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CRM-M-25453-2019 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-25453-2019 (O&M)

Date of Decision:-25.7.2022

SIDDHARTH SANGWAN

... Petitioner

Versus

STATE OF HARYANA

... Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by :-

Mr. Gurmandeep Singh Sullar, Advocate
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

KARAMJIT SINGH, J.

Petitioner/accused has filed this petition seeking quashing of
FIR No.156 dated 7.3.2018 registered under Section 406/34 IPC at Police
Station Suraj Kund, Faridabad (Haryana).

Notice of motion was issued and reply by way of an affidavit of
Mr. Rajiv Kumar, Assistant Commissioner of Police, Suraj Kund, Faridabad
was filed on behalf of the State and the same has been taken on record.

The counsel for the petitioner contended that the petitioner was
employee of Hindustan Wellness 107, First Floor, Sector-44, Gurugram

(clinical laboratory). In the impugned FIR, which was registered at the instance of complainant-Nagendra Singhal, it was alleged that the lab technician of said clinical laboratory went to the house of the complainant in the morning, to collect his blood-sample for testing, for which, the complainant paid charges worth ₹1,299/- against invoice No.92495 dated 10.2.2018 but the clinical laboratory failed to provide report of his blood-sample to the complainant.

The counsel for the petitioner further contended that there is no denying the fact that on 10.2.2018, blood-sample of the complainant was taken for testing, for which he was charged ₹1,299/- against proper receipt. The counsel for the petitioner further contended that when the said blood sample was sent for its analysis, it was found to be clotted and as such the said blood-sample was unfit for testing and due to the same reason no report regarding aforesaid blood-test was prepared by the concerned doctor. The counsel for the petitioner further contended that impugned FIR itself suggests that at that time the present petitioner was working as a CEO of the said clinical laboratory. The counsel for the petitioner further contended that the aforesaid blood-sample was not personally collected by the petitioner and he was not responsible for its preservice. The counsel for the petitioner further contended that there was no mala-fide or dishonest intention on the part of the petitioner as it was not his duty to collect, preserve or to analyse the blood-sample in question. The counsel for the petitioner further contended that the blood sample of the complainant may have been damaged due to negligence of the person who collected the said sample or for want of care after its collection. The counsel for the petitioner

further contended that the petitioner cannot be held liable for the same on the criminal side. The counsel for the petitioner further contended that even admitting what has been mentioned in the FIR, this case should not come within the purview of criminal proceeding as the entire allegations even if admitted to be correct amounts to deficiency of service on the part of clinical laboratory and no offence under Section 406 IPC is made out against the petitioner.

On the other hand the State counsel submits that after completion of investigation, the police presented challan under Section 406 IPC against the petitioner and his co-accused. She further submits that the trial Court after hearing both the parties framed charges under Section 406 IPC and now the trial is under progress. The State counsel further submits as the trial is going on, at this stage, no ground is made out to interfere in the matter under Section 482 Cr.P.C. The State counsel further submits that specific allegations are recorded against the petitioner in the FIR and that the trial Court rightly framed charges under Section 406 IPC against the petitioner and other accused persons. The State counsel further submits that no ground for interference under Section 482 Cr.P.C. is called for.

I have considered the submissions made by the counsel for the parties.

One of the ground the State counsel has taken while opposing the prayer is that the case has proceeded and after framing of charges, some of prosecution witnesses have also been examined. As per the State counsel, since trial has proceeded, the FIR in question cannot be quashed. However, the Hon'ble Supreme Court of India in **Anand Mahatta vs. State (NCT of**

Delhi) (2019)11 SCC 706, has held that inherent power of the High Court to quash the proceedings can be exercised even after the charge-sheet is filed. So now it is well-settled that FIR can be quashed at any stage of the proceedings, by the High Court while exercising jurisdiction under Section 482 Cr.P.C. to prevent the abuse of process of law.

FIR in the instant case was registered on the basis of the complaint lodged by the complainant-Nagendra Singhal, in which he alleged that he gave his blood-sample for testing to the aforesaid clinical laboratory against the payment of ₹1,299/-, but the clinical laboratory failed to provide him the report with regard to his blood sample. Consequently, the police registered impugned FIR under Section 406 IPC against the present petitioner and one Rakesh Kumar Maurya. As per the allegations in the FIR, the present petitioner at that time was working as a CEO of the clinical laboratory while Rakesh Kumar Maurya collected the blood-sample of the complainant.

The relevant statutory provisions describing criminal misappropriation of property and criminal breach of trust are as follows:-

Section 403 IPC:- Dishonest misappropriation of property.—

Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 405 IPC:- Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in

violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”

Explanation [1].—A person, being an employer 3[of an establishment whether exempted under section 17 of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not] who deducts the employee’s contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Explanation 2.—A person, being an employer, who deducts the employees’ contribution from the wages payable to the employee for credit to the Employees’ State Insurance Fund held and administered by the Employees’ State Insurance Corporation established under the Employees’ State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Section 406 IPC:- Punishment for criminal breach of trust.—

Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

A careful reading of the Section 405 IPC shows that a criminal breach of trust involves the following ingredients:-

- (a) a person should have been entrusted with property, or entrusted with dominion over property;
- (b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so;
- (c) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.

Now adverting to the facts of the present case. It appears that the complainant handed over (entrusted) his blood-sample to the clinical laboratory i.e. Hindustan Wellness, 107, First Floor, Sector 44, Gurugram for the purpose of testing. However, after the collection of the said blood-sample, the same got clotted and as such became unfit for testing and resultantly, it was not analyzed and consequently the clinical laboratory failed to provide any report of blood test to the complainant. In the given circumstances, it cannot be said that the aforesaid blood-sample of the complainant was misappropriated or converted to his own use by the petitioner. The blood-sample of the complainant was not personally

collected by the petitioner and even thereafter was not handled in any manner by him. Further it cannot be said that the blood-sample of the complainant was damaged or clotted due to malicious or *mala fide* intention of the petitioner. Further there is nothing on the record to *prima facie* establish that the aforesaid blood-sample was dishonestly used or disposed of by the petitioner or by some other person at his instance.

A perusal of the penal statutory provisions, which are reproduced above show that there has to be dishonest misappropriation or conversion of the entrusted property by the accused. In the present case, as has already been discussed earlier, the petitioner was having no such dishonest or *mala fide* intention to misappropriate or convert the blood-sample of the complainant. Thus, there leaves no manner of doubt in the mind of the Court that even if the allegations levelled in the FIR are accepted at their face value, even then the allegations do not constitute commission of any offence against the petitioner, leave alone offence under Section 406 IPC.

The Hon'ble Supreme Court of India in **State of Haryana and Ors. vs. Ch. Bhajan Lal and Ors. 1991(1) RCR Criminal 383** culled out certain categories of cases by way of illustrations wherein power under Article 226 of the Constitution of India or the inherent power under Section 482 Cr.P.C. can be exercised either to prevent abuse of process of the Court or otherwise to secure ends of justice. A relevant extract from the said judgment reads as follows:-

“In the exercise of the extra-ordinary power under [Article 226](#) or the inherent powers under [Section 482](#) of the Code of Criminal Procedure, the following categories of cases are given 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 myriad kinds of cases wherein such power should be exercised:

- (a) 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;
- (b) 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;
- (c) 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;
- d) 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;
- (e) 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;
- (f) 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;

(g) 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.”

As a sequel to above discussion, this Court feels that the present case falls under (a) and (c) categories set out in **State of Haryana and others's** case (supra) as has been reproduced above. Thus in the instant case, the continuance of the criminal proceedings against the petitioner would be nothing but an abuse of the process of Court.

For the foregoing reasons, the petition is allowed and FIR No.156 dated 7.3.2018 registered under Section 406/34 IPC at Police Station Suraj Kund, Faridabad (Haryana) and all the subsequent proceedings arising therefrom are hereby quashed qua the petitioner.

(KARAMJIT SINGH)
JUDGE

25.7.2022

Gaurav Sorot/Paritosh Kumar

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No