

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

CRM-M-17230-2022

Date of Decision:-28.04.2022

Ankur.

.....**Petitioner.**

Versus

State of Haryana.

.....**Respondent.**

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Vaibhav Sehgal, Advocate for the Petitioner.

Mr. Amit Aggarwal, Deputy Advocate General, Haryana.

JASJIT SINGH BEDI, J. (ORAL)

The Prayer in this petition under Section 482 Cr.PC is for quashing of FIR No.0629 dated 25.06.2019 under Sections 420, 467, 468, 471 IPC registered at Police Station Chandanibagh, District Panipat and all consequential proceedings arising/emanating out of the aforesaid FIR.

2. The allegations in the FIR are that the petitioner Ankur son of Sh. Harjit Pal, resident of Mandi Gobindgarh, Fatehgarh Sahib, Punjab and got himself registered under the CGST/HGST Act, 2017 under the name and style of M/s R.S. Steel Trader, Baba Lalji Mandhir, Insar Chowk, Panipat. Enquiries regarding the genuineness of the firm was got conducted and it was found that the dealer had uploaded bank account details, photos, other details for taking registration. During the enquiries the given address

at Panipat was visited by the Taxation Inspector on 17.04.2019 and a report in this regard was prepared by him that no such firm was found functioning at that address. Therefore, Sh. Ankur, the petitioner had on the basis of fake and forged documents got himself registered under the HGST/CGST Act, 2017 and fraudulently submitted/uploaded fake and forged documents and used the government GST Online Portal for utilizing the input credit for himself with dishonest intention to evade payment of taxes. Details of the supplies made by the concerned dealer were referred to in the FIR (Annexure P-1).

3. The Counsel for the petitioner contends that the FIR has been registered without any preliminary enquiry whatsoever. He has referred to various documents including GST number details with regard to the proprietorship of the concern, earlier cancellation of the registration certificate, fresh registration certificate, GST Number, Rent Deed executed between the petitioner and the landlord (owners of the property where the petitioner was operating), Aadhar Card, Pan Card etc., (Annexure P-2 to P-10) to contend that all these documents would show that the allegations levelled in the FIR that the petitioner had committed an offence was baseless. The thrust of the case of the petitioner is that documents uploaded by the petitioner for obtaining registration under the HGST/CGST Act, 2017 are genuine and the firm exists at the same place. He has also stated that the input credit availed and input credit passed of the petitioner was genuine and the payments made to the selling firm and payments received from the purchasing firm were also genuine having been received through banking channels. He also contended that during a roadside checking on 14.10.2017 the vehicle of the petitioner carrying Iron scrap was detained by

the ETO Hansi and on checking it was found by the State Tax Authority that the transaction was valid.

4. As per the petitioner, he raised his grievance before the DGP and the ADGP Haryana vide representation dated 19.02.2021 and 10.12.2021 (Annexure P-11 and P-12 respectively) regarding his false implication but no action was taken on the said representations. Thus his contention was that the investigating agency was unable to find any material whatsoever in the last almost three years against the petitioner and the documentary evidence available on the police file as also before this Court clearly established the innocence of the petitioner.

5. The Counsel for the State on the other hand has contended that the bail application of the petitioner had been rejected (a fact fairly admitted by the learned Counsel for the petitioner) and the petitioner is absconding thereafter. Because of this fact, the investigation has not been able to make any progress. However, a perusal of the FIR and the documents attached with the same *prima facie* establish the commission of various offences and the question of quashing of an FIR at the nascent stage would not arise, moreso at the instance of an absconding accused.

6. I have heard learned Counsel for both the parties at length.

7. Before proceeding further, it would apposite to examine the law on the issue enunciated by the Hon'ble Supreme Court in **M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra & Ors. 2021 AIR (Supreme Court)1918 :-**

“ In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or “no coercive steps to be adopted”, during the pendency of the quashing

petition under Section 482 Cr.P.C, 1973 and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or “no coercive steps to be adopted” during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;
- ii) Courts would not thwart any investigation into the cognizable offences;
- iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;
- iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;
- vi) Criminal proceedings ought not to be scuttled at the initial stage;
- vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;
- viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;
- ix) The functions of the judiciary and the police are complementary, not overlapping;
- x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

- xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;
- xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;
- xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;
- xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;
- xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;
- xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are

hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.”

A perusal of the aforementioned judgment would reveal that the Hon'ble Supreme Court has categorically held that the courts should not thwart an investigation into the commission of a cognizable offence. The Court cannot and should not embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint and save in exceptional cases where non interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of the investigations of the offences. It has also been held that it would be premature to pronounce the conclusion based on hazy

facts that the complaint/FIR does not deserve to be investigated. Effectively the Hon'ble Supreme Court has reiterated and further expounded the principles enunciated in the judgment of **State of Haryana Vs. Ch. Bhajan Lal 1991(1) RCR 383.**

8. Keeping in view the judgment in *M/s Neeharika Infrastructure's case (supra)* it is clear that the interference of the High Court at the stage of investigation has to be in exceptional circumstances and the High Court is not to embark upon an enquiry as to the genuineness or otherwise of the allegations levelled in the FIR. In the present case the petitioner has raised a number of grounds, all of which are a matter of his defence or at best would be placed before the investigating agency when he joins investigation. This Court cannot examine the veracity or the genuineness of the documents attached to this petition and come to the conclusion that no case is made out against the petitioner.

9. There is yet another disturbing feature of the present case. The FIR in question was registered in June 2019 and despite the anticipatory bail of the petitioner having been dismissed, he has chosen not to join investigation or avail his alternative remedies in accordance with law but has filed the instant petition for quashing. The Hon'ble Supreme Court in **Virender Prasad Singh Vs. Rajesh Bhardwaj & Ors. (2010)9 Supreme Court Cases 171** held as under:-

“ The High Court should have seen through the incessant efforts on the part of the respondent No. 1/accused to stall the proceedings one way or the other and to avoid arrest. It was way back in 2008 that the anticipatory bail application was rejected by this Court and yet the accused has remained outside without being arrested. Again the investigation against him is complete, the charge sheet has been filed for offence

committed by him, and still he has managed to remain out. In fact, the lack of bona fides on the part of the accused should have put the High Court on guard. A Section 482 application on the plea that the investigation is not proper at the instance of the accused who does not choose to even appear before the Sessions Judge before whom the matter is pending, should immediately have put the High Court on guard before entertaining the petition which has no bona fides whatsoever.”

10. In view of the aforementioned facts and the law as enunciated in *M/s Neeharika Infrastructure's case (supra)* and *Virender Prasad Singh's case (supra)*, there is no merit in the present quashing petition, which is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

April 28, 2022
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>