, Rs. 10 lacs were transferred by the sister of the complainant/respondent No. 2 on 15.11.2018 through RTGS, Rs. 7,20,000/- were given in cash and Rs.2,80,000/- was paid as share of profit from the Diwali sale of year 2018. Thereafter, the complainant/respondent No. 2 alleged that there was misappropriation of funds by Gurkirat Singh son of the Paramjit Singh and asked for withdrawal from the partnership and return of his amount paid for the said business. Petitioners-Paramjit Singh and Gurkirat Singh refused to return any of the amount. The complainant/respondent No. 2 gave a complaint in this regard and the aforesaid FIR was got lodged against both the petitioners under Sections 420 and 120-B IPC.

15. It is also pertinent to mention here that compromise was effected between the parties and the petitioner-Paramjit Singh issued a cheque in the name of the sister of the complainant/respondent No. 2 for Rs. 10 lacs but the same got dishonored. One complaint under Section 138 of the N.I. Act was filed by the sister of the complainant/respondent No. 2 which is pending in the Court of learned Sub Divisional Judicial Magistrate, Jalalabad.

16. So far as, invoking of provisions of Section 420 IPC is concerned, in order to constitute offence punishable under Section 420 IPC, the prosecution has to prove essential ingredients of offence of cheating as defined in Section 415 IPC. To scrutinize the ingredient(s) of cheating and its punishment, Sections 415 and 420 IPC are reproduced hereunder:-

> "**415. Cheating.-** Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".
> *Explanation.-* A dishonest concealment of facts is a deception within the meaning of this section.
> xx xx xx xx
> **420. Cheating and dishonestly inducing deliver of property.-** Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable fine."

17. A bare perusal of Section 415 IPC clearly depicts essential ingredients; (1) deception of any person; (2) (a) fraudulently or

dishonestly inducing that person; (i) to deliver any property to any person; or (ii) to consent that any person shall retain any property; or (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. As per Section 420 IPC, punishment, in case of fulfillment of above ingredients, shall be imprisonment for a term which may extend to seven years alongwith fine.

18. In the case in hand, the complainant/respondent No. 2 entered into the partnership deed with the petitioner-Paramjit Singh. Due to some dispute between both the partners, complainant/respondent No. 2 sought for withdrawal from the business. Thereafter, a settlement was arrived at between both the parties and petitioner-Paramjit Singh issued cheque in lieu of the compromise. However, the same got dishonored and the complainant party instituted a complaint under Section 138 of the N.I. Act against the petitioner- Paramjit Singh.

19. From the sequence of events narrated above, it would be emerged that predominantly the nature of offence with regard to non-adherence of the partnership deed/withdrawal from the business by any of the parties or the question of genuineness of the Partnership Deed is civil. The allegation of the complainant as to his fraudulent inducement has no basis particularly when the complainant/respondent No. 2 had himself entered into partnership deed out of his own free will and shared the profits and no ingredients of Section 420 IPC are made out in the present FIR. The only criminal liability as to dishonour of cheque

upon the petitioner is under Section 138 of the N.I. Act for which a complaint has already been got instituted by the sister of the complainant/respondent No.2. The judgment in case ***Bhajan Lal (Supra)*** is of no help to the complainant/respondent No. 2 in the present case.

20. The complainant/respondent No. 2 cannot avail two parallel remedies as one side criminal complainant under Section 138 of the N.I. Act has been got instituted against the petitioner and thereafter the present FIR has been got lodged under Sections 420 and 120-B IPC though the dispute being civil in nature.

21. In ***Varala Bharath Kumar v. State of Telangana, (SC) : 2017(4) R.C.R.(Criminal) 113*** Hon'ble Supreme Court observed as under**:-**

> *".........It is by now well settled that the extraordinary power under Article 226 or inherent power under section 482 of the Code of Criminal Procedure can be exercised by the High Court, either to prevent abuse of process of the court or otherwise to secure the ends of justice. Where allegations made in the First Information Report/the complaint or the outcome of investigation as found in the Charge Sheet, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out the case against the accused;* ***where the allegations do not disclose the ingredients of the offence alleged****; where the uncontroverted allegations made in the First Information Report or complaint and the material collected in support of the same do not disclose the commission of offence alleged and make out a case against the accused; 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, the power under Article 226 of the Constitution of India or under section 482 of Code of Criminal Procedure may be exercised."*

22. In case, ***CRM-M-1696-2008*** titled as '***Madan lal and***

another Vs. State of Haryana and another' decided on 29.02.2012, Co-ordinate Bench of this Court has held as under :-

> *".............14. As is clear from the FIR (Annexure P1) that the main grievance of the complainant was that since the petitioners did not execute the sale deed, so, they have embezzled the amount of Rs.11 lacs and cheated him. If the crux of the contents of the FIR (Annexure P1) is clubbed together and is perused, then, it gives rise to a dispute of purely a civil nature. The question of execution of sale deed or otherwise cannot be gone into by the police or the criminal Court. Only the civil Court has the jurisdiction to decide such intricate questions.* ***It is now well recognized principle of law that the matter, which essentially involves the dispute of civil nature cannot legally be allowed to become subject matter of criminal proceeding. It is not a matter of dispute that the jurisdiction of civil and criminal courts is entirely different and distinct from each other. The matter which squarely falls within the ambit and jurisdiction of the civil court cannot legally be permitted to be re-agitated in parallel proceedings in the criminal court****.* *If the complainant is permitted to re-agitate the same very dispute in the garb of criminal prosecution, by way of impugned FIR (Annexure P1), then, there will be no end of unwarranted litigation and it will inculcate and perpetuate injustice to the petitioners in this relevant direction. The complainant cannot possibly and legally be permitted to execute a non-existent civil court decree by putting pressure of a criminal prosecution against the petitioners-accused. This matter is no more res integra and is well settled......."*

23. In case, ***Criminal Miscellaneous M-12673 of 2012*** titled as '***Maya and others Vs. State of Haryana and another***', decided on 15.05.2013, Co-ordinate Bench of this Court held as under :-

> *"....6. There is no allegation that there was any misrepresentation made to respondent No.2 to extract money from him and, therefore, essential ingredients of Section 420 IPC do not stand established.* ***It is a well settled proposition of law that if a bare reading of the FIR does not disclose the commission of any offence, then, in such like matters, the FIR deserves to be quashed.*** *In support of this, reference can be made to the findings of the Hon'ble Supreme Court in State of Haryana vs. Ch. Bhajan Lal & others, AIR 1992 SC 604.*
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> *7. Apart from this, the* ***reading of the FIR would also disclose a sheer abuse of the process of law by respondent No.2 who has used the agency of the police to settle his score of a purely commercial transaction gone sour****."*

24. From the above referred judicial precedents, this fact is not disputed that where a civil dispute has been given criminal colour, the same cannot legally be allowed to become subject matter of criminal proceedings. Also, where the allegations in the FIR do not disclose the ingredients of the offence alleged, the inherent power under section 482 of the Code of Criminal Procedure can be exercised by the High Court to prevent abuse of process of the court.

25. The present case is overwhelmingly and predominantly of private character and has arisen out of commercial transaction. The dispute being civil in nature, continuation of the present FIR would be an abuse of process of law.

26. In view of aforesaid discussion, both the petitions **CRM-M-628-2022 and CRM-M-3930-2022** are allowed. FIR No. 231 dated 25.11.2020 registered under Sections 420 and 120-B of the Indian Penal Code, 1860 at Police Station Varioke, District Fazilka, is hereby quashed alongwith consequent proceedings.

(SANT PARKASH)
JUDGE

25.04.2022
kavneet singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No