

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-16064-2010(O&M)

Reserved on : 07.04.2022

Pronounced on :25.04.2022

Mohammad Saleem

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Naresh Prabhakar, Advocate,
for the petitioner.

Mr. Karanbir Singh, AAG, Punjab.

Mr. Rajeev Anand, Advocate,
for respondent No.4-CBI.

Mr. ADS Sukhija, Advocate,
for respondent Nos.6 and 7.

VINOD S. BHARDWAJ, J.

The present petition has been filed under Section 482 Cr.P.C. praying for entrustment of the investigation in FIR No.199 dated 11.11.1999(Annexure P-5) under Section 420 IPC, registered at Sadar Police Station, Ropar to any other independent agency like CBI along with directions for expeditious and impartial investigation in the matter by an officer of a high rank.

Briefly summarized the facts of the case that the petitioner, who is a retired Lecturer, claims to have valuable property in the form of Physics

books written by him and alleges that the same has been dishonestly misappropriated by respondent Nos.6 and 7. It is contended that the petitioner is a well-known Physics Lecturer in the area of Rupnagar and retired from service in the year 2005 as the Head of Physics Department in Govt. College Rupnagar. Respondent Nos.6 and 7 are the publishers and publish books for the higher classes especially in the science stream. They approached the petitioner during the years 1992 to 1995 to persuade him to write the Physics books for their publishing company known as “S. Dinesh and Company”. The proposal of the private respondents was accepted by the petitioner in the year 1996 and accordingly, an agreement dated 01.01.1996 was instituted between the petitioner and respondent No.6. The said agreement is claimed to have been signed on behalf of respondent No.6 as a proprietor. The petitioner thus refused to sign the said agreement, however, eventually the petitioner accepted the proposal to author four books for “S. Dinesh and Company” on 22.06.1996 and the agreement in question was signed by the respondent No.6 as a partner of “S. Dinesh Sales Corporation”. It is alleged that four books of the petitioner were published by respondent No.6 i.e. under the name of “S. Dinesh Sales Corporation” instead of “S. Dinesh and Company”, the 5th book was published under the name of “S. Dinesh and Company” and it is further alleged that there was some mischief regarding the payment of royalty in violation of the terms and conditions settled between the parties. It is submitted that the petitioner cancelled the agreement by serving a legal notice dated 18.11.1998 to respondent No.6. A complaint was thereafter submitted by the petitioner to the local police vide which FIR No.199 dated 11.11.1999 under Section 420 IPC, was registered at Sadar Police Station, Ropar. The grievance of the

petitioner is that despite registration of the criminal case, the police did not arrest the accused persons and did not carry out proper investigation through a high ranked police officer and resultantly, cancellation report was submitted before the Illaqa Magistrate. The same was, however, not accepted by the Illaqa Magistrate and the matter was sent for further investigation under Section 173(8) Cr.P.C. Even thereafter, the police submitted the cancellation report which was again not accepted by the Magistrate and the matter was sent back for further investigation vide order dated 05.03.2005. It was alleged that the same has thereafter remained pending with the respondents thus necessitating filing of the instant petition since a deep-rooted nexus is apparent between the police and respondent Nos.6 and 7. It is alleged that the police officials have not only been insensitive to the constitutional ethos but have also shown scant regard to the basic human values resulting in shaking of the confidence of the people in administration of justice. He has thus sought to invoke the power of this Court under Section 482 Cr.P.C. for entrusting the investigation of the matter to CBI or some other independent agency.

Learned counsel for the petitioner has argued that the police is in connivance with the private respondents and as such has been moving cancellation reports subsequently.

Reply by way of counter affidavit on behalf of respondent Nos.1 to 3 and 5 has been filed through Bhupinder Singh Thind, DSP, Rupnagar, wherein he has stated that finding no offence being made out after investigation, a cancellation report was submitted by the police. As a matter of fact, even second investigation was conducted by Harish Kumar, Superintendent of Police City-I, Ludhiana. The petitioner refused to give

any evidence in support of the FIR to the investigating officer and had also submitted an application to the SHO, Sadar Police Station, Ropar on 06.03.2000 asking him to not to do any investigation in the matter. Even while appearing before the Illaqa Magistrate, the petitioner resiled from making any statement, due to which the case was sent for re-investigation. The petitioner thereafter moved an application before the Secretary to Chief Minister, which was marked to the SSP, Ludhiana to re-examine the case and despite multiple investigations, respondents-accused were found innocent and accordingly information was given for cancellation of the FIR. It is submitted that there is no evidence to substantiate any fraud or to establish commission of any cognizable offence by the respondents.

Reply on behalf of the private respondent Nos.6 and 7 has also been filed, wherein it is averred as under:-

“The true position is that it was the petitioner who approached the replying respondents to publish his books against the payment of royalty. The replying respondent worked really hard on the manuscripts provided by the petitioner to make these into saleable books as the petitioner was a first time author and had no previous reference or credentials. Two separate agreements were signed by the petitioner one with M/s S. Dinesh Sales Corporation in June, 1996 to publish four books and one with M/s S. Dinesh & Co. dated 3-9-1996 to publish one book, which are nothing but sister concerns being owned by the same family. A total of five books were published i.e., to say “Dinesh Basic elements of Electricity & Magnetism” and “Dinesh Basic Elements of Mechanics” during the year 1997-98 by M/s S. Dinesh Sales Corporation and “Dinesh A to Z in Physics” for the session 1997-98 by M/s S. Dinesh & Co. Two more books namely “Dinesh Basic Elements of Modern Physics” and “Dinesh Basic Elements of Thermodynamics and

Statistical Physics” were published during the session 1998-99 by M/s S. Dinesh Sales Corporation. Only these five books have been published as per the agreements signed by the petitioner and due amount of royalty was paid to him. The sixth book alleged to be printed by the replying respondents is not a book and infact it is only a solution booklet of the Book titled “Dinesh A to Z in Physics” in which the name of the writer is mentioned as that of the petitioner's wife as the petitioner being a government teacher at relevant time could not lend his name to solutions of a text book. This book was not meant for sale and it was so mentioned on its cover and it was intended only for complementary purposes just to boost the sale of the actual Book by distribution among the Professors, Lecturers and other teaching staff. That Due Royalty was paid to the petitioner by the replying respondents and most of the cheques issued to the petitioner were encashed by him but some drafts of the royalty sent to him were not accepted by him after he raised the dispute with the replying respondents. The petitioner is now wrongly raising the bogey that he was misled by getting the agreement signed in the name of Dinesh Sales Corporation whereas the petitioner fully well knew that both these concerns are family concerns, being owned by the replying respondents. The petitioner had even written a letter to respondent no.6 expressing his gratitude for publishing his books and having learnt a lot from the experience of respondent no.6. A copy of this letter is attached as Annexure R6/1. It appears that the petitioner was misguided by some vested interests to raise the dispute with the replying respondents under some really mistaken notions. The replying respondents had even tried to clarify the doubts expressed by the petitioner in their reply to his letter dated 16.12.1997 and even subsequently but the petitioner failed to see reason. Copies of these letters are attached as Annexure R6/2(Colly). In pursuance to his alleged grievances the petitioner even refused

to give the revised manuscript of the books, as per his obligation under the agreement which affected the publication of the books and therefore, for avoiding his obligation he started creating unnecessary disputes with the replying respondents. The details of all these payments is given as under:-

FIRM: S Dinesh Sales Corp.

- 1. Royalty for financial year 1997-98=Rs.20761/-**
- 2. Royalty for financial year 1998-99=Rs.21760/-**
- 3. Royalty for financial year 1999-2000=Rs.3993 (Note in this year dispute was going and new stock was not printed and royalty is less because only old existing stock was sold).**

Payments made till date against the above transactions

- 1. Cheque no.210435 dated 30-7-96 as advance royalty Rs.5000(encashed)**
- 2. Cheque no.005168 dated 3-8-1998 as balance of royalty for year 1997-98 Rs.15761(Encashed)**
- 3. Draft no.156128 dated 29-9-1999 against royalty for year 1998-99 Rs.21,760/- (draft sent by Regd Post but received back and lying with us)**
- 4. Draft for year 1999-2000 sent by Regd post alongwith revalidated draft for Rs21760 twice but returned back.**

FIRM S DINESH & CO

- 1. Royalty for financial year 1997-98 Rs.99,473**
- 2. Revised royalty of financial year 1997-98 after raising % from 10% to 12.5% Rs.1,24,341**
- 3. Royalty for financial year 1998-99 Rs.1,04,085**
- 4. Royalty for financial year 1999-2000 Rs.40028**

Payments made

- 1. DD no.231777 dated 15-4-1997 as advance royalty for year 1997-98 Rs.25000(encashed)**
- 2. Cheque No.050023 dated 3.8.98 as balance royalty for**

year 1999 Rs.74,473(encashed on 13-8-98)

3. Cheque No.050024 dated 3.8.98 as balance royalty for the year 1998-99 Rs.1,00,000(encashed on 13-8-98)

4. Draft no.455876 dated 29.09.1999 against balance royalty for the year 1998-99 Rs.28,953(draft sent by regd post but received back and lying with us)

Note: Advance at Sr no.3 of Rs.1,00,000 was reduced to Rs.75,132 accordingly after revised royalty.

After year 1999-2000 no books were published and sold.”

Learned counsel for the respondents have argued that there is no such evidence or material available on the basis whereof any offence under Section 420 IPC could be said to have been made out. It is further urged that the grievance regarding deficient royalty, if any, is a matter of civil dispute and that the criminal proceedings cannot be conducted in this regard. The registration of the case itself is an abuse of process of law and has been carried out because of pressure exerted by the petitioner. It is further argued that the matter has already been investigated by the senior officers including an officer of the rank of IPS and that no material was made available that would make out any criminal case against the private respondents.

I have heard the learned counsel appearing for the respective parties and have gone through the pleadings as well as the documents appended along with the instant petition.

A perusal of the documents appended with the petition by the petitioner shows that an agreement had been executed by the petitioner with the private respondent Nos.6 and 7 on 15.06.1996 as well as on 03.09.1997. Some of the relevant clauses of the said agreement executed with “S. Dinesh Sales Corporation” and “S. Dinesh and Company” are as under:-

“3. The publishers shall, at their own risk and expense,

produce and publish the aforesaid book and shall have, during the legal term of copyright, the exclusive right of producing and publishing the book or any portion of it and its subsequent editions throughout the world, as also the general control of the publication and the sale of the book and its subsequent editions. The publishers shall also have the right to publish or get published a translation or an adaptation of the said book in any language. In respect of any such material of which the author/s is/are not the copyright holder/s, the author/s shall, at his/their own expense, obtain/s from the owners of the respective copyright, written permission to produce such material in connection with the work.

5. All blocks, plates etc. relating to the said book shall be the exclusive property of the publishers.

14. If the publishers decide to publish a translation of the book, they shall have the right to do so at the same terms if the author supplies the translated manuscript. In the event the author/s is/are unable to translate, the publishers shall get it done from elsewhere and shall pay the translation charges from his/their (author/s) royalty.”

As the conditions are identical insofar as the rights are concerned, the same are not being repeated. It is, however, apparent from a perusal of the said conditions that the property rights in the book stand vested in the publisher that the publisher is entitled to publish the book or get the same published. The said right is absolute and no conditions have been attached to the same. The same is thus not qualified and does not impose any prohibition against the publisher about the manner in which the publication is to be done. It is well settled rule of contractual interpretation that a person is entitled to do all such acts in furtherance of his contractual rights, when the same are not prohibited expressly or by necessary inference.

Counsel for the petitioner also could not point out any such

provision during the course of arguments in support of his contentions and also led no material to establish as to how the dues have not been paid or cleared.

Perusal of the agreement shows that the property in the work has been vested in the publisher with a right to the publisher to get it published; right thus also exclusively vests with the publisher to decide as to from where he gets the same published. The entitlement of the petitioner is to the royalty itself in terms of the agreement. Petitioner has not brought on record any document or filed any counter to the details furnished by respondent Nos.6 and 7 in their reply and has not put forth any material to suggest that the due amount has not been paid. Even otherwise, this Court is not seized of a dispute pertaining to the royalty and the scope of the petition is restricted to the prayer made by the petitioner for seeking transfer of the investigation of the case to CBI or any other independent agency.

In order to make out an offence under Section 420 IPC, the intention of the party should be to commit cheating from the very inception of the relationship. Sections 415 & 420 of the IPC are extracted here-in-after below:-

“Section 415 IPC-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".

Section 420 IPC-Cheating and dishonestly inducing delivery 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 to fine.”

Any dispute which is being raised subsequently on the basis of a calculation cannot mean that the intention was criminal from the commencement of the relationship. The petitioner has also failed to demonstrate any wrongful gain in favour of the respondents or any wrongful loss to him.

Further, no basis of any notice by the investigating agency in favour of the respondents has been established. A mere general averment is not sufficient to discredit an investigating agency or its officials and the allegations must be supported or corroborated by some *prima-facie* material. Dissatisfaction of a complainant from the conclusion drawn by the investigating agency above cannot be the basis to presume that the investigation has not been fair or impartial. It would be essential for the aggrieved to *prima-facie* show that the investigation is tainted or perpetuated by apparent and evident bias and that the conclusion drawn by the investigating agency is not a plausible conclusion on the objective analysis of such evidence.

The direction to hand over investigation to CBI is not to be issued without existence of any valid, cogent, substantial and forceful reasons where the judicial conscience is satisfied that justice and its cause can not be served, except by investigation by CBI.

The Hon'ble Supreme Court after considering the recent

judgment in the matter of State of Punjab Versus Davinder Pal Singh Bhullar, (2011) 14 Supreme Court Cases, 770 has held that the Constitutional Court can transfer the matter to CBI or any other special agency only when it is satisfied that the accused is a very powerful and influential person or, the State Authorities like high police officials are involved in the offence and the investigation has not been proceeded with in a proper manner or, the investigation has been conducted in a biased manner. In such a case, in order to do complete justice and having belief that it would lend credibility to the final outcome of the investigation, such directions may be issued sparingly and in exceptional circumstances. The apprehension of bias must be reasonable. When there is no *prima facie* evidence to substantiate the allegations of bias, the perception of the complainant of bias cannot be fueled by the Court by misplaced sympathy and as an indent to pacify such dissatisfied complainant. Power under Section 482 Cr.P.C. is inherent and exceptional, which must be exercised when exceptional circumstances are overwhelming reflected on the record necessitating the Constitutional Court to pro-actively step up to secure the ends of justice.

It is also evident from the perusal of the reply filed by the respondents that investigation of the case has already been conducted by an officer of the rank of IPS. The petitioner has not been able to point out any malice or mischief against the private respondents and he has also not been able to establish any nexus of the private respondents with the police officials. Besides, he has not placed any evidence on record to establish as to how the investigation conducted by the police officials was faulty. Dissatisfaction of the complainant from the investigation conducted by the

investigating agency cannot itself be a ground to hand over the investigation to CBI or any other independent agency. It does not lie for the complainant to steer investigation of the case. In the absence of any material to establish any bias, mischief or malice on the part of the investigating agency or any nexus between the accused and police officials, a mere self-serving statement that the police officials are cooperating with the accused cannot be held sufficient to direct the transfer of investigation from one agency to any other agency.

The present petition is wholly devoid of any merit and fails to advance existence of any sufficient ground for invoking the jurisdiction of this Court under Section 482 Cr.P.C. The same is accordingly dismissed.

April 25, 2022
seema

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No