232 IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-3834-2018
DECIDED ON: 31st OCTOBER, 2022

VIVEK PANDEY AND ANOTHER

.....PETITIONERS

VERSUS

STATE OF PUNJAB AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Akshay Bhan, Sr. Advocate with
Mr. H.S. Sandhu, Advocate and
Mr. B.S. Aulakh, Advocate
for the petitioners.

Mr. Aman Dhir, DAG, Punjab.

Mr. Gaurav Sharma, Advocate
for respondent No.2.

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SANDEEP MOUDGIL, J

By virtue of present petition, the petitioners have sought the quashing of FIR No. 433, dated 13.12.2017, under Section 420 of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Barnala (Annexure P-1) and all subsequent proceedings arising therefrom.

Brief facts of the present case are that Kapil Dadu-complainant/respondent No.2 had moved an application dated 8.6.2017 to the Senior Superintendent of Police, Barnala for taking legal action against Vivek Pandey, Chetan Sharma (present petitioners), Harbir Singh Gill (since deceased) and Biresh Kumar. It is alleged that by the complainant/respondent No.2 that he had a business of scooter repair in a showroom near Bus Stand, Barnala. In November, 2015, Harvir Singh (since deceased) visited the complainant to make him distributor of Castrol India Limited in Sangrur and Barnala for selling the products of the company. Furthermore allured him with good profits on the sale of company's goods on which the complainant gave his consent. Thereafter Harvir Singh Gill alongwith petitioners and Biresh Kumar formed a partnership firm, Daadu Sales Corporation to get distributorship of Castrol India Limited issued letter of Intent dated 27.11.2015 in the name of complainant's firm. As per the terms and conditions of the company, the complainant gave a bank guarantee of Rs.20,00,000/-(Rupees 20 lakhs) to Castrol India Limited Company along-with 20 blank cheques as security. After that, according to instructions given by company, the applicant kept doing payment to the dealers against their appropriate schemes. According to instructions given by the company, the complainant paid retails credit note of Rs.5,18,549/-, workshop credit note of Rs.13,756/- Imperial Dealer Value of Rs1,51,013/- to the dealers in cash as asked by accused-persons. In addition, on behalf of the company, credit notes of Rs.15,000/- were paid to Sachkhand Automobiles, Bhawanigarh, dealer of the company. Any other distributor can't supply goods in the area of other distributor, about which the complainant repeatedly notified the afore-mentioned individuals via email neither any action was taken nor they were prevented from doing this. As a result thereof, the complainant submitted a resignation to resign from distributorship through email on 5 May, 2016. Once again the complainant was allured to work as a distributor with an additional scheme of Rs.5/- per liter. The complainant got 'No Objection

Certificate' from all dealers of Barnala and Sangrur districts and sent it to company. He asked the company to refund his amount and also to return 20 blank cheques given as security. The company replied that it has only dues of Rs.1,56,293/- and this amount will be released after submitting 'No Due Certificate' to the company. But the complainant failed to submit 'No Due Certificate' because of his dues of Rs.6,98,318/- with the company.

Learned Senior counsel for the petitioners has vehemently argued that the present FIR is an abuse of process of law and is totally bereft of merit and does not disclose commission of any offence. The dispute is purely civil in nature and based on documents and agreements entered into between the parties. He further submits that there is no specific role of the petitioners regarding commercial transaction related activities. It is asserted that respondent No.2/complainant had paid a credit note of Rs.6,98,318/- to the market dealers, which constitutes the entire foundation for filing the impugned FIR. While the employer of petitioners only requires the respondent No.2 to furnish no objections from the alleged dealers in market in relation to credit notes, the same has not been furnished by respondent No.2.

His assertion is that evidently, the facts listed above amply demonstrate that Respondent No. 2 failed to provide the "No Dues Certificate" in support of his Credit Notes-based claim. Therefore, the FIR makes an improper attempt to support this claim of Respondent No. 2 and, on that count, an intentional attempt to disparage petitioners for allegedly stealing the money of respondent No.2. In fact, the information in the FIR is contradictory because it claims that Respondent No. 2 provided a certificate of no debts owed to all dealers in one place but claims that he failed to do so because he owed his employer, the petitioners, a debt of Rs. 6,98,318. It is unclear how debts of respondent No.2 prevented him from providing a No-Dues Certificate.

It was further submitted that the allegations contained in the FIR are purely contractual disputes of civil nature but Respondent No. 2 has given a criminal colour to it and that breach of contract does not come within the purview of cheating as defined in IPC. In addition to it, it was submitted that the transaction in question between the parties as revealed from the FIR was purely a sale transaction or what may be called as a commercial transaction, therefore the question of cheating does not arise at all. It was further submitted that there are no allegations in the complaint filed by the respondent No. 2 about the petitioners having fraudulent or dishonest intentions at the time of making the representation.

Learned State counsel appearing on behalf of the respondent-State assisted by the counsel appearing for respondent No.2/complainant has vehemently submitted that the allegations contained in the FIR disclosed all the ingredients of the alleged offences and moreover, the criminal proceedings have not been initiated with *mala-fide* intention. It is asserted that the established principle of quashing is that at the stage of cognizance all that a Court is required to see if *prima facie* an offence is made out and courts should restrain itself from throttling legitimate prosecutions at the threshold and the law should be allowed to take its course. Substantiating the same, it was submitted that the respondent No.2 has made a specific allegation of inducement by the accused persons.

Assertion is that the present FIR was rightly registered against the petitioners regarding the offence of cheating of Rs.6,98,318/- which was duly substantiated during the investigation, therefore, subsequent proceedings are legal and valid, therefore, no question of quashing the FIR arises in any manner.

Having heard learned counsel for the parties at length.

As a saving provision, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.

The Supreme Court in case of ***State of Haryana & Ors. Vs. Bhajan Lal & Ors. 1992 Supp (1) SCC 335*** the scope of inherent powers of the High Court under Section 482 Cr.P.C. to quash the FIR has been discussed in detail. At the same time, the Apex Court identified the following cases in which FIR/complaint can be quashed:

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 Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the 21 proceedings and/or where there is a specific provision in the Code or the Act concerned, 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.*

Due to the incompetent authorities mistake the FIR entirely missed the line between a simple 'breach of contract' and 'cheating', which depends upon the accused's intent at the time of alleged inducement. Even if it is proven that the accused made a representation that was later broken, criminal culpability could not be imposed on the accused, and the complainant's sole legal recourse would be to *sue* only for breach of contract in a Civil Court. There can be no doubt that a mere breach of contract is not in itself a criminal offence and gives rise to the civil liability of damages.

Legal action for cheating cannot be taken for a simple breach of contract unless there is a clear indication of fraud or deceit at the outset of the transaction. Despite the fact that there is no evidence to support any such offensive purpose on the part of the petitioners, the investigating agency mistakenly went ahead and registered the afore-said impugned FIR.

For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. In the instant case, respondent No.2/complainant does not disclose any criminal offence under Section 420 IPC and the present case is a case of purely civil dispute between the parties for which remedy lies before a civil court by filing a properly constituted suit.

As a universal fact the criminal proceedings should not be encouraged when it is found to be *mala-fide* or otherwise an abuse of the process of the Courts. Considering this, there is nothing to show that at the very inception there was any intention on behalf of the petitioners to cheat which is a condition precedent for an offence under Section 420 IPC.

More so, the allegations made against the petitioners in their personal capacity seem to be absolutely vague. In the present case, the company has not been arrayed as an accused/party. It is alleged that when a complainant intends to rope in official authorities of a company, it is essential to make requisite allegation to constitute the vicarious lability. In the case in hand, as noted earlier, allegations are vague and in fact, principally are against the petitioners and not specifically against the company.

In view of discussions made hereinabove, this Court is of the considered view that continuation of this FIR would amount to an abuse of the process of Court and to prevent the same it is just and expedient for this Court to quash the same by exercising the powers under Section 482 Cr.P.C.

Accordingly, the present petition is allowed and FIR No. 433, dated 13.12.2017, under Section 420 IPC, registered at Police Station Barnala (Annexure P-1) and all subsequent proceedings arising therefrom, are quashed qua the petitioners.

SANDEEP MOUDGIL
JUDGE

31st OCTOBER, 2022.
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1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No