

CRM-M-34935-2022

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-34935-2022 (O & M)

Date of decision: 09.09.2022

Vikas Kumar

...Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Sunil Kumar, Advocate,
for the petitioner.

HARNARESH SINGH GILL, J. (ORAL)

CRM-33787-2022

Allowed as prayed for. Annexures P-3 and P-4 are taken on record, subject to all just exceptions.

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This petition has been filed for quashing of FIR No.75 dated 05.06.2022, registered at Police Station Nangal, District Rupnagar, under Sections 420 and 511 IPC, and all the subsequent proceedings arising therefrom.

Learned counsel for the petitioner submits that on the complaint of respondent No.2, the above-noted FIR was registered against three accused i.e. Gurjant Singh, Vikas Kumar (present petitioner) and Som Nath; that co-accused Gurjant is the friend of complainant-respondent No.2; that so far as the allegations that while advancing loan to respondent No.2, his cheque book containing 10 cheques had been retained by the petitioner

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being a Bank Manager, are concerned, the same are false. In fact, only 05 cheques i.e. Cheque Nos.068441 to No.068445 had been retained by the bank. Learned counsel further contends that in order to discharge his liability, respondent No.2 issued cheque No.068448 dated 26.03.2021 in favour of co-accused Som Nath; that when the said cheque was presented for encashment, the same got dishonoured, following which Som Nath had filed a complaint under Section 138 N.I.Act, against respondent No.2, but at a later stage, a compromise had been effected between them therein. Learned counsel further contends that respondent No.2 has also got registered FIR No.09 dated 20.01.2021, under Sections 406, 420 and 120-B IPC, against the petitioner alleging misuse of 10 cheques and, therefore, the parallel proceedings by way of present FIR, cannot be initiated against the petitioner. He further contends that even in the departmental inquiry by the bank, the petitioner has been found innocent and has been given a clean chit.

I have heard the learned counsel for the petitioner.

As per the case of the prosecution, the bank sanctioned the loan of Rs.3.50 lakh to respondent No.2 and in lieu thereof, his cheque book containing 10 cheques had been retained by accused-Gurjant and the present petitioner, who had handed over the same to accused Som Nath and the same were being misused by him.

There are specific allegations against the petitioner that he alongwith co-accused Gurjant Singh handed over the cheque(s) of respondent No.2-complainant to Som Nath, and the same had been misused by him.

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This Court cannot go into the question as to whether only five cheques or ten cheques had been given by the complainant while taking the loan from the bank. The only question that requires to be determined at this stage is whether the registration of the FIR is an abuse of process of law. However, on the basis of facts on record coupled with the arguments raised by the counsel for the petitioner, this Court does not find the proceedings to be an abuse of process of law.

The disputed questions of facts involved in the present petition, can only be determined on the basis of evidence to be led by the parties. In exercise of the powers under Section 482 Cr.P.C., this Court cannot conduct a mini trial so as to go into said questions. As noticed above, such inherent powers are to be exercised by this Court only under exceptional circumstances and when the proceedings, on the face of record, appear to be an abuse of process of law.

In the judgment of State of Haryana vs Bhajan Lal, 1992 Supp (1) SCC 335, which has been followed in umpteen number of subsequent judgments, the Hon'ble Apex Court, has held that when a criminal proceeding is instituted with mala-fide intention to harass the person, the Court can quash the entire proceeding for the ends of justice. It was held as under:-

“(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

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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 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.

(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.”

The instant case does not fall under any of the above parameters laid down by the Hon’ble Supreme Court.

This Court does not find any force in the argument of the learned counsel for the petitioner that he has been given a clean chit in the departmental inquiry, for the reason that departmental inquiry and criminal investigation are being done by two different entities and they are not in same hierarchy.

In view of the above, finding no merit in the present petition, the same is hereby dismissed.

09.09.2022

parveen kumar

**(HARNARESH SINGH GILL)
JUDGE**

Whether reasoned/speaking?

Yes/No

Whether reportable?

Yes/No