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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-24968-2022
Date of Decision: 02.06.2022

Pardeep Suri and another

..... Petitioners

Versus

Amandeep Bansal

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sandeep Arora, Advocate,
for the petitioner.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 with a prayer for quashing of Criminal Complaint No.COMI 390 of 2021 instituted on 01.02.2021 titled as “**Amandeep Bansal Vs. Pardeep Suri and another**” under Sections 420, 465, 467, 468, 471 & 120-B of the IPC and also for quashing of the summoning order dated 20.12.2021 passed by the learned Judicial Magistrate Ist Class, Bathinda in which the petitioners have been ordered to be summoned for commission of offence under Section 420 of the IPC (Annexure P-2) with all the subsequent proceedings arising therefrom.

The subject matter of the complaint/ application under Section 156(3) of the Cr.P.C. (Annexure P-1), which is challenged in the present case, was that the complainant and his father were doing business of buffaloes for long years and they purchased the buffaloes from surrounding areas, villages and mandies and further sold the same to other persons for doing the business.

The present petitioners were also in the visiting terms with the father of the complainant for purchasing the buffaloes and due to this reason they were known to each other. On 20.09.2019, the complainant purchased eight buffaloes at Maur Mandi and on the next date the complainant purchased four other buffaloes from different villages. Out of the said buffaloes, the complainant purchased some buffaloes on cash basis or paid the amount later. On 22.09.2019, the petitioners came to the house of the complainant at Village Tungwali and they purchased ten buffaloes from the complainant for Rs.9,30,000/-. Out of this aforesaid amount, the petitioners paid only Rs.30,000/- to the complainant and petitioner No.1 in discharge of his legal liability issued one cheque bearing No.103263 dated 05.10.2019 for Rs.9,00,000/- drawn on Oriental Bank of Commerce, Branch Hambran Road, Ludhiana and assured the complainant that the cheque will be honoured as and when presented and they took away the buffaloes on the same day and on the same day, the complainant received another message from the petitioners that they require more buffaloes for which they will give payment later on and on their asking, the complainant sent two more buffaloes of the value of Rs.1,70,000/-, which is still due towards the petitioners. Thereafter, the complainant presented the said cheque for encashment, but the same returned as unpaid by the banker of petitioner No.1 with remarks that 'No Such Account'. The complainant filed a complaint under Section 138 of the Negotiable Instruments Act alleging that it was within the knowledge of the petitioners that the cheque will not be honoured as they issued the cheque of the account which was not of petitioner No.1 and issued the cheque of other account under his signatures and in this way the petitioners have committed a

fraud and cheating with the complainant while purchasing the buffaloes and issuing a cheque of another account of another person and no such account was available with the Oriental Bank of Commerce, Branch Hambran Road, Ludhiana. Thereafter the complainant tried to contact the petitioners many times and he went to their house and dairy farm where he found a lock there and on further inquiry, it was found that the petitioners had absconded on 24.09.2019 and turned off their mobile phones and fled away with the money of several other people as well. It is further stated in the complaint that the petitioners have links with the gunda persons and in case the complainant or his family members have caused any loss, then the petitioners will be responsible for the same.

Since it was a complaint case, preliminary evidence was recorded in which the complainant, namely, Amandeep Bansal himself appeared as CW-1 and reiterated the entire facts of the complaint. The complainant also examined Sant Lal, Assistant Manager of Punjab National Bank, Branch Hambran Road, Ludhiana as CW-2 to brought the record of cheque No. 103263 dated 05.10.2019 which was in the name of Amandeep Bansal-Complainant. The complainant also examined Rajwinder Singh son of Sukhmander Singh as CW-3, who deposed that he knows the complainant-Amandeep Bansal, who does the business of buffaloes and also supported the version of the complainant. Further the complainant also examined Mandeep Singh as CW-4, who also deposed on the lines of CW-3 regarding purchasing of buffaloes. ASI Jasvir Singh, PC Branch Office of SSP, Bathinda also produced on record copy of inquiry report dated 21.10.2019 on the basis of application moved by the complainant. The inquiry by the police was

consigned on the ground that a case under Section 138 of the Negotiable Instruments Act was already pending but the learned Judicial Magistrate Ist Class, Bathinda came to the conclusion that the allegations made by the complainant against the petitioners are sufficiently corroborated and, therefore, there were sufficient grounds to summon the accused/petitioners under Section 420 IPC and therefore, both the petitioners were summoned to face the trial under Section 420 IPC.

Learned counsel for the petitioners has submitted that the complainant in connivance with his brother procured the cheque, forged and fabricated the same in the name of petitioner No.1 and misused the same against them only to harass and humiliate him and to defame him in the society. He further submitted that the alleged cheque was never issued by petitioner No.1 to the complainant in discharge of his legally enforceable debt and the same does not bear the signatures of petitioner No.1. He also submitted that the report of the banker was that "No Such Account" exists, which shows that the cheque does not belong to petitioner No.1 and therefore, no offence was made out against the petitioners and therefore, the complaint as well as summoning order are liable to be quashed.

I have heard the learned counsel for the petitioners.

The complainant had filed a complaint before the learned Magistrate by alleging that he had sold buffaloes to the petitioners for an amount of Rs.9,30,000/- and they had given an amount of Rs.30,000/- to the complainant and for the remaining amount of Rs.9,00,000/-, the petitioner No.1 had issued a cheque and taken away the buffaloes with them. When the cheque was presented, it was found that "No Such Account" exists. On the

basis of the preliminary evidence which included the statement of the complainant as well as the other witnesses, who also supported the version of the complainant, the learned Magistrate had summoned the petitioners. Specific allegations have been made in the complaint itself that offence under Section 420 IPC was made out since a fraud was committed upon the complainant. The argument raised by the learned counsel for the petitioners that the petitioners never issued any cheque nor there was any legally enforceable debt against the petitioners, would be disputed question of fact and the same can be ascertained only at the time of trial. For the purpose of quashing of the FIR and the complaint at the threshold, the law is well settled. The Hon'ble Supreme Court in “*State of Haryana and others Vs. Ch. Bhajan Lal and others*”, 1991(1) RCR (Criminal) 383 has laid down various parameters wherein a complaint or an FIR can be quashed at the threshold. The allegations which are contained in the complaint and the primary evidence as stated by the learned Magistrate in the summoning order would show that there is no ground available with the petitioners for seeking quashing of the complaint at the threshold level since all these facts can be ascertained only at the time of trial. The fact that proceedings under Section 138 of the Negotiable Instruments Act are pending would also not make any ground for quashing of the FIR under Section 420 IPC because as per the allegations, the fraud was committed at the time of issuance of the cheque which according to the complainant was regarding a cheque of which petitioner No.1 was not having any account and, therefore, according to the complainant, a fraud was being committed at the time of inception.

This Court does not wish to go into the merits of the controversy,

but at the same time finds that there is no ground available with the petitioners for quashing of the complaint at the threshold. Therefore, finding no merit in the present case, the same is hereby dismissed.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

02.06.2022
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes |
| 2. Whether reportable: | Yes/No |